On 24 January 2013, Mr Ighalo appealed against the Tribunal's decision on findings. The appeal was dismissed by Lord Justice Laws and The Honourable Mrs Justice Swift DBE. Bruce Ihionkhan Ighalo v Solicitors Regulation Authority [2013] EWHC 661 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10614-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BRUCE IHIONKHAN IGHALO Respondent

Before:

Mrs J. Martineau (in the chair)
Mr R. Hegarty
Mr D. E. Marlow

Date of Hearing: 5 September 2011

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

James Pyke, Solicitor of McMillanWilliams Solicitors, 159 Herne Hill, London SE24 9LR for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he:

1.1 In breach of Rule 22(5) of the Solicitors' Accounts Rules 1998 ("SAR") withdrew money on behalf of one client which exceeded the money held on that client's behalf;

1.2 In breach of Rule 32(1) SAR failed to keep accounting records properly written up at all times to show his dealings with client money held, received or paid;

1.3 In breach of Rule 32(7) SAR failed to carry out reconciliations in accordance with the requirements of the said Rule;

1.4 In breach of Rule 32(9) SAR failed to retain bank statements received from the Bank of Scotland for a period of at least 6 years;

1.5 Breached Rule 1 of the Solicitors' Code of Conduct 2007 ("SCC") in each and all of the following respects:

1.5.1 Failed to act with integrity contrary to Rule 1.02;

1.5.2 Allowed his independence to be compromised contrary to Rule 1.03;

1.5.3 Failed to act in the best interests of his client contrary to Rule 1.04;

1.5.4 Behaved in a way that was likely to diminish the trust the public placed in him or the profession.

It was alleged that the Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to establish dishonesty for all or any of these allegations to be proved. His dishonesty was firstly the deliberate use of Abbey's mortgage money for a different purpose to that for which it was advanced to him, and secondly his provision to Investigation Officers of a false explanation;

1.6 Acted in circumstances in which there was a conflict between his interests and those of his client;

1.7 Contrary to Rule 10.05(1)(a) SCC failed to fulfil an undertaking given to Cash Express on 30 October 2007 to repay a loan of £50,000;

1.8 Acted in breach of Rule 1 of the Solicitors' Practice Rules 1990 ("SPR") in each and all of the following respects:

1.8.1 Compromised or impaired his independence or integrity;

1.8.2 Compromised or impaired his duty to act in the best interests of his client;

1.8.3 Compromised or impaired his good repute and that of the solicitors' profession;

The particulars were that he acted in or otherwise facilitated conveyancing transactions during the course of which he failed to be alert to the suspicious characteristics of those transactions and that he was as a consequence grossly reckless.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 29 March 2011 with exhibit "DEB 1" and handwritten file note prepared by Clare Guile, Investigation Officer ("IO"), dated 3 September 2008;

- Applicant's Schedule of Costs.

Respondent:

- Letter First Solicitors LLP to Solicitors Regulation Authority ("SRA") dated 14 June 2010;

- Medical Reports dated 2 September 2011 and 5 September 2011 by Dr Nagore Benito LMS, Consultant Psychiatrist.

Preliminary Matter

3. Mr Pyke applied for permission to adduce in evidence a letter written by the Respondent to the SRA on 14 June 2010 which had been omitted from exhibit "DEB 1". Further, Mr Barton had been asked by Mr Pyke to provide existing notes prepared by IO Clare Guile recording her discussion with the Respondent on 3 September 2008. Mr Barton had produced what Mrs Guile said was the relevant note and applied for permission to adduce the same. The Tribunal gave its permission for the introduction of the documents, neither party having opposed the other's application.

4. Mr Pyke also applied for permission to introduce medical reports dated 2 and 5 September 2011 from Dr Nagore Benito LMS, Consultant Psychiatrist. The application was opposed by Mr Barton. On 31 March 2011 the Tribunal directed the Respondent to file and serve any expert medical evidence upon which he intended to rely by no later than 6 weeks prior to the date fixed for the substantive hearing. Mr Barton reminded the Tribunal that it had first been suggested on behalf of the Respondent that he might want to rely on medical evidence in September 2009. The Applicant had been concerned that evidence would be produced close to the hearing, which was why it had sought a specific direction from the Tribunal. Mr Barton said that he was unclear as to the issue to which the medical report was directed. Was it being suggested that the Respondent was unwell at the time when the events in question took place, or did the evidence go solely to mitigation? The Applicant had been given no opportunity to consider its position in the light of the evidence. Mr Pyke accepted that the medical evidence did not answer all the questions that might

have been posed. It had been intended that the evidence should be directed to the Respondent's state of mind at the time of the events complained of by the Applicant. Dr Benito saw the Respondent on 24 August 2011 and requested access to his general practitioner's records, but they were not produced in time for a comprehensive report to be prepared before the hearing.

5. The Respondent gave oral evidence as to why his medical evidence had not been disclosed in compliance with the Tribunal's direction. He explained that his general practitioner had tried to obtain a report from an NHS doctor in order to save costs, but without success. In 2010 no doctor was available to see him because they were all "too busy". On receipt of the Tribunal's March Memorandum he had no option but to obtain a report privately, although he could not afford to do so. One doctor had cancelled appointments repeatedly, and the Respondent had been re-training in Entertainment Law in America for over three months. This had also caused delay.

6. In all the circumstances and somewhat reluctantly the Tribunal agreed to the Respondent's application to introduce medical reports from Dr Benito. However the Tribunal made it clear to the Respondent and others reading its Judgment that its directions were not to be flagrantly ignored. It was incumbent upon all parties to abide by time limits. Failure to do so caused inconvenience and created the potential for delay in the timely determination of cases.

Factual Background

7. The Respondent was born on 1 June 1960 and admitted as a solicitor on 3 July 2000. His name remained on the Roll of Solicitors, but he no longer held a practising certificate. At all material times the Respondent was a member of First Solicitors LLP ("the Firm") of 24a Nelson Road, Greenwich, London SE10 9JB. The Firm was established by the Respondent in 2003 and became a Limited Liability Partnership in 2006. It closed on 1 October 2008.

8. The allegations arose from an investigation of the Firm's books of account and other documents by Clare Guile, an IO appointed by the SRA, which commenced on 13 May 2008, and resulted in the production of a Forensic Investigation Report ("FIR") dated 19 March 2009 by M. J. Calvert, the SRA's Head of Forensic Investigation. Mrs Guile and a colleague interviewed the Respondent on 6 November 2008 and a transcript of that interview was exhibited to the Rule 5 Statement.

<u>The Accounts Rules Allegations (1.1 to 1.4)</u>

9. The Respondent agreed at a meeting with the IO on 10 July 2008 that the Firm's books of accounts were not in compliance with the SAR. He also agreed that he had failed to maintain client account ledgers and the cashbook in relation to four designated client accounts. He agreed that he had not retained Bank of Scotland bank statements and that he had failed to carry out reconciliations.

10. The IO inspected a list of liabilities to clients as at 30 April 2008 and compared it with cash available in client account, revealing the existence of a cash shortage of £99,229.88. The Respondent agreed the shortage and replaced it on 19 May 2008. The cause of the shortage was analysed. Liabilities to clients totalled £408,603.74. The

figures reconciled with balances on client ledgers, but the Respondent agreed that client ledger accounts for clients Mr EE and Mrs U were incorrect due to mispostings. The shortage arose as a result of overpayments of various amounts between 12 July 2007 and 18 March 2008 in respect of Mr EE's matters when insufficient funds were held for him.

11. The Respondent had acted for Mr EE for 6 or 7 years. The Firm operated a merged client ledger account (number 1102) for him to which all transactions relating to his individual matters were posted. The IO asked the Respondent to demerge the account and provide individual ledgers for each matter. Following a review of the client account bank statements, it could be seen that on 12 July 2007 one ledger had been incorrectly credited with £100,048.63. The Respondent said that when this sum was received it was not allocated immediately. It should have been credited to Mrs U's unconnected client ledger but the Respondent did not realise this at the time when the enquiry concerning the allocation of the money was referred to him. He believed that the money was to remain unallocated and to be carried forward to the next month's accounts enquiries. He could not explain how it had been allocated to Mr EE's account in error. Once the ledger had been reconstructed it was revealed that on 12 July 2007 the account was overdrawn by £13,912.65. During the period 13 July 2007 to 31 March 2008 further postings to the ledger increased the debit balance to £100,807.52. The Firm held £1577.64 for Mr EE. When deducted from the debit balance, the cash shortage of £99,299.88 was identified.

Allegations 1.5 and 1.6 and Albyfield

12. The Respondent and his wife purchased a property at Albyfield in joint names in 2005. The property was initially mortgaged to the Bank of Scotland. In 2007 the Respondent decided to remortgage the property to Abbey and £468,345 from Abbey was advanced to the Respondent for the purpose of redeeming the Bank of Scotland mortgage. Abbey was to have a first legal charge in accordance with the conditions under which the advance was made. Abbey instructed the Firm, which was acting for the Respondent and his wife, to act on its behalf. An unadmitted conveyancing clerk conducted the transaction under the Respondent's supervision. The relevant client ledger, which was in the maiden name of the Respondent's wife, recorded that on 17 December 2007 the Firm received the mortgage advance of £468,345 from Abbey into its client account. On 19 December 2007 the whole sum was paid from client account by means of cheque number 001305. On 3 September 2008 the IO asked the Respondent if the item on the client ledger account marked "17-Dec-07 PAYMENT" related to the redemption of the Bank of Scotland mortgage. The IO's recollection and her attendance note recorded that the Respondent said that it did. The IO asked the Respondent why the payment was by cheque as it was unusual to redeem by cheque rather than telegraphic transfer. Her recollection and written record was that he said that it was not unusual as a few banks accepted cheques and one bank encouraged payment by cheque. When asking these questions the IO already knew that the Bank of Scotland mortgage had been redeemed by telegraphic transfer on 2 July 2008, and not by cheque payment in December 2007.

13. The Certificate of Title for Abbey was signed by the Respondent's partner in order, he said in a letter to the IO dated 13 October 2008, to "avoid conflict". He said that his partner relied on him to ensure that "[the case] was properly carried out and the

interest of the lender protected and registered". The Respondent did not inform Abbey that the Firm was acting for it and him. He said in interview on 6 November 2008 that he "thought they knew". He was referred by the IO to Rule 3.18 SCC which required the Firm to inform the lender in writing of the circumstances if the borrower was a member of an LLP if the Firm wished to act for both the lender and the borrower. The Respondent said that he could not recall doing that, but he thought that Abbey was aware that he worked at the Firm. He was also asked whether he was aware that the Council of Mortgage Lenders' Handbook ("CMLH"), which applied to this remortgage, stated that:

> "May my firm act if the person dealing with the transaction or a member of his immediate family is the borrower? Yes provided another partner acts for Abbey".

The Respondent said that he had not referred to these requirements at the time and did not realise that another partner had to act.

14. The advance by Abbey was not used to discharge the Respondent's Bank of Scotland mortgage. It was instead used to discharge a personal guarantee that the Respondent had given to Green Lantern, a bridging finance company advised by KF Solicitors. Abbey's charge dated 17 December 2007 was registered on 26 June 2008. The Bank of Scotland mortgage was redeemed on 2 July 2008.

15. On 13 October 2008 the Respondent wrote to the SRA with the file to explain the remortgage transaction. He confirmed that he had incurred a personal liability to the bridging loan company. He said that he acted for Mr EE on the purchase and subsequent re-mortgage of five properties. Contracts were exchanged and a completion date fixed. The Respondent completed three purchases, but two remained uncompleted because Mr EE had insufficient funds. Mr EE was referred to the bridging loan company for a loan, which the Respondent gave his personal guarantee to repay if Mr EE defaulted. The records showed that on 23 November 2007 £400,000 was received into the Firm's client account and used to complete the two remaining purchases.

The Respondent's letter continued:

> "... lenders were pressing for their charge to be registered, while the bridging loan company was pressing for the loan to be paid back and both of them were threatening to report to the Solicitors Regulation Authority. I was anxious that a report to the SRA would meet with unsavory (sic) consequences".

16. During a recorded and transcribed interview with the IO and her colleague on 6 November 2008, the Respondent expanded upon his letter. He agreed that he had given his personal guarantee to Green Lantern and described the informal way in which the transaction had been conducted without the completion of any paperwork. The bridging loan for approximately £400,000 was to be paid back within a month. He had been provided with a definite date for repayment which he did not write down but which he remembered at the time. The Respondent confirmed that he was aware of the requirements of the role of a guarantor. He appreciated that if the loan was not redeemed by Mr EE it would become his personal debt. He confirmed that he did not

feel pressurised or blackmailed in to repaying the money, but that he felt "compelled" to do so because he feared what might happen to him or his Firm if a report was made to the SRA. The bridging loan had to be redeemed around 15 or 16 December 2007. KF solicitors telephoned to tell him that the money had to be repaid before the Christmas holiday. He said that he thought Mr EE would produce the money, but once it became apparent that he was not going to do so the Respondent said he met with him up to twice a day to discuss. He and Mr EE went back to KF solicitors to obtain an extension of time which was refused. KF told the Respondent that £470,000 had to be repaid. The mortgage advance on his property was received from Abbey on 17 December 2007. The Respondent told the IO that he did not read the conditions attached to the mortgage, but only the product offer. He confirmed that he signed the terms and conditions on the mortgage offer and to that extent was aware of what they said. He volunteered that at the very least it was an implied term that the existing mortgage to Bank of Scotland had to be redeemed, regardless of whether that was explicitly stated in the mortgage offer. He confirmed that his assistant, a conveyancing clerk with some experience of dealing with re-mortgages, conducted the matter on behalf of the Firm. He confirmed that his partner signed the Certificate of Title. He said she did not conduct the whole transaction because "she did not do a lot of conveyancing". She asked who the mortgage was for, and he said it was for him and his wife, so she signed the Certificate. The Respondent confirmed that he had carried out the various searches and that there was a priority search in place in Abbey's favour throughout. When the mortgage advance was received he initially intended to return it to the Abbey because his wife did not wish to proceed for personal reasons. However she agreed to go ahead. At some point on 17 December 2007 KF solicitors telephoned the Respondent saying that their clients were "very agitated" and wanted the money in their account before they went on holiday, but in any event before 24 December 2007. The Respondent said that he called Mr EE who confirmed that he was not able to raise funds. The Respondent said that he was angry and issued cheque number 001305 on client account for the whole amount (£468,345) and sent it to KF. There was no covering letter to verify this. The Respondent said that this was the only money he had, even though it was not for the full amount. He accepted that he should have sent the money to Bank of Scotland as the money belonged either to that bank or to Abbey. He conceded that it was not his money and that Abbey had not given him permission to use the mortgage advance as he saw fit and for any other purpose than that for which it was intended. The Respondent accepted that the use of the money to discharge his personal debt was not the right thing to do and, reluctantly, that he had misused client funds, having, he said, been pushed to do so. He accepted that he was aware on 19 December 2007 that he had misused client monies and later said that he knew at the time of using the mortgage advance to pay Green Lantern that what he was doing was wrong, but that he did not have a choice. He acknowledged that other solicitors would not say his actions had been right.

17. The Respondent told the IO that he continued to service the Bank of Scotland and Abbey mortgages until mid-2008. He received a telephone call from Abbey asking why its charge had not been registered. He borrowed further funds from Green Lantern via KF solicitors to redeem the Bank of Scotland mortgage on 2 July 2008.

18. During the November 2008 interview the Respondent insisted that he had not told the IO about what had happened to the Abbey advance at his initial interview with her

because it had not arisen during the course of the questions put to him. He strongly disputed during that interview and at the hearing that he had misled the IO during their meeting on 3 September 2008. He said that Mrs Guile had not asked him whether cheque 001305 was to the Bank of Scotland. He had been asked by Mrs Guile what the cheque was for, but had insisted that he did not want to say anything about the matter until he had checked the file. He denied that he had behaved dishonestly.

19. On 29 April 2009 the SRA wrote to the Respondent to ask him to explain his conduct. The Respondent's solicitor replied on his behalf on 2 July 2009 in which he confirmed that the Respondent stood by the explanations provided to the IO and recorded in her report. In response the SRA asked the Respondent's solicitor whether he intended to seek medical assistance and/or produce medical evidence in relation to a suggestion that the Respondent was unwell at the time when events took place. The Respondent's solicitor replied on 21 September 2009 stating that the Respondent was seeking expert medical opinion and a report would be available in due course. On 4 December 2009 the issues identified were referred by the SRA for formal adjudication.

Allegation 1.7 – Breach of Undertaking

20. The Respondent acted for Mr EE in relation to a property transaction at Holborn Road. The Respondent provided an undertaking to Cash Express by letter dated 30 October 2007 as follows:

> "We write to confirm that we act for the above named who has applied to your company for a loan of £50,000 for a period of two months at interest of 11% monthly repayable within this period. This letter serves as our undertaking to redeem the Loan whether or not we proceed to the completion on the above sale. We should be pleased if you would release funds to First Solicitors LLP."

The loan of £50,000 was paid into the Firm's bank account on 5 November 2007.

21. Solicitors acting for Cash Express wrote to the SRA on 3 February 2010 to report breach of the undertaking in that the loan had not been redeemed. The same solicitors had already written to the Respondent on 8 December 2009 reminding him that he had failed to discharge the undertaking. The Respondent replied by letter on 29 December 2009 informing the solicitors that the Firm had closed. The SRA contacted the Respondent on 11 May 2010 to request an explanation, which was provided by his letter dated 14 June 2010. In short his explanation was that the undertaking had been subsequently varied as set out in his letter and discharged when Mr EE signed a charge on his property in favour of Cash Express.

Allegations 1.5.1, 1.5.3 and 1.5.4 and the HBOS Properties

22. The Respondent acted for the following buyers/borrowers and their mortgagees, HBOS, as follows:

- Mr EE – Albert Embankment. Mortgage instructions were dated 22 February 2008. The Certificate of Title dated 26 February 2008 was signed by the Respondent. Completion took place on 27 February 2008.

- Miss MB – Brookmans Park. Mortgage instructions were dated 2 May 2008. The Certificate of Title dated 19 May 2008 was signed by the Respondent. Completion took place on 23 May 2008.

- Miss FB – Chatsworth Road. Mortgage instructions were dated 20 August 2007. The Certificate of Title dated 31 August 2007 was signed by the Respondent. Completion took place on 3 September 2007.

- Mr SO – Erwood Road. The Certificate of Title dated 25 June 2008 was signed by the Respondent. Completion took place on 30 June 2008.

23. On 24 September 2009, DLA Piper UK LLP complained to the Legal Complaints Service ("LCS") on behalf of HBOS that the mortgages had not been registered. They said that the Respondent had not responded to "repeated requests" for transaction files. The LCS referred the complaint to the SRA. The fee earner at DLA with conduct of the complaint moved to another firm from which she wrote on behalf of HBOS to the SRA on 1 March 2010. She said that the Respondent had advised on different occasions that he had passed the relevant files to other firms of solicitors. One such firm denied that it had received the files. The other firm was subject to intervention by the SRA, but also denied having received the files.

24. Each Certificate of Title signed by the Respondent expressly incorporated the extended Certificate set out either in Rule 6(3) SPR or in the Annex to Rule 3 SCC, with the result that the Respondent had confirmed to HBOS that he would deliver the documents necessary to register their mortgages to the Land Registry within the priority protection period afforded by searches.

25. The SRA wrote to the Respondent on 19 March 2010. He replied through his solicitor on 5 May 2010, providing an explanation for his conduct and denying any fault with respect to the delay in registering title. In summary, he said that any problems were the result of actions taken by third parties over whom he had no control. On 1 April 2010 the Respondent's insurers declined indemnity cover in respect of the properties at Brookmans Park and Chatsworth Road.

<u>Allegations 1.8.1 to 1.8.3 – The Bordley Court Transactions</u>

26. These transactions were conducted before July 2007 and the provisions of the SPR applied. All transactions resulted in insurance claims. The Respondent acted for buyers and lenders in relation to Flats 1, 2, 4, 5 and 8 Bordley Court. The lender was M Bank, for which the Respondent also acted.

27. On 10 September 2009 solicitors acting for the Respondent's professional indemnity insurers sent him a declinature letter relating to the insurance claims. The documents on file inspected by those solicitors revealed that the purchase price in each case had been divided into three parts, and paid to TW Ltd ("the seller"), Mr A and Mr R. Mr A received over £200,000; Mr R received £162,233.60. In each case the Respondent

had not reported to M Bank that the purchase price was not paid in its entirety to the seller.

28. The SRA wrote to the Respondent and his solicitor in March and April 2010 with questions arising from perusal of the documents. The SRA's letter asserted the following:

- that the Respondent acted for the lender and the borrowers;
- that KF solicitors acted for the seller as well as Mr A and Mr R;
- that M Bank advanced a total of £1,113,490 to the buyers;
- that £951,266.40 was paid to the seller;
- that M Bank advanced £162,223.60 more than the aggregate sale price.

29. The Respondent's solicitor replied on 22 April 2010. The SRA wrote to the Respondent with additional questions on 30 April 2010, confirming that the transaction ledgers had not been available for inspection. On 19 May 2010 the Respondent telephoned the SRA to ask for a copy of the relevant practice rules, which were sent to him on 21 May 2010. On 28 May 2010 the Respondent requested more time to respond properly. As at the date of the Rule 5 Statement the Respondent had not provided his answers to the questions raised.

30. Consideration of the transactions in detail revealed the following:

- Flat 1: the purchase completed on 23 December 2004. The Respondent was instructed on 20 December 2004. The retainer letter was dated 13 December 2004 and confirmed that the Respondent was acting and that Mr E, the client, would pay £250 on account of costs. The Certificate of Title dated 22 December 2004 was signed by the Respondent. In a letter to his lender client dated 23 December 2004 the Respondent reported that carpets, fridge and cooker were included as incentives. He did not mention the way in which the purchase monies were to be divided. The lender advanced £212,500. Out of this sum £190,253.28 was paid to the seller. The completion statement referred to a deposit of £41,293, but it was not known who, if anyone, paid that sum. Mr E's stated contribution to costs of £250 was not included on the completion statement. The copy passport used by the Respondent to identify Mr E showed him to be male, but the retainer letter was addressed to Mrs E. There were no records of communications by the Respondent with Mr E.

- Flat 2: the purchase completed on 20 December 2004. The retainer letter was dated 13 December 2004 and was in the same terms as that for Flat 1. The lender advanced £212,495 against the stated purchase price of £250,000. The mortgage offer was dated 14 December 2004. The sum of £37,500 was paid to Mr A, who had the same surname as the borrower, but their relationship, if any, was unknown. The sum of £22,246.72 was paid to Mr R. The sum of £190,253.28 was paid to the seller. The Certificate of Title/Request for Advance dated 17 December 2004 was signed by the Respondent. There was a copy passport for the buyer on file. The Respondent wrote to the lender on 20 December 2004 stating that from the documents shown to the Firm they confirmed that the buyer had a legal right to remain in the UK. No reference was made to the division of the purchase price. A letter from the Respondent

to the lender dated 22 December 2004 referred to completion as being on that date rather than 20 December 2004. The completion statement dated 23 December 2004 referred to a deposit of £41,293, but it was not clear from whom, if anyone, that deposit had been received. There were no records of any communications by the Respondent with the buyer/borrower apart from the retainer letter. The division of the purchase price was not referred to on the file.

- The remaining three transactions followed the same pattern and were carried out at the same time. In respect of Flat 8 there was no evidence to support the statement by the Respondent in a letter to the lender dated 20 December 2004 that from documents shown to him his client had the legal right to reside in the UK.

31. The five transactions shared the same characteristics, as follows:

- very short periods between receiving instructions and completion;
- an absence of any communication between the Respondent and his buyer client;
- identical and unsigned retainer letters;
- identical letters to the lender client on certain issues;
- lenders advancing more than the price paid to the seller;
- significant sums paid to the two named third parties, but not reported to the lenders;
- Certificate of Title and completion within a few days of each other and conducted side-by-side;
- no evidence of payment of deposits by the buyers as described in the completion statements;
- no evidence that buyers paid money on account as requested in the standard retainer letter.

Witnesses

32. Clare Guile, the SRA's Investigation Officer, gave evidence and was cross examined by Mr Pyke. She confirmed that the contents of the FIR were true and accurate to the best of her knowledge and belief. A handwritten file note was handed to her, which she confirmed to be written by herself after meeting with the Respondent at his office on 3 September 2008. She said that she had received intelligence concerning the Abbey mortgage. She visited his office and he met with her. It was her practice to ask for ledgers in the name of anyone working at a Firm and its partners. This particular ledger was produced at her request and was in the Respondent's wife's maiden name. Their conversation was short and what was discussed was recorded in her note prepared immediately after it had taken place. Mrs Guile said that she looked at the ledger and made enquiries of the Respondent concerning the payment on 17 December 2007. She said that she noted that the narrative on the ledger was basic and that the payment was made by cheque, not telegraphic transfer. She was already aware that Abbey was looking into other mortgage issues and that its charge had not been registered. She said that she asked the Respondent whether this was the redemption payment, to which he replied "yes". They discussed the fact that payment

had been made by cheque. He said that he did not have the file. She said that payment by cheque was unusual and he disagreed.

33. Under cross-examination Mrs Guile confirmed that she joined the SRA as an IO in October 2007. She disagreed that she was inexperienced and said she had been employed by the SRA because of her experience. She was questioned about the fact that she had not mentioned the 3 September 2008 meeting in the first paragraph of her report. She said that the only formally recorded interview was 6 November 2008 and her report was presented in a "set way". It was put to her that on 3 September she had a conversation with the Respondent on a fleeting visit to his office and made no notes at the time. Mrs Guile said that she made a note in the Respondent's office immediately after the meeting. She was referred to the transcript of the November interview and asked why she did not mention her note to the Respondent. Mrs Guile conceded that she did not draw his attention to the note. She confirmed that the Respondent seemed upset towards the conclusion of the interview but said that the interview itself had been conducted as calmly as it could be, save for when dishonesty was mentioned. It was put to Mrs Guile that when interviewed on 6 November 2008, the Respondent challenged the suggestion that he misled her on 3 September 2008. He challenged her suggestion again in his solicitor's letter dated 2 July 2009 where it was stressed that at interview he emphasised his wish to see the file before he commented fully. It was put to Mrs Guile that the Respondent did not say that he used cheque 001305 to redeem the Bank of Scotland mortgage. Mrs Guile's evidence was that her note was made immediately afterwards and recorded her recollection of what the Respondent said. She was referred to the transcript and accepted that she was trying to get the Respondent to admit that he had been dishonest by using a particular questioning technique. She said that she took the Respondent's answers to those questions as an admission of dishonesty.

34. Mrs Guile confirmed that the SAR breaches concerned clients EE and U and were the only instances where the books of accounts were not properly written up. The unreconciled accounts related to the designated deposit accounts only, and they were closed at the time of inspection. She accepted that the Respondent's main bank account was with Lloyds TSB.

35. The Respondent gave oral evidence. He was examined in chief by Mr Pyke and cross-examined by Mr Barton. His evidence is referred to below.

Findings of Fact and Law

36. **Allegation 1.1: In breach of Rule 22(5) SAR withdrew money on behalf of one client which exceeded the money held on that client's behalf;**

Allegation 1.2: In breach of Rule 32(1) SAR failed to keep accounting records properly written up at all times to show his dealings with client money held, received or paid;

Allegation 1.3: In breach of Rule 32(7) SAR failed to carry out reconciliations in accordance with the requirements of the said Rule;

Allegation 1.4: In breach of Rule 32(9) SAR failed to retain bank statements received from the Bank of Scotland for a period of at least 6 years.

36.1 The Respondent admitted the allegations. Mr Barton submitted that the existence of the cash shortage went directly to the Respondent's failure to exercise proper stewardship of client money. If the Respondent had maintained a separate ledger for each of Mr EE's transactions, it was possible that the cash shortage would have been evident at an earlier date. As it was, over £100,000 belonging to Mrs U remained credited to Mr EE's composite ledger for some time. The error came to the Respondent's attention only as a result of the SRA's inspection and the cash shortage was capable of being replaced quickly only because Mr EE was in a position to refund the money immediately.

36.2 The Respondent said in evidence that his accountants advised him to maintain separate ledgers for Mr EE because he had so many transactions. The purpose of multiple ledgers was to reduce the number of transfers from ledger to ledger. The four designated deposit accounts were not used and were the only examples where reconciliations had not been carried out. The Respondent said that due to past bad experiences at other firms he took his accounts rules duties very seriously. When he started his own firm he did not want any problems with the SRA, so instructed accountants to come into his practice once a week to input figures and to do reconciliations.

36.3 The Tribunal found allegations 1.1 to 1.4 inclusive, which were admitted, substantiated on the facts and documents beyond reasonable doubt.

37. **Allegation 1.5: Breached Rule 1 SCC in each and all of the following respects:**

1.5.1 Failed to act with integrity contrary to Rule 1.02;

1.5.2 Allowed his independence to be compromised contrary to Rule 1.03;

1.5.3 Failed to act in the best interests of his client contrary to Rule 1.04;

1.5.4 Behaved in a way that was likely to diminish the trust the public placed in him or the profession.

It was alleged that the Respondent had also been dishonest, although for the avoidance of doubt it was not necessary to establish dishonesty for all or any of the allegations to be proved. His dishonesty was firstly the deliberate use of Abbey's mortgage money for a different purpose to that for which it was advanced to him, and secondly his provision to Investigation Officers of a false explanation.

37.1 The Respondent denied the underlying allegation and the allegation that he had been dishonest. The standard of proof applied by the Tribunal when determining the allegation was the criminal standard, namely proof beyond reasonable doubt.

37.2 Mr Barton submitted in relation to the underlying allegation that the Respondent's failure to register the Abbey mortgage on his property until 26 June 2008 on its own

was sufficient evidence of a breach of Rule 1. The Tribunal might think it unusual that, having finally registered that mortgage in June 2008 and redeemed the Bank of Scotland mortgage in July 2008, matters were not fresh in the Respondent's mind when he met Mrs Guile on 3 September 2008 and surprising that the matter file was not immediately available. Mr Barton submitted that the Respondent did not tell Mrs Guile the truth on 3 September 2008 because he knew that if the facts were uncovered he would be in serious professional difficulty. The Applicant's case was that it was unlikely that he would have needed to check the file before answering Mrs Guile's questions in September 2008 due to the proximity of that date to recent events. Mrs Guile's version of events had credibility because the payment on 17 December 2007 which she queried was made by cheque and the Abbey mortgage was ultimately redeemed by telegraphic transfer. The Tribunal might also find it surprising that any solicitor, including the Respondent, would expose himself to the risk of providing a personal guarantee on behalf of a client.

37.3 Mr Barton said that allegation 1.5 was put forward by the Applicant as an allegation of dishonesty in respect of the deliberate use of Abbey's mortgage money for a different purpose to that for which it was advanced to the Respondent and his provision to the Investigation Officers of a false explanation. He submitted that the prevailing circumstances demonstrated a series of discrete deliberate intentional decisions which could only be due to the Respondent's dishonest state of mind. There was no evidence before the Tribunal that the Respondent was unwell at that time. He may have been suffering from stress and pressure but these were not illnesses, and solicitors regularly had to work under stress and pressure. Client money was sacrosanct, and the funds in question belonged to the Abbey and were to be used by the Respondent solely to redeem the Bank of Scotland mortgage.

37.4 Mr Barton referred the Tribunal to the combined test for dishonesty set out by Lord Hutton at paragraph 27 of his Judgment in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, which stated that:

> "… Before there can be a finding of dishonesty it must be established that the defendant'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".

And at paragraph 36:

> "… Dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he sets his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

Mr Barton submitted that viewed objectively the Respondent's behaviour was dishonest by the standards of solicitors acting properly. Viewed objectively, it was dishonest to misuse client money. Viewed subjectively, the Respondent's answers during interview demonstrated that he knew at the time that what he was doing was dishonest.

37.5 The Respondent's evidence was that he had been "stupid" to give the personal guarantee to Green Lantern. He said that he had responded to the demands of Titua, which had provided bridging finance to Mr EE which the latter had not repaid. Titua had threatened to report the Respondent to the SRA. He confirmed that his position remained as set out in his solicitor's letter to the SRA dated 2 July 2009, in which he denied having misled the Investigation Officers either at interview or in writing. He had emphasised that he wished to see the file before he commented fully. He disputed Mrs Guile's evidence that during their meeting on 3 September 2008 he had said that cheque 001305 was made payable to Bank of Scotland. He insisted that he had asked to "have the benefit of the file" before answering any questions. The Respondent described the meeting with Mrs Guile in some detail. He said she was casually dressed. She referred to a complaint regarding his mortgage and asked what had happened. He said that he told her that they were packing up and that he needed to locate the file and when he did so he would tell her. She asked for the ledger which he produced together with the cheque book. She asked about the cheque and in particular whether it was for the redemption of the mortgage. He did not wish to mislead her and asked again for the file, saying that he would write to her once he had it. Mrs Guile asked whether the cheque could have been for the redemption, and he replied that he did not usually redeem with a cheque but there would be no problem doing so with the Bank of Scotland. The Respondent's evidence was that Mrs Guile accepted that he would get the file. He said he believed the Abbey money to be his money for his mortgage. During interview when he was asked about what happened he did not think that he had acted dishonestly. He thought that what he had done was wrong, but he did not think it was dishonest. In order to protect Abbey's interest he said he renewed the priority search and thought that was sufficient. His evidence was that if another solicitor heard the full story of what happened, namely the pressure from Titua to repay its loan, the loss of funds to other solicitors who were ultimately intervened, and his actions to protect his client Mr EE and Abbey, he did not think that the solicitor would consider his actions to have been dishonest.

37.6 Under detailed cross-examination by Mr Barton, the Respondent expanded on his evidence-in-chief. He recalled signing the cheque to KF solicitors for £468,345 on 17 December 2007. He did not think that what he was doing was wrong at the time because the money had been advanced on his property and the Bank of Scotland mortgage would be redeemed at some point. His intention was to pay the money back. He accepted that the fact that the money had been sent to him by Abbey did not give him the freedom to use it however he wished. He also accepted that the money was in the Firm's client account held on trust for its client Abbey He did not accept that he had breached that trust because the mortgage was ultimately redeemed.

37.7 The Respondent was questioned at length by Mr Barton concerning the meeting with Mrs Guile on 3 September 2008. He denied that the redemption of the mortgage was fresh in his mind on that date so that he would not have had to look at the file to answer Mrs Guile's questions. He said that it was he who had suggested to KF solicitors that they should send the money he had borrowed from Green Lantern to Bank of Scotland to redeem his mortgage. However he believed that his Firm would have registered the Abbey mortgage and paid the Land Registry fee in June 2008. He insisted that he had not "looked after himself very well" and, although he had "ideas" about what had happened, he wanted to be sure of his facts by looking at the file and putting it in writing. He did not have the relevant dates in his head. The Respondent

repeatedly asserted that when Mrs Guile asked him about cheques he would have asked to be allowed to get the file. He did not remember whether she asked what "payment" in the narrative of the ledger meant. She might have asked whether the cheque was for redemption of the mortgage, but he would have replied that he did not want to answer until he had looked at the file. She might have asked "could it have been" and again he would have said he did not want to answer until he had looked at the file. He stressed that he did not want to mislead Mrs Guile. He was referred to his letter to Mrs Guile dated 13 October 2008. He confirmed that what he said in that letter was correct, namely that he was anxious that a report to the SRA by Titua would meet with "unsavory(sic) consequences".

37.8 The Respondent was unable to say who in his office had written out the cheque to KF solicitors; he had signed a blank cheque and had written in the figures but not the words. No covering letter was sent with the cheque. The usual pink cheque requisition slip was not completed because he was the originator of the cheque. He repeated that he made the decision to write the cheque following calls from KF solicitors and after having fallen out with Mr EE on the telephone. He was aware that the money from Abbey was in client account because the bank always called when money had been sent. He did not record details of the cheque on the stub because he was "angry" at the time and this was "careless".

37.9 The Respondent was questioned by Mr Barton about his use of the word "compelled" in paragraph 2 of his letter to the SRA dated 13 October 2008 in relation to use of the Abbey's mortgage monies. He said that he used that word because he was compelled to use the mortgage money due to Titua pressing for repayment and he was under pressure to get their money back to them. He did not want to use the money but had no choice. He said that he "did not have the luxury of sitting down to think about it". He said that he may have been foolish but he did not have a choice and did not know that what he was doing was wrong. He was referred to the completion date of 17 December 2007 stated on the Certificate of Title and it was suggested by Mr Barton that he had not actually completed on that day. The Respondent insisted that he had completed but had not redeemed the mortgage. He said that he was permitted to keep the advance for 3 to 5 days if for any reason completion did not take place. Ultimately he appeared to accept that completion took place on the redemption of the mortgage and application to the Land Registry to register Abbey's mortgage rather than at the point of receipt of the advance.

37.10 In answer to a question from the Chairman, the Respondent accepted that he knew that the mortgage monies were generally understood to be for the specific purpose of redeeming his mortgage. However he maintained that the mortgage related to his own property and therefore he could use the money. He accepted that the Abbey's money was for the purpose of redeeming the Bank of Scotland's mortgage, but said that at the time when he used the money to pay Green Lantern he did not realise that he could not use it for that purpose. The Tribunal drew his attention to the Office Copy entry for his property where the date of the registered charge was given as 17 December 2007 but the charge was not registered i.e. completed until 26 June 2008. The Respondent repeated that he had maintained a priority search in favour of Abbey throughout in order to protect its interest. In answer to another question from the Chairman as to whether he appreciated that what he had done was wrong, he replied

"yes now, but not at the time" and "that if he had had the luxury of time and space he might have done something differently".

37.11 In his submissions Mr Pyke referred the Tribunal to paragraph 20 of the decision in Twinsectra, which stated:

> "They require a dishonest state of mind, that is to say, consciousness that one is transgressing ordinary standards of honest behaviour."

With emphasis on the second limb of the combined test, Mr Pyke said that, whilst his client must have realised that by the ordinary standards of honest behaviour his conduct was dishonest, at the time when he wrote the cheque to KF solicitors he did not know that his behaviour fell short by those same standards. Mr Pyke also referred to the medical evidence before the Tribunal, but accepted that there was no medical evidence to corroborate the Respondent's state of mental health in 2007 and 2008.

37.12 The Tribunal was satisfied beyond reasonable doubt that the facts and the documents established that the Respondent had breached Rule 1 SCC as alleged at allegation 1.5 and particularised at allegations 1.5.1 to 1.5.4. Instead of using the mortgage monies advanced by Abbey for the sole authorised purpose of redeeming the Bank of Scotland mortgage secured on the property he jointly owned with his wife, the Respondent used the monies for the unauthorised purpose of meeting his personal guarantee to repay bridging finance provided by Green Lantern to his client Mr EE. The Tribunal was also satisfied beyond reasonable doubt that the facts and the documents established that the Respondent had provided Investigation Officer Clare Guile with a false explanation when he met with her on 3 September 2008, namely that the payment by cheque 001305 on 17 December 2007, recorded on a ledger in his wife's maiden name, was to redeem his mortgage to Bank of Scotland when it was in fact sent to KF solicitors to meet his personal guarantee. The Tribunal found Mrs Guile to be an impressive and persuasive witness. It commended her for an exemplary Forensic Investigation Report prepared with thoroughness and presented with clarity. The Tribunal rejected the Respondent's evidence about what had happened at the meeting on 3 September 2008 and preferred the evidence of Mrs Guile in its entirety.

37.13 The Tribunal had to consider whether the Respondent had been dishonest as particularised, by applying the combined test as set out by Lord Hutton in Twinsectra to the facts which they had found proved. The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct in not using Abbey's money advanced solely for the purpose of redeeming his Bank of Scotland mortgage but instead using it to repay the bridging loan obtained by Mr EE from Green Lantern secured by the Respondent's personal guarantee was dishonest by the ordinary standards of reasonable and honest people. Having carefully read the papers, including the transcript of the interview on 6 November 2008 and his letter to the SRA dated 13 October 2008, having seen the Respondent give evidence and having heard his explanations for his conduct, the Tribunal was also satisfied beyond reasonable doubt that the Respondent did not have an honest belief that he was entitled to use Abbey's money for the purpose of repaying the bridging loan, and therefore that he knew that what he was doing was dishonest by those same standards. His dishonesty continued after 17 December 2007, evidence by the fact that the Respondent by his own admission renewed the priority search to ensure that it

remained in place to protect Abbey's interests until such time as he registered its charge in June 2008. When Abbey contacted him in mid-2008 to ask why its charge had not been registered he was well aware of the real reason which he did not pass on to Abbey thus perpetuating the dishonesty.

37.14 The Tribunal having preferred the evidence of Mrs Guile in relation to the meeting on 3 September 2008, and applying the same combined test, was satisfied beyond reasonable doubt that, in giving a false explanation to Mrs Guile on that day the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that the Respondent knew that what he was doing was dishonest by those same standards. The Tribunal was satisfied that the Respondent was intentionally trying to mislead Mrs Guile for the reason he provided in his letter dated 13 October 2008, namely that he was anxious that a report to the SRA would meet with unsavoury consequences.

37.15 The Tribunal was also required to consider in the context of allegations 1.5.1, 1.5.3 and 1.5.4 the facts and documents relating to the HBOS properties. It was not disputed that a complaint was made to the LCS and from the LCS to the SRA concerning the Respondent's failure to register charges on four properties in favour of his then lender client HBOS. The Tribunal heard detailed evidence from the Respondent on this allegation as Mr Barton took him through each transaction in turn. Mr Pyke conceded that the Respondent had admitted failing to register the charges within the period of priority searches in accordance with the Certificate of Title that the Respondent had signed and before he closed the Firm on 1 October 2008. Mr Pyke referred to the litany of misfortune encountered by the Respondent. He stressed that the Respondent did not believe that he had deliberately breached the relevant Rules but he did believe that the SRA had not assisted him in respect of his complaints concerning the actions of other firms and solicitors who had let him down.

37.16 The Tribunal found the facts relating to the HBOS transactions substantiated beyond reasonable doubt. It did not accept the Respondent's explanation that he had failed to register the charges due to the actions of others. He acted on behalf of HBOS and had a duty to his lender client to ensure that he complied with its instructions and advised it promptly if he was unable to do so for any reason, including the alleged actions of others.

37.17 The Tribunal therefore found allegation 1.5 including the allegation of dishonesty, which was denied, substantiated beyond reasonable doubt.

38. **Allegation 1.6: Acted in circumstances in which there was a conflict between his interests and those of his client**

38.1 The Respondent denied this allegation, which arose from the fact that his Firm had acted for Abbey in relation to his remortgage. It was accepted by the Applicant that the provisions of the CMLH which applied to the remortgage permitted the Firm to act as long as a partner other than the Respondent acted for Abbey. Mr Barton submitted that the Respondent appeared to believe that as long as his partner, who he said did little conveyancing, signed the Certificate of Title to Abbey, and in spite of the fact that an unadmitted clerk was doing the conveyancing under the Respondent's supervision, that enabled him to avoid criticism for acting personally where there was

a conflict. Mr Barton submitted that conflict arose when the mortgage advance was received by the Firm on 17 December 2007. By 15 December 2007 the Respondent was already under pressure to honour his personal guarantee to Green Lantern. In spite of this he continued to act without reporting his conflicted position to Abbey. Mr Barton submitted that this was not a momentary lapse but continued until June 2008 when the Abbey mortgage was registered. For a period of six months the Respondent did not come clean to Abbey.

38.2 The Tribunal accepted Mr Barton's submission and found the allegation, which was denied, substantiated on the facts and the documents beyond reasonable doubt.

39. **Allegation 1.7: Contrary to Rule 10.05(1)(a) SCC failed to fulfil an undertaking given to Cash Express on 30 October 2007 to repay a loan of £50,000.**

39.1 The Respondent denied the allegation. Mr Barton submitted that the Respondent was required to fulfil the undertaking given in the course of practice under Rule 10.05(1)(a) SCC. The Respondent admitted that he had given the undertaking on behalf of Mr EE and that he had not redeemed the loan of £50,000. His explanation for failing to fulfil the undertaking was contained in his letter to the SRA dated 14 June 2010. It was unnecessary to go into the detail of that letter, but in short the Respondent said that Cash Express had agreed to a variation of the undertaking involving securing a charge on Mr EE's property, and the charge was signed but not registered. The Respondent's position was that his undertaking was discharged when Mr EE signed the charge. Mr Pyke rightly conceded that the Respondent had foolishly given an unconditional personal undertaking for a client which he was unable to meet and that this was a technical breach of Rule 10.05(1)(a) SCC.

39.2 The Tribunal found that the Respondent had failed to fulfil the undertaking given to Cash Express on the 30 October 2007 to repay a loan of £50,000 on behalf of Mr EE. The allegation, which was denied, was therefore found substantiated on the facts and the documents beyond reasonable doubt.

40. **Allegation 1.8: Acted in breach of Rule 1 SPR in each and all of the following respects:**

1.8.1 Compromised or impaired his independence or integrity;

1.8.2 Compromised or impaired his duty to act in the best interests of his client;

1.8.3 Compromised or impaired his good repute and that of the solicitors' profession;

The particulars were that he acted in or otherwise facilitated conveyancing transactions during the course of which he failed to be alert to the suspicious characteristics of those transactions and that he was as a consequence grossly reckless.

40.1 The Respondent denied the allegation, which related to the Bordley Court transactions. Mr Barton submitted that the Respondent had recklessly disregarded his

duties as a solicitor to his lender client M Bank. He relied on the declinature letter written by solicitors acting for the Respondent's professional indemnity insurers to the Respondent following the submission of insurance claims arising out of his conduct of these transactions. Mr Barton submitted that the Respondent had committed a serious dereliction of his duty to his lender client. The Respondent described in his evidence the haste with which the transactions had been carried out in order to ensure completion before the Christmas holiday. He appeared to have accepted without any thought or analysis what he was told by others, namely that the substantial payments to Mr A and Mr R were justified in respect of their work as marketing agents. In evidence the Respondent said that this was not an issue at the time and, having accepted that the payments were justified, he did not consider it necessary to pass the information on to the lenders. He made much of the fact that he had asked for the draft lease to be amended by a well-known firm of solicitors acting for the seller in order to specify the division of the sale proceeds because he was concerned about money laundering. He seemed to think that this was sufficient to satisfy his duty to M Bank. He said that the Firm had done the best it could have done and did not mislead anyone. If the lender had a problem, he said it could have come back to the Firm and that the lay clients had not complained.

40.2 The Tribunal found the underlying facts substantiated beyond reasonable doubt. It had heard detailed evidence from the Respondent, an experienced conveyancer, as to why he had not informed his lender clients of the payments to Mr A and Mr R. The Respondent should have been alert to the obvious suspicious features of the transactions as identified in the Rule 5 Statement. His admission that he was concerned about money laundering suggested that he was already alert to the possibility that something might not be quite right, which made it all the more important that he protected his lender client’s interests regardless of the fact that this might have resulted in the transactions not being completed by Christmas, or indeed at all. The lender was entitled to know in advance of completion where its mortgage funds were to be applied in order to ensure that its security was adequately protected and providing it with the option to withdraw from the transactions if it wished to do so. The speed with which the transactions were being carried out made no difference to the duties of the Respondent as set out in Rule 1 SPR.

40.3 It was also alleged that the Respondent's conduct in failing to be alert to the suspicious characteristics of the transactions was grossly reckless. Mr Pyke urged the Tribunal to find that the Respondent had been incompetent rather than reckless. However, the suspicious characteristics of these transactions were sufficiently obvious to put the Respondent on notice of the possibility of money laundering resulting in his request for the lease to be amended. He was therefore well aware that there was at the very least the potential for a problem about the payments to Mr A and Mr R, not least because of the rather odd circumstances under which he said he had been told about the division of the sale proceeds. He said that the seller had turned up unexpectedly at his office and instructed him how to divide the sale proceeds. He said that the seller gave him his card and asked him to get in touch direct if there was a problem. The Respondent was not acting for the seller which had its own solicitors who could have relayed the message in the proper way. The Tribunal found that the Respondent was not incompetent; he had identified potential difficulties, and pressed on regardless in order to complete the transactions by Christmas no matter what. His failure to protect

his lay and lender clients' interests by being alert to the suspicious characteristics represented a serious dereliction of his duty as a solicitor and was grossly reckless.

40.4 The Tribunal found allegation 1.8 including the allegation that the Respondent's conduct had been grossly reckless, which was denied, substantiated on the facts and documents beyond reasonable doubt.

Previous Disciplinary Matters

41. None

Mitigation

42. The Tribunal heard evidence from the Respondent concerning his personal circumstances. He was parted from his wife and children. He came to the UK in 1990 and worked as a cleaner, kitchen porter, courier and hotel receptionist whilst he studied part-time. He decided that he wished to be a solicitor and undertook the necessary training. He found it difficult to obtain a training contract but was eventually successful, qualifying in July 2000. He had been unlucky with his past employers, some of whom had encountered serious regulatory difficulties. His experiences had coloured his approach to the management of his own practice which he started in 2003. The Tribunal had sympathy for the Respondent's strongly held view about the difficulty that he and others sometimes encountered in obtaining training contracts where proper training and supervision would be provided. It was essential for the future of the profession and the protection of the public that trainees were trained only by those who had themselves been properly trained. Since 1 October 2008 the Respondent had been in America undergoing retraining in Entertainment Law at the financial expense of his relations and he had also done some freelance legal work in Wales. He said that he had limited income and received some financial assistance and moral support from a social worker friend who paid rent for living at his home. The Respondent said that he had mortgage arrears of £50,000.

43. During cross-examination by Mr Barton the Respondent provided some information concerning three properties owned by him which were currently being managed by the Official Receiver appointed by mortgagees. No documentary evidence of his means was produced to support his oral evidence.

Sanction

44. The Tribunal found that the Respondent had been dishonest. It had not been suggested by Mr Pyke that there were exceptional circumstances such as those identified in the decision of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) justifying a sanction other than striking off. On that basis the Tribunal's starting point was that the Respondent should be struck off the Roll of Solicitors, having been found to have been dishonest and grossly reckless. The deliberate use by the Respondent of Abbey's mortgage funds to meet his personal obligation to Green Lantern rather than to redeem his Bank of Scotland mortgage was a serious matter. During the course of giving his evidence it was very apparent to the Tribunal that the Respondent took no personal responsibility for his actions. He chose to make excuses and blame others for his own shortcomings, and in so doing

demonstrated a weakness of character and lack of judgement that was profoundly troubling. For the protection of the public and the protection of the public's confidence in the reputation of the profession the only sanction appropriate in this case was striking off the Roll and the Tribunal so ordered.

Costs

45. The Applicant applied for costs of £34,440.08, which Mr Barton asked the Tribunal to summarily assess. He anticipated and opposed any application by the Respondent for costs to be capped or for an order to be made not to be enforced without leave of the Tribunal.

46. Mr Pyke duly applied for the costs to be capped and for an order for costs not to be enforced without leave. He conceded that there was no documentary evidence before the Tribunal in relation to the Respondent's means. He said that the Respondent's next step following his striking off was to apply for benefits. He asked for costs to be subject to detailed assessment if not agreed and suggested a cap of £20,000.

47. Mr Barton submitted that the admission in respect of the SAR had been made very late and that all other allegations had been contested and found substantiated. An earlier element of realism might have reduced costs. It was not clear how the unconditional cap on costs of £20,000 was to be paid. A non-enforcement order would create a problem for the SRA and further increase costs. The Respondent had been asked on oath about his other properties and had demonstrated an inability to remember even their addresses. Proper documentary evidence and analysis of his means was therefore required.

48. The Tribunal considered the limited available evidence of the Respondent's means when deciding the question of costs in view of the fact that he had been struck off the Roll. Striking off was an outcome which should not have taken the Respondent by surprise in the event that the allegation of dishonesty was found proved. The Tribunal did not consider that it was appropriate to cap costs at £20,000; they had been properly incurred by the SRA and the allegations had been found substantiated in their entirety. The Respondent had had every opportunity to attend the Tribunal with detailed documentary evidence of his means and had not done so. He had admitted the SAR breaches, so knew that a costs order was likely to be imposed upon him whatever the outcome in respect of the other allegations. If he intended to argue that his means made it difficult for him to pay costs, he should have attended the hearing with sufficient documentary evidence to support that argument. His oral evidence in respect of his three properties had been unconvincing and in the Tribunal's view evasive. The Tribunal had therefore summarily assessed costs at £30,000. There was nothing to be gained for either party by requiring the SRA to obtain leave from the Tribunal before enforcing the order for costs, which would of itself run up costs which the Respondent might have to meet. The Tribunal would therefore leave it to the SRA to investigate the Respondent's means fully and fairly without further reference to the Tribunal.

Statement of Full Order

49. The Tribunal Ordered that the Respondent, BRUCE IHIONKHAN IGHALO of 22 Willow Crescent, Abbeywood, London SE2 0LQ, 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 summarily assessed at £30,000.

Dated this 11th day of October 2011
On behalf of the Tribunal

Mrs J. Martineau
Chairman