SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10670-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
ARMEET SINGH SIKH	First Respondent
and	
[RESPONDENT 2]	Second Respondent
and	
[RESPONDENT 3]	Third Respondent

Before:

Mr K. W. Duncan (in the chair)
Miss J. Devonish
Mr R. Slack

Date of Hearing: 2 June 2011

Appearances

Robin Havard, Solicitor of Morgan Cole Solicitors, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant.

The First Respondent did not appear and was not represented.

Gregory Treverton-Jones QC of 39 Essex Street, London WC2R 3AT instructed by Weightmans LLP for the Second Respondent.

Gary Oldroyd, Solicitor-Advocate of Bond Pearce LLP, 3 Temple Quay, Temple Back East, Bristol BS1 6DZ for the Third Respondent.

JUDGMENT

Allegations

Allegations against all Respondents

1. The allegations against all Respondents were that they:

1.1 Failed to maintain the books of account of the practice in accordance with Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR");

1.2 Improperly withdrew monies from client account when there were insufficient monies held leading to a cash shortage contrary to Rule 22 SAR;

1.3 Transferred, or permitted to be transferred, client funds from one client account to another when they were not authorised or permitted to do so contrary to Rule 30 SAR;

1.4 Contrary to Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC") they;

- Failed to act with integrity; and/or
- Acted in a way which meant that their independence was compromised; and/or
- Failed to act in the best interests of clients; and/or
- Failed to provide a good standard of service to their clients; and/or
- Acted in a way that was likely to diminish the trust the public placed in them and/or the legal profession;

1.5 Operated the client account in breach of Rule 15 SAR.

Additional allegations against First and/or Second Respondents only

2. It was further alleged against the First and/or Second Respondents only that they:

2.1 Failed to comply with an Undertaking in breach of Rule 10.05 SCC (withdrawn as against the Third Respondent);

2.2 Acted dishonestly (First Respondent only; withdrawn as against the Second Respondent) or, in the alternative, recklessly (First and Second Respondent);

2.3 Failed to provide to their lender clients in a series of conveyancing transactions information that was material to their business;

2.4 Acted where there was a conflict of interests contrary to Rule 3.01 SCC;

2.5 Acted in transactions involving the transfer of large sums of monies received from lender clients which they knew, or should have known, were suspicious;

2.6 Became involved in dubious and/or fraudulent transactions notwithstanding such transactions were of such a nature that, as solicitors, they should not properly involve themselves whether or not they actually knew they were fraudulent.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 19 November 2010 and bundles entitled Schedules of Documents numbered 1, 2 and 3;

- Applicant's Schedule of Costs.

First Respondent:

- Witness Statement dated 23 May 2011, exhibiting letters to the Solicitors Regulation Authority ("SRA") dated 20 November 2009, 27 January 2010 and 29 March 2010;

- Email from the First Respondent to Robin Havard dated 19 May 2011.

Second Respondent:

- Rule 5 Response dated 6 April 2011, including Witness Statement and exhibits;

- Bundle of Testimonials.

Third Respondent:

- Witness Statement dated 17 May 2011 and exhibits.

Preliminary Matters

4. Mr Havard, for the Applicant, addressed the Tribunal concerning the First Respondent's non-attendance at the hearing. The First Respondent sent Mr Havard an email on 19 May 2011 confirming that he was aware of the hearing date, but did not intend to attend, and was content for the Tribunal to proceed in his absence. The First Respondent had provided a signed statement in response to the Rule 5 Statement.

5. The Tribunal was satisfied that notice of the hearing had been served on the First Respondent in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007

("SDPR") Rule 16(2) and that the First Respondent was content for the Tribunal to hear and determine the application in his absence.

6. Mr Havard informed the Tribunal that the Second Respondent admitted all the allegations save for allegation 2.2, that he had acted dishonestly, which he denied. The Applicant had concluded that there was insufficient evidence available to establish to the required high standard that the Second Respondent had acted dishonestly in respect of the operation of the Firm's accounting systems and books of account and the various property transactions. There was however sufficient evidence available to pursue the alternative allegation that he acted recklessly, which the Second Respondent would admit. The Applicant therefore applied to withdraw the allegation of dishonesty as against the Second Respondent.

7. Mr Treverton-Jones, on behalf of the Second Respondent, confirmed that this summary was correct. He reminded the Tribunal that the Second Respondent had been involved in only two relevant property transactions.

8. The Tribunal consented to the withdrawal of allegation 2.2, that he had acted dishonestly, against the Second Respondent under SDPR Rule 11(6).

9. Mr Havard addressed the Tribunal concerning the Third Respondent. She was a partner and as such was responsible with her partners for SAR breaches. The Applicant accepted that the Third Respondent's involvement in the SAR breaches arose solely from her status as a named partner. The Third Respondent admitted allegations 1.1, 1.2, 1.3 and 1.5. She also admitted that the SAR breaches constituted a breach of Rule 1.06 SCC as set out at allegation 1.4. She admitted a further breach of Rule 1.06 SCC as alleged at 1.4 in relation to the case of client E. The Applicant sought consent from the Tribunal to withdraw allegation 2.1 as against the Third Respondent, namely failure to comply with an Undertaking in breach of Rule 10.05 SCC.

10. Mr Oldroyd, on behalf of the Third Respondent, confirmed that this summary was correct. He informed the Tribunal that the Third Respondent made admissions solely on the basis that she was an employee of the Firm held out as a partner, and therefore as a principal of the Firm. Under SAR Rule 6 she was required to ensure compliance with the SAR by the principals, and everyone employed in the practice.

11. The Tribunal consented to the withdrawal of allegation 2.1 as against the Third Respondent under SDPR Rule 11(6)

Factual Background

12. The Respondents were born and admitted as solicitors on the following dates:

<u>First Respondent</u>

Date of Birth: 30.08.64
Date of admission: 03.04.95

Second Respondent

Date of Birth: 16.06.61
Date of Admission: 01.03.88

Third Respondent

Date of Birth: 01.04.69
Date of Admission: 02.04.97

13. At all material times the Respondents practised in partnership as J R Jones, Solicitors, of 58 Uxbridge Road, London W5 2ST ("the Firm"). The First Respondent left the partnership and the Firm on or about 30 September 2009.

14. The allegations arose from two investigations into the activities of the Respondents whilst partners at the Firm. The first investigation began on 3 November 2008 resulting in a Casework Investigations & Operations Report ("CIOR") dated 10 July 2009 by M. J. Calvert, the SRA's Head of Forensic Investigations. The second investigation began on 20 November 2009, resulting in a Forensic Investigation Report ("FIR") dated 24 February 2010, again by Mr Calvert. The November 2009 investigation was prompted by information supplied by the First Respondent when replying to a letter dated 10 September 2009 from the SRA raising questions about the findings in the CIOR.

15. The first investigation was lengthy, taking place in the weeks commencing 23 February 2009, 16 March 2009 and 4 May 2009, culminating in interview by the Investigation Officer ("IO") with the Respondents on 7 May 2009.

Books of Account

16. On review of the office account bank statements for the period May 2008 to October 2008, it was discovered that at the beginning of each month before the staff salaries were paid, a round sum, usually in the region of £65,000, was received into office account and, either the same day, or the day before, a corresponding payment was made from client account into office account. At the time of transfer the office account was overdrawn close to its limit. If the transfer had not been made, the overdraft limit would have been exceeded and/or staff salaries would not have been paid. Transfers were generally made from the client account of SS.

17. Documents inspected contained abbreviations for transfers as follows:

17.1 CP - recorded in the Firm's cash book as a transfer from client bank account either to the client or third parties on the instructions of the client;

17.2 CR - monies received into client account;

17.3 CTO - payments made from client to office bank account.

18. For example, on 2 October 2008 the client account bank statement entry 8163 showed a payment of £65,000, recorded in the cashbook report as a "CP for client". The

office account bank statement for 2 October 2008 confirmed an overdraft limit of £25,000. The account was £25,738.37 overdrawn. Sundry credit of £65,000 was paid in to office account on 2 October 2008 clearing the overdraft. Staff salaries were paid from that account on 3 October 2008. On 9 October 2008 £65,000 was returned to client account. The client account from and to which the £65,000 payment was made belonged to SS.

19. At interview with the IO on 7 May 2009 the First Respondent confirmed that the round sum transfers of client monies were to assist in the payment of staff salaries.

20. The first investigation began on 3 November 2008. On a number of occasions each month after October 2008 more money was transferred from client to office account than was recorded on the books of account. On 26 February 2009, the First Respondent told the IO that all transfers from client to office account were recorded as "CTO" payments in the cashbook. However during investigation a number of instances where the amounts transferred from client to office account exceeded those recorded as "CTO" transfers in the cashbook were identified. The excess transfers were described as "CP" transfers i.e. payments to client or third parties on instructions of client. They were in fact paid into the Firm's office account. The IO prepared a schedule of those payments. During January and February 2009 the sum of £96,254.99 was transferred from client to office account over and above what was recorded in the cashbook.

21. The IO noted that round sum transfers at the beginning of the month were not made by electronic bank transfer from client account to office account, (as was the case with every other client to office account transfer), but by way of cheque payments. The IO also noted that the narrative on the cashbook when payments were made from client account did not always accurately reflect the actual movement of money.

22. On 10 November 2005 an SRA Adjudicator had issued a reprimand to the First and Second Respondents and a warning to the Third Respondent and others for admitted breaches of SAR Rules 19(2), 19(3), 22(3) and 22(5). The Adjudicator stated that she was satisfied that, since the Third Respondent was not a signatory to any of the relevant bank accounts and had no control over the accounts, whilst she bore responsibility for breaches of the SAR in consequence of her liability as a principal pursuant to Rule 6 SAR, it was not necessary or appropriate to take any disciplinary action. Rule 6 SAR stated that all principals in a practice must ensure compliance with the Rules by the principals themselves and by everyone else working in the practice. "Principal" included a partner or a person held out as a partner, including a salaried or associate partner.

Loans from Clients

23. The First Respondent borrowed money from SS and KS who were clients of the Firm. When interviewed on 7 May 2009 the First Respondent provided the IO with a copy of a nominal ledger which he maintained in respect of loan facilities provided by clients. As at May 2009, the Firm, through the actions of the First Respondent in taking loans, owed clients £641,516.94. The First Respondent said that he had the clients' permission to borrow money. The identity of all clients from whom the First Respondent had borrowed money was unclear. A letter dated 9 October 2008 from

KS gave permission to the First Respondent to use up to £100,000 "as per your needs in respect of funds held by you on by (sic) behalf". It confirmed that KS had had an opportunity of obtaining independent legal advice, and was happy to proceed. However, KS had been making loans to the practice long before that date. There was another letter on file from the First Respondent to SS dated 4 November 2008 confirming a facility of up to £150,000 to be used by the First Respondent from funds held on behalf of SS. The letter recorded that at a meeting on the same date SS had been advised to take independent legal advice concerning the loan, had had an opportunity to obtain such advice and was happy to proceed. By letter to the SRA dated 27 May 2009 the First Respondent stated that the financial arrangements with SS had continued for 10 years.

24. During interview with the IO on 7 May 2009 the Second Respondent confirmed that he was aware of the loan agreements. The Third Respondent said that she became aware of the loans for the first time during the interview.

25. The First Respondent informed the IO that he was responsible to repay creditors the monies owed, as it was he who had borrowed the funds. However, it appeared that money owed to the Firm in costs and disbursements was used to repay the First Respondent's creditors. The Second Respondent stated that he was aware that the First Respondent was indebted to clients of the firm.

Loan to Clients

26. The Firm had acted for ZF for 10 years, in particular in conveyancing transactions. During a meeting between the First Respondent and ZF, the latter asked about the possibility of raising short term finance. The First Respondent provided ZF with a loan of £90,000. Later the Firm acted for ZF on a remortgage. During that transaction the First Respondent authorised the transfer of funds from the client ledger into the Firm's office bank account to refund the loan. ZF's file did not contain authority for the transfer. There was no evidence that ZF had taken independent advice, although the First Respondent stated that he had asked ZF to do so.

Use of Clients' Monies to Repay Loan Facilities

27. Funds due to the Firm in respect of costs and disbursements were transferred direct to the ledgers of the First Respondent's creditors in repayment of loan facilities. The Firm acted for C, and billed insurers for costs incurred in pursuing a claim. Costs of £40,000 were paid into C's client account on 9 January 2009. The same day £30,000 was transferred to office account, recorded in the cash book as "CTO" in respect of costs. The transfer was not recorded on C's client ledger. Two payments of £15,000 were recorded on SS's client ledgers for property transactions. On 9 January 2009, the Firm's loan ledger showed two payments of £15,000 being applied to the outstanding balance, reducing the First Respondent's debt to SS. There was no evidence of a connection with SS on C's file.

Conveyancing Transactions and Client SS

28. There were thirty-five ledgers open in the name of SS, thirty-two of which related to property transactions. The IO reviewed ten files.

29. In relation to five files reviewed, the following activities had taken place:

29.1 Sums of money in excess of those apparently needed for completion passed through the ledgers;

29.2 Inter-ledger transfers were commonplace, again apparently unrelated to the purported transaction;

29.3 Monies passed through the ledgers after completion;

29.4 On two matters, monies were transferred from the client ledger in excess of funds held for that particular matter;

29.5 The ledgers did not evidence that costs and/or Land Registry fees and/or search fees had been paid.

30. The findings on investigation were set out in detail in the CIOR and FIR, and also in the Rule 5 Statement and supporting documents. The Tribunal was referred in particular to transactions involving the re-mortgage of properties at York Road, Grasgarth Close, Moireux Road and Edith Road. The transactions could be summarised as follows:

30.1 All transactions were conducted by the First Respondent;

30.2 All transactions were conducted in the name of client SS;

30.3 All transactions were re-mortgages;

30.4 The Firm acted for the lenders in all transactions;

30.5 All Certificates of Title submitted to the lenders were signed by the First Respondent;

30.6 Separate client ledger accounts were maintained by the Firm in respect of the prior and second advances;

30.7 None of the funds received in respect of the second advances were used to pay off the prior advances;

30.8 All of the second advances had been registered, without the prior advance lenders had having released form DS1 to enable the second advances to be registered.

31. In particular, in September 2006 the First Respondent acted for SS on his re-mortgage of York Road under ledger 11184-00058-7. The Firm also acted for lender client P. On 13 September 2006 the Certificate of Title was signed by the First Respondent as a partner in the Firm and submitted to P. On 29 September 2006 the mortgage advance of £178,440 was received by the Firm, and used on 2 October 2006 to discharge an existing charge of £120,625.53. P's mortgage was registered on 29 June 2007.

32. Ledger account 11184-00092-8 related to a re-mortgage of York Road in September 2008. Lender BM, a division of BOS, provided the remortgage and instructed the Firm to act on its behalf. No client financial transactions were recorded on the ledger.

33. The client matter file with reference 11184-00092-8 recorded that £187,465 was received from BOS following submission of a Certificate of Title signed by the First Respondent on 18 September 2008 in respect of York Road. The file also contained a redemption statement provided by lender P for £186,994.13 as at 22 September 2008.

34. Ledger account 11184-00081-3 headed "SS - Re-mortgage ..C Edith Road" recorded the sum of £187,465 as having been received by the Firm on 19 September 2008. The same ledger account also recorded numerous transfers to other ledger accounts, with the result that £187,465 was reduced to £6,175.88 by 5 November 2008. No payment was recorded as having been made to P to redeem the pre-existing mortgage on York Road. Office copy entries dated 6 May 2009 showed that the advance from BOS had been registered as a first charge against that property. The client matter file also contained a copy of form DS1 purporting to show that P had acknowledged that York Road was no longer charged as security for repayment of sums due under its 2006 charge. Subsequently P confirmed that it had never released form DS1 so as to enable the First Respondent to register BOS's charge.

35. The Tribunal's attention was also drawn to the remortgage transactions relating to properties at Julian Avenue, Grasgarth Close, Moireux Road, Thanet Court and a further property at Edith Road, the details of which were set out in the FIR and Rule 5 Statement. The transactions could all be summarised as set out at paragraph 30 above.

36. Further investigation was carried out by the SRA starting on 20 November 2009 resulting in the FIR dated 24 February 2010. The First Respondent left the Firm on 30 September 2009. At the time of the later inspection the books of account were not in compliance with the SAR. The Firm had liabilities to clients as at 31 October 2009 totalling £799,533.59. The Firm's client account reconciliation showed an equivalent amount of funds available in client bank accounts as at that date. However in consequence of the property transactions described above, the Firm had additional liabilities to lender clients in excess of £1.5 million without funds available to meet those liabilities. The precise amount of additional liabilities could not be determined, as loans provided by subsequent lenders had been registered using false DS1 forms. Prior lenders could require subsequent charges to be cancelled and their loans to be re-registered, in which case the subsequent lenders would require their funds to be returned to them. The Firm's insurers had been informed of the situation.

Dealings with MK

37. Three files relating to client MK were reviewed. The first file related to an appeal on which the Firm acted for MK, recovering £161,000 plus interest on his behalf. The money was paid into client account in June 2006. MK provided evidence of his identification in the form of a bank card. At the end of the proceedings £161,000 was transferred to a designated deposit account and the file closed in September 2006.

38. In September 2006 a second file was opened. An attendance note of a meeting between the First Respondent and MK dated 18 September 2006 stated that MK had received approximately £160,000 plus interest; he did not have and had difficulty in opening a bank account. The attendance note continued, stating that MK would lend money without security to client A, who would pay interest at 5 % above base rate. On 25 September 2006 the First Respondent wrote to MK to confirm his instructions. He said that the Firm had been instructed to draft a loan agreement, which he enclosed with the letter. The loan agreement was between MK and C, a different client of the First Respondent and a business associate of client SS. It was unclear as to when and why C had been substituted for A in the arrangement.

39. The terms of the agreement were summarised as follows:

- MK was to lend C £161,000;
- C would pay MK a facility fee of £20,000 upon repayment;
- Interest was said to be 4% above Barclays base rate;
- C was to repay MK on demand;
- The purpose of the loan was for redevelopment of properties.

40. A schedule of payments on file showed sums totalling £161,000 being paid out to various third parties between 1 November 2006 and 6 December 2006. No payments were made to C, nor was there any explanation on the file as to why funds were distributed to third parties. The final payment of £27,000 was on 6 December 2006.

41. On 7 December 2006 a third file was opened with an attendance note in which MK requested repayment. The First Respondent contacted client SS (rather than C or any of the recipients of the payments made in accordance with the schedule). SS agreed to "send some cheques". On 21 January 2009 MK contacted the First Respondent by email chasing payment.

42. On 26 January 2009, two amounts totalling £10,000 were transferred to MK and AK on the instructions of MK. The same day £10,851 was transferred to the relevant ledger from a property transaction ledger for SS. The sum of £9,220 was recorded on the client side of the client ledger, appearing to originate from two other parties, S and D.

43. The IO reviewed the file relating to SS's purchase of Moireux Road, and found an attendance note dated 5 January 2009 between SS and the First Respondent. That attendance note made reference to "S....." needing to repay MK. The note said that:

> "He will send some money collected, but the balance I can transfer. He has agreed that up to 40K should be repaid by the end of February. He will sort it out with ..."

It was unclear why SS was contacted regarding the repayment of monies to MK when the loan agreement was between MK and C.

44. During interview on 7 May 2009 the First Respondent said that MK had been repaid the full amount owed under the terms of the loan. No evidence was provided in support.

Reconciliation Statements

45. There were inaccuracies in the bank reconciliations undertaken by the Respondents in accordance with SAR Rule 32(7). A review of bank statements demonstrated that the actual balances at the bank did not correspond with balances shown on the reconciliation statements in respect of eight client accounts other than the general client account. When this was pointed out to the Firm's bookkeeper he provided a reconciliation statement reflecting accurate bank account balances. In relation to the First Respondent only there were incorrect and inaccurate entries relating to a US$ client account maintained for SS and a litigation file in the name of HP. Incorrect transfers were made between the US$ ledger and the client ledger of HP which centred on payment of costs and disbursements. There was no evidence on file relating to bills for work done rendered to HP.

Breach of Undertaking

46. In August 2003 the Firm took over instructions from Southall Rights to act on behalf of a client for whom Southall Rights had been granted a legal aid certificate. On the transfer of instructions the First Respondent gave an Undertaking to Southall Rights that, when costs were recovered from the Defendant, the Firm would release all funds payable to Southall Rights following assessment and payment by the Legal Services Commission "as soon as practicable". The claim was successful, and the Defendant ordered to pay costs on 6 August 2004. Costs were assessed at £22,192.44 plus interest on 16 June 2005. From 18 January 2006 the Defendant paid costs by instalments to the Firm. The outstanding balance due was paid in full on 20 December 2007 when it was transferred to office account. Southall Rights was owed £4,269.44 in accordance with the Undertaking given by the First Respondent.

47. Southall Rights wrote to the Firm on 9 August 2007, 19 October 2007 (for the attention of the Senior Partner- the Second Respondent), and on 5 June 2008, quoting the Second Respondent's reference each time. On 14 November 2008 £4,269.44 was transferred from the Firm to Southall Rights, nearly 12 months after payment in full had been received from the Defendant and without interest.

Client E

48. In June 2006, E instructed the Third Respondent to defend a personal injury claim. He paid £15,129.89 on account of costs. The claim was successfully defended; the Claimant was ordered to pay E's costs in the sum of £13,500. These costs were paid into client account on 10 and 15 July 2008 and transferred to office account. On 1 July 2008 a cheque for £8,000 payable to E was drawn on office account. At the time the cheque was issued office account was overdrawn by £24,192.75. The Firm's authorised overdraft limit was £25,000. E said that he did not receive the cheque. The Third Respondent said that the cheque was sent but must have been dishonoured.

49. On 24 November 2008 the office side of the client ledger showed a credit of £8,000 and a further cheque for the same sum was issued from office account to E. At the time the office account was overdrawn by £16,197.72. E said that this cheque was dishonoured. He complained to the Legal Complaints Service and to the Third

Respondent. On 10 December 2008 a direct payment for £8,000 was made from the Firm's office account to E's bank account.

50. E complained again to the Legal Complaints Service concerning payment of the balance of costs which he said was outstanding. On 19 February 2009 a further cheque was sent to him for £6,718.64 which cleared the office account.

51. The Third Respondent said that a discounted fee agreement had been entered into with E, under which he would pay the Firm an increased hourly rate if the case was successfully defended. She said that he was owed only £8,000 of the costs payable by the Claimant and not £13,500 which the Firm had actually received. The Third Respondent produced a letter to E dated 8 June 2006 in which it was stated that he would be charged an hourly rate of £210 in the event of a successfully defended case, and an hourly rate of £120 if the defence was not successful and/or costs were not recovered. No other documentation mentioning the discounted fee agreement was produced.

Failure to Disclose Material Facts to Lender Clients
Gosport Road – First Respondent Only

52. In May 2005 the First Respondent acted for SS in the purchase of properties at Gosport Road. Each property was purchased using a mortgage from lender S Building Society, for which the First Respondent also acted. The instructions from S Building Society were subject to parts 1 and 2 of the Council of Mortgage Lenders' Handbook ("CMLH"), under which all incentives had to be reported to the lender.

53. In four out of five transactions the vendor gave SS an allowance of £4,000 on the purchase price in respect of furniture. SS paid less to the vendor than was notified to and advanced by S Building Society. The First Respondent signed the Certificate of Title in each case. There was no evidence on file that the allowances had been reported to the lender clients. The First Respondent confirmed that the lender client had not been notified of the allowances during interview on 7 May 2009.

54. The transactions were completed in May 2005 and registered in March 2009. The Certificates of Title signed by the First Respondent required mortgages to be registered within the period of protection afforded by the relevant searches. In three out of five transactions search fees had been deducted from the ledgers. However there was no evidence on file that searches had been undertaken. In respect of one property, the client ledger recorded that the fee for the local authority search was paid six weeks after completion had taken place. It was unclear whether searches were undertaken before mortgage money was released.

Avon Court - First and Second Respondents

55. In September 2007 the First Respondent acted for the Second Respondent on the purchase of Avon Court from F, who was independently represented, for £250,000. The First Respondent also acted for lender H Building Society. The mortgage offer was £212,465. There was no client ledger account for the property. A Certificate of Title was submitted to H Building Society requesting funds for completion on 5 September 2007. The mortgage advance was received into the Firm's client account

on 4 September 2007, credited to General File client ledger 11184-00003-0 in the name of client SS marked "payment on account". On 6 September 2007 the same client ledger recorded a payment of £150,000 marked "Dubai".

56. The vendor's solicitors confirmed that the sale of the property did not take place and that they did not receive any funds from the Firm in respect of the transaction.

57. On 18 November 2009, two years after the mortgage advance had been received and after the First Respondent had left the firm, the mortgage advance was registered and the Second Respondent's name placed on the Proprietorship Register.

58. The Second Respondent told the FIO that he had been approached by the First Respondent who wanted to buy the property but was unable to borrow money. He asked the Second Respondent to put his name to the mortgage application. The Second Respondent agreed to the proposition. He assumed that the First Respondent had completed the purchase.

59. Bank statements confirmed that payments of the Land Registry Fee and Stamp Duty Land Tax were made from the Firm's office account in September and October 2009 respectively. A TR1 form showing a transaction date of April 2007 purportedly bearing the signature of the vendor's solicitor as witness to the signature of the vendor was shown to the vendor's solicitor on 8 February 2010. He said that the signature was not his. The First Respondent informed the SRA by letter dated 29 March 2010 that the Second Respondent was unaware that the transaction had not proceeded or that the First Respondent had used the mortgage advance for his own purposes.

West Lodge Court - First and Second Respondents Only

60. At about the same time as the transaction relating to Avon Court, the First Respondent acted for the Second Respondent on the purchase of a property at West Lodge Court from A for £250,000. A was represented by the same solicitors who had acted for F on the Avon Court transaction. The property was to be purchased with a mortgage of £187,000 from TMB. The mortgage offer dated 6 June 2007 was addressed to the Second Respondent at his home. A letter on file to TMB dated 30 October 2007 enclosed the Certificate of Title and requested release of the mortgage funds by 31 October 2007. The Certificate of Title was not on file. There was no client ledger account for the transaction. On 31 October 2007 the mortgage advance of £186,970 was credited to General File client ledger 11184-00003-0 in the name of client SS. On 22 October 2007 the same client ledger recorded a payment of £200,000 marked "payment for Dubai flats".

61. The vendor's solicitors confirmed that the sale of the property did not take place and that they did not receive any funds from the Firm in respect of the transaction. On 18 November 2009 the relevant documentation was submitted to HM Land Registry, the mortgage advance was registered and the name of the Second Respondent was inserted on the Proprietorship Register. The payments in respect of the Land Registry fee and Stamp Duty Land Tax were made from the Firm's office account in September and October 2009 respectively. The vendor's solicitor confirmed that his purported signature on form TR1 was not in fact his. The First Respondent informed the SRA by letter dated 29 March 2010 that the Second Respondent was unaware that

the transaction had not proceeded or that the First Respondent had used the mortgage advance for his own purposes.

62. On 5 May 2010 the SRA's Adjudication Committee resolved to intervene in the practice and to refer the matter to the Tribunal. The Tribunal received the referral on 24 November 2010.

Witnesses

63. No witnesses of fact were called. Mr Neville Lawrence gave evidence as to the Second Respondent's character.

Findings of Fact and Law

<u>All Respondents - Allegations 1.1, 1.2, 1.3 and 1.5</u>

64. **Allegation 1.1 - Failed to maintain the books of account of the practice in accordance with Rule 32 SAR;**

Allegation 1.2 - Improperly withdrew monies from client account when there were insufficient monies held leading to a cash shortage contrary to Rule 22 SAR;

Allegation 1.3 - Transferred, or permitted to be transferred, client funds from one client account to another when they were not authorised or permitted to do so contrary to Rule 30 SAR;

Allegation 1.5 - Operated the client account in breach of Rule 15 SAR.

64.1 The First Respondent admitted the allegations by means of paragraph 22 of his signed Statement containing a statement of truth dated 23 May 2011. The Second and Third Respondents admitted the allegations at the hearing via their Advocate. The Respondents did not dispute the facts set out in the Rule 5 Statement and supporting documents. Mr Havard submitted that these allegations were capable of substantiation on the facts and the documents. He said that there was financial irregularity, manipulation of the books of account and non-compliance with the SAR, predominantly orchestrated by the First Respondent. Under SAR Rule 6, the Second and Third Respondents as principals in the practice also had an obligation to ensure their own compliance and that of everyone employed in the practice. "Principals" included a partner in a partnership, and "partner" meant a person who was or was held out as a partner. The Second Respondent did not dispute that he was an equity partner in the Firm. The Third Respondent said that she had been a partner only during the period 1 October 2003 to October 2004. However, she accepted that she permitted herself to be held out as a partner after that date even though she was then contractually an employee. All Respondents had been subject to a previous decision in relation to SAR breaches of the SRA Adjudicator dated 10 November 2005. The Second and Third Respondents should therefore have had heightened awareness of the requirement to comply and ensure compliance with the SRA.

64.2 The allegations had been admitted by the Respondents and the Tribunal found them substantiated on the facts and the documents.

65. **Allegation 1.4 - Contrary to Rules 1.02, 1.03, 1.04, 1.05 and 1.06 SCC they:**

- **Failed to act with integrity; and/or**
- **Acted in a way which meant that their independence was compromised; and/or**
- **Failed to act in the best interests of clients; and/or**
- **Failed to provide a good standard of service to their clients; and/or**
- **Acted in a way that was likely to diminish the trust the public placed in them and/or the legal profession,**

65.1 The First and Second Respondents admitted the allegation. The Third Respondent admitted the allegation only to the extent that she acted contrary to Rule 1.06 SCC, namely acted in a way that was likely to diminish the trust the public placed in her or the legal profession in respect of the admitted breaches of the SAR and the dishonoured cheque or cheques sent to client E. The Third Respondent did not admit breaches of Rules 1.02, 1.03, 1.04, and 1.05 SCC. Her admission was made solely on the basis that she was held out as a partner in the Firm and was therefore culpable. The Applicant proceeded on that basis.

65.2 Mr Havard submitted that the First Respondent was the prime instigator in respect of the facts giving rise to this allegation. The First Respondent acted wholly inappropriately and admitted that he had acted dishonestly in his management of the books of account as set out in detail in the Rule 5 Statement (including the inaccuracies in the reconciliation statements), in taking loans from and making loans to clients and using client monies to repay loan facilities, and in respect of the various conveyancing transactions, including those involving client SS. The facts relating to the First Respondent's dealings with MK, and conveyancing transactions at Avon Court and West Lodge Court were particularly serious. The Second Respondent's involvement was more limited. He accepted during interview that he was aware that the First Respondent had loan agreements with clients. His involvement in the Avon Court and West Lodge transactions was serious. He admitted that he had acted recklessly as alleged.

65.3 The First and Second Respondents admitted the allegation. The Third Respondent admitted the allegation only in respect of breach of Rule 1.06 SCC. The Tribunal found the allegation substantiated as admitted on the facts and documents.

<u>First and Second Respondents Only</u>

66. **Allegation 2.1 - Failed to comply with an Undertaking in breach of Rule 10.05 SCC.**

66.1 The First and Second Respondents admitted the allegation, which related to the Undertaking, signed by the First Respondent on behalf of the Firm, to Southall Rights to account for their costs under a legal aid certificate in the case of H, "as soon as practicable". Costs were received in full by the Firm by 20 December 2007, and were transferred to office account by 21 December 2007, in spite of the fact that £4,269.44

was due to Southall Rights under the Undertaking. Southall Rights wrote to the Firm quoting the Second Respondent's reference three times to chase payment. The costs were not reimbursed until 14 November 2008, 11 months late, and without accounting for interest received in the interim.

66.2 The Tribunal found the allegation, which was admitted by the First and Second Respondents, substantiated on the facts and documents.

67. **Allegation 2.3 - Failed to provide to their lender clients in a series of conveyancing transactions information that was material to their business.**

67.1 The First and Second Respondents admitted the allegation. The facts were not in dispute.

67.2 This allegation in relation to the First Respondent arose from the various conveyancing transactions on which he acted for client SS and the transactions at Gosport Road, in addition to the transactions at Avon Court and West Court Lodge dealt with below. All transactions were itemised in the Rule 5 Statement and the facts were not in dispute. For example, on the Gosport Road transactions, the lender client was not informed of allowances of £4,000 given by the vendor to the purchaser in respect of four out of the five transactions. Further, local authority searches did not appear to have been undertaken in spite of the fact that the cost of the same had been deducted from the ledger account. Mr Havard submitted that the failure to provide relevant information to the lender client could have had an impact on the loan to value ratio and was also dishonest in that the First Respondent had charged for searches which had not been undertaken. The Tribunal accepted that submission.

67.3 The facts relied upon in support of the allegation against the Second Respondent concerned the transactions at Avon Court and West Lodge Court. Lender clients released mortgage advances in response to a Certificate of Title submitted by the First Respondent in the name of the Second Respondent without the transactions having proceeded to completion. Registration was completed by the Second Respondent using documents prepared by the First Respondent. The Applicant submitted that the Second Respondent paid no heed to the conduct of the transaction by the First Respondent.

67.4 The Tribunal found the allegation, which was admitted by the First and Second Respondents, substantiated on the facts and the documents.

68. **Allegation 2.4 - Acted where there was a conflict of interests contrary to Rule 3.01 SCC.**

68.1 The First and Second Respondents admitted the allegation. The facts were not in dispute.

68.2 The facts relied upon against both Respondents concerned the various breaches of the SAR and the loans to and from clients for the benefit of the Firm and others. In respect of the First Respondent only, the Applicant also relied on the conveyancing transactions, particularly those involving client SS. For example, as at May 2009 loans taken from clients stood at £641,516.94. Save for a few exceptions, there was

no evidence that the First Respondent had insisted that clients from whom he was borrowing money, either in a personal capacity or on behalf of the Firm, should take independent legal advice prior to the loan being made, as required by Rule 3.01 SCC. The First Respondent said that the practice of taking loans had been continuing in relation to client SS for 10 years. The Second Respondent accepted that he was aware that the loans were being taken, although he was surprised by their extent. In his words this came as a "complete shock to him". The Applicant submitted that the conduct of the First Respondent was dishonest, and that of the Second Respondent reckless.

68.3 The Tribunal found the allegation, which was admitted, substantiated on the facts and the documents.

69. **Allegation 2.5 - Acted in transactions involving the transfer of large sums of monies received from lender clients which they knew, or should have known, were suspicious.**

69.1 The First and Second Respondents admitted the allegation. The facts were not in dispute.

69.2 The facts relied upon in support of the allegation concerned the conveyancing transactions at Avon Court and West Lodge Court, and, in respect of the First Respondent only, the numerous conveyancing transactions involving client SS.

69.3 The Tribunal found the allegation, which was admitted, substantiated on the facts and the documents.

70. **Allegation 2.6 - Became involved in dubious and/or fraudulent transactions notwithstanding such transactions were of such a nature that, as solicitors, they should not properly involve themselves whether or not they actually knew they were fraudulent.**

70.1 The First and Second Respondents admitted the allegation. The facts were not in dispute.

70.2 As against the First Respondent, the Applicant relied upon the facts concerning the conveyancing transactions for client SS, and his dealings with client MK. As against both Respondents, the Applicant relied on the facts concerning the purported conveyancing transactions at Avon Court and West Lodge Court.

70.3 Mr Havard submitted that the First Respondent's involvement in the facilitation of the loan from client MK to others was a particularly serious breach of trust. The Firm recovered £161,000 plus interest on behalf of MK. The First Respondent proceeded to broker a loan agreement between MK and C, which resulted in MK's money being paid out between 1 November and 6 December 2006 to various unrelated third parties. MK did not recover his funds in full until 2009 after chasing the First Respondent.

70.4 The Applicant submitted, and the Tribunal accepted, that the transactions in relation to Avon Court and West Lodge Court involving both Respondents were shameful examples of misconduct. The Second Respondent admitted that he allowed his name

to be used by the First Respondent in relation to the purchases of two properties because, he said, the First Respondent had informed him that he was unable to obtain a mortgage due to a poor credit rating. This should have set alarm bells ringing in the Second Respondent's mind. Instead the Second Respondent appeared to show little interest in the transactions. His actions played no small part in enabling the First Respondent to dishonestly secure funds from his lender clients which were promptly transferred to Dubai, without the property purchases ever having been completed. Some two years later, without asking any additional questions, the Second Respondent lodged documents apparently forged by the First Respondent at the Land Registry and the Firm paid the Land Registry fee and Stamp Duty Land Tax. By these actions the Second Respondent was registered on the Proprietorship Register for each property when he was not the legal owner.

70.5 The Tribunal found the allegation, which was admitted by both Respondents, substantiated on the facts and the documents.

71. **Allegation 2.2 - Acted dishonestly (First Respondent) or, in the alternative, recklessly (First and Second Respondent).**

71.1 It was alleged against the First Respondent that he acted dishonestly, or, in the alternative, recklessly, in respect of the facts giving rise to allegations 1.1, 1.2, 1.3, 1.4, 1.5, 2.3, 2.4, 2.5 and 2.6.

71.2 It was alleged against the Second Respondent that he acted recklessly in respect of the facts giving rise to allegations 1.1, 1.2, 1.3, 1.4, 1.5, 2.3, 2.4, 2.5 and 2.6.

71.3 In paragraph 22 of his signed statement dated 23 May 2011, which contained a statement of truth, the First Respondent accepted all allegations made against him, including the allegation of dishonesty. He said:

> "I totally accept all the allegations made against me. I accept that I have fallen way short of the standards expected of me. I accept that I have grossly disregarded my obligations towards my clients and partners. I am very sorry for all the problems I have caused my Clients and my Partners and the way I have brought the profession into disrepute. I accept that there cannot be any mitigation or excuse for my behaviour which has caused disruptions (sic) and loss to my clients. I am extremely sorry for damage I have caused my partners. There (sic) professional lives have been ruined by someone they trusted. .... I will fully accept decision (sic) of the Tribunal."

71.4 The First Respondent had provided no explanation for his conduct. The Tribunal was satisfied so that it was sure that the First Respondent's conduct as set out in the Rule 5 Statement and supporting documents and accepted by the First Respondent, was dishonest by the standards of reasonable and honest people. The Tribunal was also satisfied so that it was sure that the First Respondent realised that by those same standards his conduct was dishonest as set out in his signed statement referred to above. A good example of his conduct was provided by the property transactions at Avon Court and West Lodge Court, in which he secured mortgage advances totalling a little under £400,000 in the Second Respondent's name, £350,000 of which was

transferred almost immediately after receipt to Dubai. There was no dispute that the First Respondent knew that the transactions had not and never would be completed. Fraudulent documents were ultimately lodged at the Land Registry by the Second Respondent, giving him title to properties that were not in fact his. Further, as a result of the property transactions conducted by the First Respondent itemised in detail in the Rule 5 Statement it was estimated that lending institutions were owed approximately £1.5 million in un-discharged prior mortgages and/or subsequent advances, which the Firm had no funds to repay other than by claiming against its insurance policy.

71.5 The First Respondent had admitted the allegation that his conduct had been dishonest and the Tribunal found it substantiated on the facts and the documents.

71.6 In so far as the Second Respondent was concerned, the Tribunal noted his admission that he had acted recklessly as alleged in the Rule 5 Statement. The Second Respondent was an equity partner at the Firm. He qualified in 1988, and had been a partner since 1991. He was not an inexperienced solicitor. Mr Havard submitted that the Second Respondent had mistakenly placed his trust in the First Respondent in spite of the clear warning of the Adjudicator in November 2005 which should have drawn to his attention that all was not well with the way in which the Firm's accounts were being managed by the First Respondent. The Adjudicator had recorded that as at 31 August 2004 there was a cash shortage of £38,664.41. By early 2004 the Second Respondent's evidence was that the First Respondent had effectively become the Firm's finance partner. The Adjudicator's decision and reprimand should have put him on notice that all was not well; he should have been much more vigilant.

71.7 The Second Respondent's conduct in relation to the transactions of Avon Court and West Lodge Court was inexplicable and entirely reckless. Mr Havard submitted that his recklessness was at the very serious end of the scale of cases that came before the Tribunal. The Second Respondent's evidence as set out in his signed statement, which included a statement of truth, was that the First Respondent had asked him whether he could use his name in order to obtain mortgages on certain properties that he was buying from a friend due to a credit rating problem. Having initially and quite properly refused to assist the First Respondent, it was reckless in the extreme to agree at a later date, whether reluctantly or otherwise, to purchase the properties as a nominee. The Second Respondent signed legal charges presented to him by the First Respondent apparently without asking any questions. He passed correspondence from the lenders to the First Respondent and thought nothing more of the purchases until he discovered late in 2009 that, in his own words, they had been a sham, connived by the First Respondent. The First Respondent left the Firm in September 2009. In November 2009, over two years later, the Second Respondent submitted the relevant documents, said to have been prepared by the First Respondent, to the Land Registry, without asking any questions or showing any curiosity about the properties which he believed belonged to him. Coupled with the Second Respondent's seemingly cavalier approach to the management of the books of account, the Tribunal had no difficulty in finding that the Second Respondent's conduct was towards the top end of the scale of recklessness.

71.8 The Second Respondent had admitted the allegation that his conduct had been reckless and the Tribunal found the allegation substantiated on the facts and the documents.

Previous Disciplinary Matters Before the Tribunal

72. None recorded against the Respondents.

Mitigation

First Respondent

73. Limited mitigation on behalf of the First Respondent was found at paragraphs 22 and 23 of his Statement dated 23 May 2011. He said that there could not be any mitigation or excuse for his behaviour which had caused disruption and loss to his clients. He apologised for the damage he had caused his partners and recognised that their professional lives had been put at risk by someone they trusted. He said that he could not expect any leniency because of his actions. However, he asked the Tribunal to consider the fact that he was solely responsible for all matters before the Tribunal and his partners had no knowledge or involvement. He said they had simply trusted him and he had let them down. He finished by saying he would fully accept the decision of the Tribunal.

Second Respondent

74. The Tribunal had the benefit of hearing from Mr Neville Lawrence on behalf of the Second Respondent. Mr Lawrence gave his evidence in a straightforward manner. The Tribunal was left in no doubt of his deep respect and gratitude for the work that the Second Respondent and others at the Firm had done on behalf of himself and his family.

75. Mr Treverton-Jones for the Second Respondent did not minimise the seriousness of his breaches of the rules and misconduct. He presented the Respondents as a hierarchy, with the First Respondent's consistently serious dishonest conduct at the top. He submitted that the Second Respondent's conduct fell at a lower level in the hierarchy, with the Third Respondent's conduct at the base. The Second Respondent fully accepted his responsibilities as an equity partner at the Firm. He did not dispute the facts that had been presented to the Tribunal. He had fallen down in honouring his management responsibilities; the First Respondent had taken advantage of his lack of attention. The Second Respondent accepted that he should not have allowed himself to be used by the First Respondent in relation to the transactions at Avon Court and West Lodge Court. He had been persuaded by the First Respondent to become involved and could now see with clarity how much he had been misled. Mr Treverton-Jones reinforced the statements made by the Second Respondent in his statement concerning his background, stressing that he came from a proud, decent family and that until these matters had arisen he had had a thoroughly impressive legal career, to the extent of being instrumental in making ground-breaking law.

76. Until recent difficulties the Firm had been "a good Firm with a good reputation and good flow of work". Mr Treverton-Jones asked the Tribunal to consider how often it

was said in court that what had gone wrong was due to the conduct of one partner and how often the partner in question was not in court to hear what was said. This was the case here. The First Respondent ran the accounting side of the practice and the Second Respondent trusted him, so took his eye off the ball. The Second Respondent should have done more; he should have queried the transfers that were being made. However, as at Spring 2006, the Second Respondent was the managing partner and practice manager and had great aspirations for the Firm. He was working very hard. The SRA's Adjudicator had made a decision relating to the partners in 2005. However the Second Respondent had taken comfort from the fact that the Firm's subsequent accounts had passed with a clean bill of health. He had borrowed funds against his personal property to invest £400,000 in the development of the Firm. He obtained new offices and excellent IT systems, managing 2,500-3,000 live files at any time. The Second Respondent was aware that the First Respondent was supposed to be putting money into the Firm, but did not know how that was being done.

77. By the time the First Respondent left the Firm, the Second and Third Respondents were fighting for the future of the practice, its clients and staff. The Second Respondent had to manage the First Respondent's conveyancing files despite not being a conveyancer. For 6 months the Firm was threatened with intervention which finally occurred on 7 May 2010. The Second Respondent helped the intervention agents with the disposal of up to 3,000 live files. He had been unable to work since intervention, his Practising Certificate having been suspended at that time. The Second Respondent had re-applied for a Practising Certificate in July 2010, and had received the same, subject to conditions, in April 2011. On 9 May 2011 he had been adjudged bankrupt, resulting in the second automatic termination of the Certificate. Mr Treverton-Jones asked the Tribunal to take this into account when considering penalty, together with the fact that he had in effect already served the equivalent of a one year suspension.

78. Mr Treverton-Jones informed the Tribunal that the Respondent was married with two children at school. His wife had part-time earnings, currently the family's only source of income. He owned three buy-to-let properties, two in joint names and one in his sole name. The rental income from those properties was currently paid to the Trustee in Bankruptcy. The Second Respondent wanted to return to work as a Solicitor and wanted to renew his Practising Certificate when discharged from bankruptcy, accepting that it would be subject to conditions. An opportunity for employment was available to him at his sister's Firm. The Second Respondent still had a huge amount to offer to the public and the profession.

79. The Tribunal was referred to the bundle of testimonials submitted on behalf of the Second Respondent, which was considered in detail.

Third Respondent

80. Mr Oldroyd for the Third Respondent referred to her witness statement and substantial bundle of testimonials. He confirmed that the Third Respondent had started her legal career as a paralegal. She had worked her way up to salaried partner at the Firm by October 2003 until she resigned as a partner in October 2004. She reverted to contractual status as an employee, but allowed herself to be held out as a partner. As a result she found herself accountable for SAR breaches. She had viewed

the First Respondent as her mentor, in whom she had placed her trust, but had become a victim of his dishonesty

81. The Third Respondent apologised unreservedly for her conduct. She wanted to put the episode behind her, having learnt the necessary lessons from it. She admitted her responsibility in relation to allegations 1.1, 1.2, 1.3 and 1.5. These SAR breaches had in turn caused her to be in breach of Rule 1.06 SCC as alleged at allegation 1.4. Effectively she had become vicariously liable for the breaches of her Co-Respondents.

82. Mr Oldroyd said that the First Respondent's flagrant and dishonest breaches of the rules were extremely grave. The Third Respondent should not be tarred with the same brush. She must be dealt with only by reference to her own failings, which were serious, but were neither dishonest nor reckless. The Third Respondent was not aware of the SAR breaches until May 2009; she had no reasonable means of preventing the breaches from taking place because she was not then a partner in the Firm. She had no control over the business or its bank accounts; she was not an authorised signatory and had no right to inspect bank statements. She was in effect powerless to detect and prevent SAR breaches. However, the Third Respondent now understood that by holding herself out as a partner she was representing to the wider world that she was in a more powerful position. It was the Third Respondent's case in mitigation that the breaches would have occurred no matter what she had done. They were seemingly committed as a result of fraud and the First Respondent went to great lengths to hide what was going on. To that extent the Third Respondent adopted the contents of the Rule 5 Statement at paragraph 157 where it was stated that the conduct of the First Respondent throughout illustrated a preparedness to act dishonestly in all matters highlighted in the reports. He appeared to have taken whatever steps necessary to attempt to conceal his activities.

83. The Third Respondent accepted that she had been unaware of her obligations and responsibilities under SAR Rule 6. She did not appreciate that she had assumed the responsibilities of being a partner without the benefits. In her witness statement she described the steps that she took in 2005 following receipt of the Adjudicator's warning. The First and Second Respondents took all responsibility for the SAR breaches, and made it clear to the SRA Adjudicator that the other partners were not responsible. They had received a reprimand, and the other partners had been warned. The Third Respondent responded to that warning. She resigned from the partnership. She made enquiries of the First and Second Respondents as to how the breaches arose. They gave her a credible explanation which satisfied the SRA. They also responded positively by investing in additional staff and IT. As a result of her resignation from the partnership the Third Respondent believed that she was no longer responsible for the Firm's compliance with the SAR, but she was mistaken. She failed to appreciate that if she held herself out as a partner she would remain responsible.

84. Mr Oldroyd said that the Tribunal might properly ask why the Third Respondent allowed herself to be held out as a partner. He said that she freely admitted in her statement that there was an element of personal vanity involved. In addition she wanted the partnership badge to further the business for the benefit of staff and clients. This had proved to be a mistake.

85. In relation to the allegation concerning E, the Third Respondent had personally done nothing wrong. The events demonstrated the chaos of the Firm in general. The Third Respondent maintained that this was a matter where costs were to be paid at a discounted hourly rate, which would increase in the event that the defence of the claim was successful. Costs were recovered and E was entitled to reimbursement of approximately £8,000. The Third Respondent sent him a cheque, which it appeared he did not receive. A further cheque was sent, which was dishonoured (as would have been the original cheque if it had been received). E made a complaint on 8 December 2008 and £8,000 was transferred to his bank account on 9 December 2008. The Third Respondent had no way of knowing that the cheque would be dishonoured. Mr Oldroyd referred the Tribunal specifically to the testimonial from E in which he stated that he was very happy with the outcome of the costs settlement and the way in which the Third Respondent handled his case. In his opinion the Third Respondent had acted with integrity and came across as a very responsible and reliable solicitor. She provided excellent service and acted in his best interests.

86. Mr Oldroyd invited the Tribunal to read the testimonials from barristers, former clients and former colleagues in full. Testimonials commended the Third Respondent as a diligent and trusted former colleague and employee. She was described as "a deeply moral lady who takes very much to heart the concerns of her lay clients". Another former client described her as "open, honest and most considerate...". She was described as being "100% committed to her work, her team and her clients". The Third Respondent's personal integrity was not in question. He invited the Tribunal to reprimand the Third Respondent.

87. Mr Oldroyd referred to the Third Respondent's statement of means. She received an income of £11,300 for the year ended 30 April 2011 and had expenses of £25,142, resulting in a shortfall of £13,842 met by funds borrowed from family members. The Third Respondent was currently living with family. She held a one-third share in a rental property (subject to first and second charges) from which she received an income of £9,200 last year. Until May 2011 the Third Respondent had been working as a consultant at a solicitors' firm owned by the Second Respondent's sister. She had decided that she needed time and space away from those connected with her former Firm. In addition her health had suffered. The Third Respondent continued to have ambitions for a career within the legal profession.

Sanction

88. Each of the parties had admitted the allegations against them and the Tribunal had found them proved, including dishonesty in the case of the First Respondent and recklessness in the case of the Second Respondent. The way the Firm managed its accounts was found by the Tribunal to be lamentable. These were extremely serious breaches of the SAR. Whilst responsibility for causing the breaches lay primarily with the First Respondent, the other two Respondents were themselves culpable to a substantial but differing degree. The Tribunal accepted that they were taken in by the First Respondent, but found the fact that they were surprising in the extreme by virtue of the very clear reprimand and warning handed down by the SRA Adjudicator on 10 November 2005. So far as the Second Respondent was concerned he then accepted responsibility for the state of the firm's then accounts, but clearly did not learn his lesson. So far as the Third Respondent was concerned the Adjudicator's decision

expressly pointed out the liabilities that would attach to a solicitor who allowed him or herself to be held out as a partner. Clearly she took no notice.

First Respondent

89. The First Respondent had admitted eleven allegations, including an allegation of dishonesty. He had provided no explanation for his extremely serious misconduct. The facts of this case clearly demonstrated why breaches of the SAR were viewed so seriously by the regulator. It also demonstrated the importance of compliance with Rule 6 SAR. It was essential for all principals in a firm to satisfy themselves beyond any doubt that accounts were being managed properly and in strict accordance with the rules. It was not acceptable to designate one or more partners as finance partner(s) and then abdicate all personal responsibility for ensuring compliance with the rules. Principals who adopted that approach had only themselves to blame when problems arose.

90. The Tribunal accepted the evidence before it that the First Respondent was a persuasive, charismatic individual. He had behaved in a reprehensible, shameful way, leaving his colleagues, his employees, and his lender clients in particular in the most serious difficulty, apparently without a second thought. The First Respondent had used those around him for his own ends, including exploiting the trust placed in him by his colleagues. The First Respondent had proved himself unfit to be a member of the solicitors' profession by his actions. The Tribunal had a duty to protect the public and to protect and maintain public confidence in the reputation of the profession. The First Respondent, having admitted dishonesty, was quite right to anticipate in his statement that he was unlikely to be treated with leniency. Save for in the most exceptional of circumstances, which did not exist in this case, the penalty for dishonesty was to be struck off the Roll of Solicitors. That was the proper and proportionate penalty in the case of misconduct such as that admitted by the First Respondent. He was therefore struck off the Roll with immediate effect.

Second Respondent

91. The Second Respondent had admitted eleven allegations, including an allegation of recklessness. He had been a solicitor for 23 years. He was a partner, and ultimately Managing Partner, at what had been a very successful firm, creating ground breaking law in high-profile cases, from 1991 until 2009/2010. This was a sorry end to what should have been a very successful chapter in his life. In 2004 the Firm was investigated by the SRA, and the Adjudicator gave the Second Respondent a reprimand in relation to SAR breaches. It was foolhardy and reckless of the Second Respondent to permit the First Respondent to continue to manage the Firm's financial affairs without keeping a much closer eye on what was going on. He had invested £400,000 borrowed on the security of his own property, together with all his hard work and energy which he admitted had been at some expense to his family life. At the very least it was essential that he ensured that his personal investment was being well cared for. The Tribunal found it difficult to understand how the Second Respondent had allowed himself to be so completely manipulated by the First Respondent. Hopefully he would emerge from this experience as a wiser and more assertive individual.

92. Several very positive points were put forward by Mr Treverton-Jones on the Second Respondent's behalf. There was little doubt that he was an extremely able lawyer. Mr Lawrence persuasively attested to his competence as did the other testimonials. The Second Respondent had been prepared to take on cases for little or no payment when others might have walked away. He was clearly and properly contrite. He was not a conveyancer so found conveyancing work hard to supervise. He had not benefitted personally from the actions of the First Respondent. The Tribunal accepted that the Second Respondent had made a valuable positive contribution to the reputation of the profession which had been of great benefit to the public. The Tribunal took note of Mr Treverton-Jones's persuasive submission that the Second Respondent could benefit the public and profession again if allowed to continue in practice. The Tribunal had also taken note of how the Second Respondent had conducted himself in relation to his responses to the allegations. He had been cooperative with the SRA and the Tribunal throughout.

93. The Tribunal had determined that a reprimand or fine were not appropriate in this case. Indeed it was to the Second Respondent's credit that he had not asked to be dealt with in that way. He had received a reprimand from the SRA Adjudicator in 2005, which seemed to have had no long-lasting effect on his level of attention to his accounts rules obligations after an initial flurry of action. The Tribunal was concerned about the transactions at Avon Court and West Lodge Court. The Second Respondent's conduct in permitting himself to be persuaded by the First Respondent into a course of conduct about which he had concerns suggested that he was unassertive to a degree that could place the public, including future clients, at risk. As a result of those two transactions in which he was directly involved lender clients of the Firm had lost money which the Second Respondent was unable to repay save by redress to the Firm's insurers. The Tribunal was very concerned that the Second Respondent might find himself involved with an equally persuasive individual in future.

94. The Tribunal had a duty to protect the public and the reputation of the profession. It had considered carefully whether the Second Respondent's conduct was sufficiently serious to merit striking off the Roll. There was no doubt that the misconduct was at the extreme end of the scale of recklessness. However, the Second Respondent had not been dishonest. His conduct was somewhat less serious than that of the First Respondent; the Tribunal accepted the submissions of Mr Treverton-Jones and Mr Havard in that regard. In all the circumstances the Tribunal did not consider that striking off the Roll was either merited or proportionate. Before these events he had had an excellent legal career which he was rightly proud of. He could still contribute positively for the benefit of the public and profession, particularly if he was able to work within a calm, well-ordered practice, with support. Within such an environment he was unlikely to pose any significant risk. It therefore ordered that he be suspended from practice as a Solicitor for the period of one year from 2 June 2011. However, the Tribunal strongly recommended that on his return to practice he should work only in approved employment. This would ensure that he was employed within an environment that would minimise the risk of the Second Respondent repeating the same mistakes.

Third Respondent

95. The Third Respondent was the minor player in this sorry tale. She admitted four breaches of the SAR, responsibility attaching solely by reason of SAR Rule 6. She had also admitted two separate breaches of Rule 1.06 SCC as alleged at allegation 1.4, arising from the technical SAR breaches and her dealings with client E.

96. The Tribunal had read the testimonials and had listened carefully to what Mr Oldroyd said on the Third Respondent's behalf. By her own admission she knew all was not well at the Firm once she had read the Adjudicator's 2005 decision. She had in fact resigned as a partner in October 2004. Significantly though, she had continued to allow herself to be held out as a partner. The Third Respondent said in her statement that this was in part due to vanity. The Tribunal noted that, before becoming a partner, the Third Respondent obtained accounting advice from her sister, a qualified chartered accountant. The Third Respondent said in her statement that her sister had advised against making any capital injections into the Firm. She suggested to the Third Respondent that she remain in her position as an employee and receive a fixed salary. In spite of this advice the Third Respondent decided to enter the partnership as a salaried partner. Having been put on notice by the Adjudicator's decision of the need for vigilance in respect of the accounts in circumstances when there was already a cash shortfall, the Tribunal found it difficult to understand why the Third Respondent continued to allow herself to be held out as a partner. Vanity alone was not a sufficiently persuasive reason in those circumstances. The Tribunal noted the Third Respondent's explanation for why her name appeared on the Firm's headed paper as a salaried partner at paragraph 58 of her signed Witness Statement dated 17 May 2011. She said:

"Essentially, it was a matter of status as well as recognition. On the one hand the title carried with it an element of marketing clout which was useful when trying to obtain new work. On the other hand, I must confess, there was a factor of vanity. I worked extremely hard, often six or seven days a week. The title "salaried partner" was considered by myself and my colleagues at the Firm as a form of recognition for that hard work, commitment and the level of experience that I had."

The Third Respondent went on to say that at no time did the First or Second Respondents as the equity partners of the Firm, or the independent accountants of the Firm, inform her of the consequences of her name being on the notepaper. The Third Respondent should have known shortly after reading the Adjudicator's Decision what the consequences of being held out as a partner were, as they were set out in summary at paragraphs 4 and 7 of the Decision. Further enquiry of the SRA or elsewhere would have clarified any continuing confusion.

97. It was evident from her statement that the Third Respondent perceived there to be a personal, but not necessarily monetary, benefit in allowing herself to be held out as a partner when she was not one. It was not only her vanity that was satisfied; she also perceived the status of partner to be a form of reward for her hard work and personal commitment. She believed too that her enhanced status would assist with the Firm's marketing effort. Of course, if the marketing effort was successful, that too could bring benefit, monetary and otherwise, not only to the Firm, but also to the Third

Respondent's career. It was essential in future that the Third Respondent did not permit vanity and ambition to lead her into making poor decisions.

98. The Tribunal considered that the Third Respondent had ignored opportunities to seek advice on what holding herself out as a partner entailed. The Tribunal found this surprising as she had been so careful to take advice before joining the partnership. The Adjudicator's Decision referred explicitly to Rule 6 SAR. It would have been a simple matter for the Third Respondent to have clarified her responsibilities and obligations in relation to the SAR as a result of being described as a salaried partner on the Firm's headed notepaper. She could have asked the Firm's independent accountants, or better still she could and should have sought independent legal or accountancy advice. It was foolhardy and naïve not to have taken advice in these particular circumstances.

99. Having said all of the above, the Third Respondent was a minor player in these events. The Tribunal had observed her distress at the hearing. The Tribunal was satisfied that it would be wholly disproportionate to strike the Third Respondent off the Roll or to suspend her immediately from practice. Mr Oldroyd had asked the Tribunal to reprimand the Third Respondent. The Tribunal had considered but discounted that sanction. The Third Respondent had failed to take adequate steps to respond to the Adjudicator's Decision in 2005. That should have been a sufficient warning to the Third Respondent that one could not have the benefits of being held out as a salaried partner without fully taking on the responsibilities and facing the consequences where there was default.

100. The proportionate sanction in all the circumstances was a fine of £2,000. This would give the message to the Third Respondent, and the profession (and in particular to potential partners in law firms) of the paramount need for care when holding oneself out as a partner in relation to compliance with the SAR. The Tribunal had satisfied itself that the Third Respondent had the means with which to pay a fine, having considered her unsworn statement of means for the year ended 30 April 2011.

101. The Tribunal also strongly recommended that the Third Respondent should work only in approved employment where she could be properly supported, to minimise the risk of repetition of the same mistakes.

Costs

102. The Applicant's claim for costs totalled £37,057.22. It was not agreed. The Tribunal heard submissions on behalf of the parties. Mr Havard for the Applicant referred the Tribunal to the decision of another Division of the Tribunal in the matter of Holly Richmond (No. 10274-2009). The respondent in that case did not provide a statement of means endorsed with a statement of truth, although she had produced some documentation concerning income support. In the light of that respondent's bankruptcy, the Tribunal made a fixed order for costs. In the current case, although the Tribunal had heard something of the Second Respondent's means, namely that he had an interest in three buy-to-let properties and rental income, it had seen no other information supported by an affidavit of means.

103. Mr Havard therefore submitted that the Tribunal should summarily assess the appropriate sum for costs and determine any apportionment between the Respondents. He further submitted that it would be inappropriate to make an Order for costs not to be enforced without leave of the Tribunal. He submitted that the First Respondent was primarily responsible for costs incurred, followed by the Second Respondent and lastly the Third Respondent. He said that the costs invoiced were not unreasonable in comparison with other similar cases.

104. For the Second Respondent, Mr Treverton-Jones submitted that costs should be subject to detailed assessment if not agreed and apportioned on a several basis, with the bulk of the costs to be paid by the First Respondent, and the Third Respondent to pay the least. He said that he had not seen a breakdown of the SRA's investigation costs including disbursements claimed at £17,305.42. He accepted that requiring the costs to be subject to detailed assessment would increase the ultimate figure which in itself would cause practical difficulty in view of his client's financial status.

105. Having heard the submissions, the Tribunal considered that some reduction in costs was necessary to reflect the fact that the hearing had taken only one rather than the intended two days. The Tribunal did not consider that it was appropriate to order detailed assessment. To do so would merely increase the costs incurred by the Applicant, which would primarily fall on the First and Third Respondents in all probability, in view of the Second Respondent's bankruptcy. Taking a broad brush approach, the Tribunal considered that the appropriate order for costs in favour of the Applicant was £32,000, to be apportioned between the Respondents as follows:

First Respondent: £26,000
Second Respondent: £4,500
Third Respondent: £1,500

106. The Tribunal was satisfied that the First Respondent was more than capable of paying costs in the sum ordered in spite of the fact that he had been struck off the Roll. He had not provided the Tribunal with any information in his statement concerning his means and had not asked for means to be taken into account but he had clearly had access to ample funds and properties throughout the partnership. The figure ordered reflected his responsibility for the proceedings having been brought and was fair.

107. The Second Respondent was bankrupt. No doubt the SRA would have to join the queue of creditors, but that in itself was no reason why an order for costs against the Second Respondent should not be made in proportion to his responsibility for the proceedings brought against him.

108. The Tribunal had taken into account the fact that the Third Respondent had been fined £2,000 and her means as evidenced in her statement when ordering her to contribute to costs in the sum of £1,500. This figure accurately reflected her responsibility for the proceedings brought against her. The Tribunal was confident that the Third Respondent would be able to return to work fairly soon after the conclusion of these proceedings. At that point it hoped that she would be able to pay the fine and costs quickly. The SRA was encouraged to bear with her in the interim.

Statement of Full Order

109. The Tribunal ordered that the First Respondent, Armeet Singh Sikh of 13 Barn Hill, Wembley, Middlesex, HA9 9LA, solicitor, be struck off the Roll of Solicitors and it further ordered that, the costs having been fixed in the sum of £32,000, Armeet Singh Sikh do pay a contribution of £26,000.

110. The Tribunal ordered that the Second Respondent, [RESPONDENT 2] of Middlesex, HA9, solicitor, be suspended from practice as a solicitor for the period of 1 year to commence on the 2nd day of June 2011 and it further ordered that, the costs having been fixed in the sum of £32,000, [RESPONDENT 2] do pay a contribution of £4,500.

111. The Tribunal ordered that the Respondent, [RESPONDENT 3] of, London, W3, solicitor, do pay a fine of £2,000, such penalty to be forfeit to Her Majesty the Queen, and it further ordered that, the costs having been fixed in the sum of £32,000, Minal [RESPONDENT 3] do pay a contribution of £1,500.

Dated this 26th day of July 2011
On behalf of the Tribunal

K W Duncan
Chairman