

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10761-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KENGAI PONNAMPALAM CHETTY

Respondent

Before:

Mr J. P. Davies (in the chair)

Mr E. Nally

Mr P. Wyatt

Date of Hearing: 5th July 2012

Appearances

Heather Emmerson, Counsel, of 4-5 Gray's Inn Square, London WC1R 5AH, (instructed by Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ), for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent contained in a Rule 5 Statement and Rule 7 Supplementary Statement were that he had:
 - 1.1 Failed to fulfil within a reasonable time, or at all, undertakings given by the Firm in breach of Rule 10.05 of the Solicitors' Code of Conduct 2007 ("SCC") namely:
 - 1.1.1 On 23 September 2010, to BlackStone Solicitors;
 - 1.1.2 On 4 October 2010, to BlackStone Solicitors;
 - 1.2 Failed to keep accounting records properly written up at all times in breach of Rule 32(1) of the Solicitors' Accounts Rules 1998 ("SAR");
 - 1.3 Failed to carry out client account reconciliations at least once every 5 weeks in breach of Rule 32(1) SAR;
 - 1.4 Failed to produce to a person appointed by the Solicitors Regulation Authority records, papers, client and trust matter files, financial accounts and other documents and any other information necessary to enable preparation of a report in compliance with the Rules in breach of Rule 34 SAR and in breach of Rule 20.08 SCC and in breach of section 44B Solicitors Act 1974 ("the Act");
 - 1.5 Withdrew monies from client account otherwise than in accordance with Rule 22(1) SAR;
 - 1.6 Acted contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC in that he has abandoned his practice or in the alternative has failed to close it down properly;
 - 1.7 In acting for clients in conveyancing transactions that exhibited the characteristics of fraudulent transactions, he acted contrary to Rules 1.02, 1.04 and 1.05 SCC;
 - 1.8 Acted contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC in that he failed to comply with his lender clients' instructions;
 - 1.9 Acted contrary to Rules 1.02, 1.06 and 10.05 SCC in that he has failed to comply with an undertaking given on behalf of his firm on 7 October 2010 to Alexander Lawyers LLP in respect of the transaction relating to Devoran;
 - 1.10 Allegations 1.1 in the Rule 5 Statement and 1.5, 1.7, 1.8 and 1.9 were made on the basis that the Respondent was dishonest or alternatively reckless but it was not necessary to establish dishonesty or recklessness for the allegations to be made out.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant, which included:
 - Application and Rule 5 Statement dated 6 June 2011 and Exhibit "MEB1";
 - Rule 7 Supplementary Statement dated 16 May 2012 and Exhibit "MEB2";

- Copies of advertisements placed by the Applicant in The Guardian newspaper and The Law Society Gazette on 17 and 24 May 2012 respectively;
- Applicant's Schedule of Costs dated 2 July 2012;
- Letter dated 4 July 2012 from Bevan Brittan to the Respondent enclosing Applicant's Schedule of Costs.

The Respondent did not submit any documents.

Preliminary Matter

3. Enquiry agents were appointed by the Applicant to confirm the Respondent's whereabouts so that the proceedings could be served. An address for a close relative was obtained, but attempts to serve the Respondent at that address in accordance with an Order for substituted service from the Tribunal were unsuccessful. On 2 November 2011 the Tribunal made a further Order for substituted service by means of advertisement of the proceedings in The Law Society Gazette and a newspaper local to the last known address of the Respondent. The proceedings, including notice of the substantive hearing date, were duly advertised on 17 and 24 May 2012 in The Guardian newspaper and The Law Society Gazette respectively. The Respondent had not contacted the Tribunal in response to the advertisements.
4. Ms Emmerson informed the Tribunal that the Respondent was believed to be in India. He had played no role in the proceedings and the last contact the Solicitors Regulation Authority ("SRA") had had with him was in October 2010. Ms Emmerson submitted that the Applicant had duly served notice of the hearing and invited the Tribunal to proceed in the Respondent's absence.

Tribunal's Decision

5. On 2 November 2011 the Tribunal directed that the proceedings and notice of substantive hearing should be served on the Respondent by means of substituted service as set out at paragraph 3 above. Rule 10(6) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") provided that, if the Tribunal required the advertisement of proceedings under the Rules, it may regard the advertisement as service for the purposes of the Rules. The Tribunal had seen copies of the advertisements in The Guardian and The Law Society Gazette and was satisfied that the proceedings and notice of substantive hearing had been brought to the Respondent's attention and properly served in accordance with its Order dated 2 November 2011. The Tribunal had power to hear and determine an application notwithstanding that the Respondent failed to attend in person and was not represented at the hearing. There was an obligation on the Tribunal to ensure that cases were heard with reasonable expedition so that the interests of the public as well as the profession could be protected. The Tribunal would proceed to hear and determine the application in the Respondent's absence.

Factual Background

6. The Respondent was born on 2 September 1941 and admitted as a solicitor on 15 March 1977. His name remained on the Roll of Solicitors. At all material times

the Respondent practised, principally in conveyancing, as a sole practitioner as Chetty & Co (“the Firm”) from premises at 79 Hoe Street, London E17 4SA.

7. The allegations arose from an inspection at the Firm's offices by Mr J. Brumwell, Investigation Officer (“IO”) appointed by the SRA which commenced without notice on 7 October 2010. The investigation resulted in the preparation by the IO of a Forensic Investigation Report (“FIR”) dated 28 October 2010. On arrival at the Firm's offices on 7 October 2010, the IO found that the office door was locked and the Firm was not open to the public. The Respondent was at the premises and unlocked the door so that the IO could gain entry. The IO handed the Respondent a letter dated 7 October 2010 giving notice under Rule 34 SAR and Rule 20.08 SCC that the Respondent must provide the documents and information requested in appendices attached to the letter in order for a report to be prepared. The IO also gave the Respondent formal notice under Section 44B of the Act that the documents and information requested must be produced to the IO immediately.
8. The Respondent informed the IO that, due to market forces, he had had to let a number of his staff go and that he practised with the assistance of a secretary and Mr S, a part-time bookkeeper accountant. He provided the IO with client account reconciliations as at 31 July 2010 and supporting bank statements, together with bank statements from 1 August 2010 to 9 September 2010. The Respondent said that Mr S was in possession of the accounts records after this date for the purposes of reconciling the client account for August and September 2010 and he was not due to attend the office until 13 October 2010. The Respondent said that he did not have access to the computerised accounting records. It was agreed that the IO would return to the office on 11 October 2010 when Mr S would be available with the accounting records.
9. On 8 October 2010 the Respondent contacted the IO to inform him that Mr S had died suddenly and that he was intending to close the office for two days as a mark of respect. It was agreed that the IO would attend the office on 13 October 2010 when the Respondent said that all the books of account would be available. When the IO returned to the office on 13 October 2010, the premises were locked and shuttered. A telephone call by the IO to the office was diverted to the Respondent's secretary, who said that the Respondent would be there the following afternoon, 14 October 2010. The IO telephoned the Respondent's mobile telephone, which rang but was unanswered. The IO and a Senior Investigation Officer returned to the office on the afternoon of 14 October 2010 to find the premises locked and shuttered. They spent approximately 2 hours outside the premises but the Respondent did not make an appearance. The IO telephoned the office number and the Respondent's mobile both of which went to voicemail. A message was left on the mobile requesting that the Respondent telephone the IO but there was no response.
10. The accounting books and records provided by the Respondent were not up-to-date and the last account reconciliation was as at 31 July 2010. Due to the absence of up-to-date documentation, it was not possible for the IO to calculate the Firm's current client liabilities to enable a comparison to be made with available cash. Further information, obtained from various banks, suggested that the Respondent had paid monies out of client account other than in accordance with his lender clients' instructions and it was therefore possible that there was a shortfall on client account.

The Respondent did not provide the IO with the documents requested at Appendix A(1) to the letter dated 7 October 2010. He did not complete the Professional History Form and Investment Business Questionnaire or write to the bank to request the information set out at Appendix A(2) of the same letter. He did not provide the balance of the documents required under the Section 44B Notice.

11. The SRA resolved to intervene into the practice on 26 November 2010 and appointed Intervention Agents.

Complaint by BlackStone Solicitors

12. BlackStone Solicitors (“BlackStone”) acted on behalf of HDL in relation to the purchase of 77 and 79 Hoe Street, London. The Respondent was the registered proprietor of the properties and the Firm acted on the sale. The following charges appeared on the Charges Register:
 - 12.1 77 Hoe Street – charge dated 19 February 2008 in favour of National Westminster Bank plc (“NatWest”);
 - 12.2 79 Hoe Street – charges dated 19 February 2008 in favour of NatWest and 6 February 2009 in favour of the Legal Services Commission (“LSC”).
13. On 23 September 2010 the Firm wrote to BlackStone setting out its unequivocal undertaking in relation to the properties to discharge and redeem the charges in favour of NatWest and the LSC and to forward to BlackStone evidence of discharge in form DS1/ED as soon as they were received.
14. Contracts for the sale of the properties were dated 1 October 2010 and endorsed to the effect that exchange had taken place, with the completion date stated as being on or before 8 October 2010.
15. Completion Information and Requisitions on Title (“the Requisitions”) were faxed by the Firm to BlackStone on 4 October 2010. In relation to both properties the Requisitions provided:
 - “6.1 Please list the mortgages or charges secured on the property which you undertake to redeem or discharge to the extent that they relate to the property on or before completion ...”

The Firm identified the 79 Hoe Street charges as “NatWest and Legal Services Commission” and the 77 Hoe Street charges as “NatWest”.
16. The form was printed in bold font with the following words as a preface to Requisition 6.2:

“WARNING: a reply to requisition 6.2 is treated as an undertaking. Great care must be taken when answering this requisition”.

Requisition 6.2 read as follows:

“6.2 Do you undertake to redeem or discharge the mortgages and charges listed in reply to 6.1 on completion and to send us form DS1, DS3, the receipted charge(s) or confirmation that notice of release or discharge in electronic form has been given to the Land Registry as soon as you receive them?”.

The Firm answered the Requisition by marking the “yes” box in respect of both properties.

17. The deposit of £20,500 was remitted by BlackStone to the Firm on 4 October 2010. The transactions were completed on 7 October 2010 and completion monies totalling £386,320 were remitted by BlackStone to the Firm the same day.
18. On 7 October 2010, after sending the completion monies to the Firm, BlackStone made a number of telephone calls in an attempt to speak to the Respondent. The receptionist confirmed that the Firm had received the completion funds and would release the keys. BlackStone spoke to the Respondent on his mobile telephone on 8 October 2010. He confirmed that he had sent cheques to redeem the charges on the properties. He said that someone in his office had died the previous day and that he was unable to open the office for the next three days. The Respondent later delivered the signed TR1 for both properties to BlackStone.
19. On 19 October 2010 Blackstone made contact with NatWest, which confirmed that its charges on the properties had not been redeemed and no payment had been received from the Respondent. On 20 October 2010 BlackStone sent an e-mail to the SRA raising concerns about the Respondent’s apparent non-redemption of the charges. Office Copies obtained by the Applicant as at 30 April 2012 showed that the charges had not been redeemed. The Office Copies named the Respondent as proprietor; HDL, the purchaser from the Respondent, was not registered on the title. On 4 May 2012 the LSC confirmed to the Applicant that no payment had been made by the Respondent to discharge the LSC’s charge on 79 Hoe Street.

Client Mr H – Purchase at Gainford House

20. The SRA received a report from the Royal Bank of Scotland raising concerns regarding a conveyancing transaction relating to the purchase of a property at Gainford House. The property was to be purchased from a London Borough (“LB”) under the Right To Buy Scheme by Mr H with the benefit of a mortgage of £206,250 from the Cheltenham & Gloucester Building Society (“C&G”). On 27 September 2010 the completion funds were sent to LB and the transaction was completed for a purchase price of £230,787.52. The solicitor who acted on this transaction on behalf of Mr H was Mr SB. The transaction was genuine.
21. It later became apparent that, at the time that the genuine conveyancing transaction was in progress, a separate, parallel transaction was being conducted in the name of Mr H in relation to the same property. The nominated solicitor in relation to this second transaction, which was to be funded with a mortgage from RBS, was the Firm.

22. Mr H opened a NatWest bank account on 7 June 2010 at its Whitechapel Road branch. A copy of the application form, UK passport and copies of Lloyds TSB Bank statements were tendered by Mr H to the bank as proof of identity and confirmation of his address and the documents were certified by a member of staff. On the same day Mr H made a telephone mortgage application for a NatWest mortgage. The bank was provided with a copy of the LB's Right To Buy offer on the property, which stated that the purchase price was £246,000, with the purchaser to receive the benefit of a discount of £16,000. An "Offer of Loan" for £193,297 plus fees was issued by NatWest on 27 July 2010, at which point Mr H was being represented by other solicitors.
23. On 17 August 2010 NatWest Mortgage Services contacted Mr H to request a certified copy of his passport, which he was asked to take to his NatWest branch. The request was repeated by the bank several times, and at some stage on 24 September 2010 a copy of the passport was taken into the branch.
24. On 27 September 2010 Mr H informed NatWest that he had appointed the Firm to represent him in place of his previous solicitors. A revised "Offer of Loan" dated 28 September 2010 naming the Firm as the nominated solicitor was issued to Mr H and the Firm.
25. The Respondent was also instructed to act for NatWest on the mortgage by letter dated 28 September 2010. The instructions were issued on the basis that the Respondent conducted the transaction in accordance with the Council of Mortgage Lenders' Handbook for England and Wales ("CMLH"). The critical provisions set out in the CMLH were as follows:

"10.3.1 - You are only authorised to release the loan when you hold sufficient funds to complete the purchase of the property and pay all stamp duty land tax and registration fees to perfect the security as a first legal mortgage or, if you do not have them, you accept responsibility to pay them yourself.

10.3.4 - You must hold the loan on trust for us until completion. If completion is delayed, you must return it to us when and how we tell you."
26. On 29 September 2010 the Firm sent a fax to NatWest with a completed Certificate of Title, stating the completion date as 30 September 2010 with a request for the mortgage advance of £193,297 to be remitted to the Firm's bank account. The Certificate of Title contained the following undertaking:

"We the conveyancer named above, give the Certificate of Title set out in the Appendix to Rule 3 of the Solicitors Code of Conduct 2007 as if the same were set out in full, subject to the limitations contained in Rules 3.19 and 3.2".
27. On 30 September 2010 NatWest received a telephone call from the Respondent asking whether the mortgage funds had been released. He was advised that a clear copy of Mr H's passport was awaited. On 1 October 2010 the Respondent sent a copy of the passport certified by the Firm to NatWest by fax. It later transpired that this was not a true copy of Mr H's passport. On the same day the Firm submitted a second Certificate of Title to the bank stating that completion was to take place on 2

October 2010, having been delayed whilst a clear passport was obtained. On the afternoon of 1 October 2010, another fax was sent by the Firm to NatWest enclosing a Certificate of Title, but this time the date for completion was stated as 4 October 2010.

28. On 4 October 2010 NatWest was satisfied with the passport and £193,267 was debited from Mr H's new mortgage account and remitted to the Firm's NatWest client account. The Firm's bank statements showed that no further funds were received. An investigator at NatWest reviewed the account and noticed that the mortgage advance had been split into two significant payments out. On 5 October, £76,125 was sent by CHAPS transfer to Euro Properties Investment Limited, and on 7 October 2010 the sum of £113,900.22 was sent by CHAPS transfer to Concept One Management Services. Neither payee had any connection with the seller, LB, to whom no part of the mortgage advance was paid. The only money which passed through the Firm's bank accounts was the mortgage advance; the balance of the purchase price was not received by the Respondent into the Firm's client account.
29. The NatWest investigator contacted LB's Legal Department and discovered that the sale of Gainford House to Mr H had been completed on 27 September 2010 and that solicitor SB had acted on his behalf. The investigator contacted Mr H, and NatWest received a letter from him dated 14 October 2010 in which he confirmed that he purchased the property on 27 September 2010 with the benefit of a mortgage with C&G.

Purchase of Devoran

30. Alexander Lawyers LLP ("AL") acted on behalf of PSWL, the prospective purchasers of a property known as Devoran owned by Mr and Mrs P. The Firm purported to have been instructed to act for Mr and Mrs P (who were said to be abroad) on the sale. At the start of the transaction Mr and Mrs P were said to be represented by R Solicitors. Instructions were purportedly issued by Mr and Mrs P's son, P, who held a Power of Attorney. The purchase price was originally £625,000, but was later reduced to £600,000. AL provided the SRA with their file, containing Office Copy entries for the property showing Mr and Mrs P as registered owners subject to a registered charge in favour of Santander UK plc.
31. On 24 September 2010 Mr A of AL sent an e-mail to R Solicitors setting out his understanding of the transaction. He requested a copy of the Power of Attorney held by P as a matter of urgency. PSWL intended to sell the property on shortly after completing the purchase so wanted immediate exchange of contracts with completion shortly afterwards. A Mr RZ of R Solicitors responded to the e-mail the same day confirming that he had received instructions. Later that day Mr A sent a further e-mail to Mr RZ confirming the revised sale price. On 29 September 2010, Mr RZ sent a copy of the proposed Power of Attorney to Mr A. It showed the intended appointee to be P. Mr A contacted the solicitors acting for the proposed purchasers with the relevant papers to enable the subsequent transaction to proceed immediately once the property had been purchased by PSWL. He also sent an e-mail to Mr RZ explaining that the Power of Attorney was "problematic" and suggesting that if Mr and Mrs P were in the country it would be better for them to sign the Transfer or if they were outside the country they would each need to appoint a separate Attorney.

32. On 29 September 2010 Mr A e-mailed Mr RZ, having become aware that the latter intended to close his practice on 30 September 2010. Mr A suggested that it would be sensible for the file to be passed to other solicitors. Mr RZ informed Mr A that he was not closing the practice the next day but that it was to be the last day for transactions to enable him to attend to closure. On 30 September 2010 Mr RZ provided Mr A with his clients' responses to Requisitions on Title.
33. On 1 October 2010 Mr G of PSWL sent an e-mail to Mr A to inform him that P had instructed a new solicitor (the Respondent) to whom he was sending the file in anticipation of exchange of contracts. On 4 October 2010 the Respondent took his first step in the transaction when he contacted Mr A to confirm his instructions and that he was going away on holiday for three weeks from 7 October 2010. Mr A sent an e-mail to the Respondent to request that he dealt with certain outstanding matters relating to the transaction to which the Respondent replied by e-mail on 5 October 2010.
34. On 5 October 2010 a member of Mr A's staff telephoned the Respondent and recorded in an attendance note that he was to be on annual leave for two to three weeks from the following Thursday. A further attendance note dated 6 October 2010 recorded that the Respondent telephoned AL and asked whether AL was in funds.
35. Mr A wrote to the Respondent by e-mail confirming that exchange and completion for that day, 6 October 2010, had been agreed, and that funds had been remitted to the Respondent subject to a number of conditions. The conditions included a requirement that the Respondent give Mr A a certified copy of the Power of Attorney, an undertaking to discharge all existing charges applicable to the property and evidence of discharge as soon as he received it, and a duly executed and dated Transfer document from his client together with all other title deeds in his possession. On 6 October 2010 Mr A sent his client's part of the Contract duly signed to the Respondent and made an internal request to the accounts department to remit completion funds of £596,483 to the Firm.
36. The Respondent wrote to Mr A by e-mail on 7 October 2010 undertaking to discharge all existing charges and to forward evidence of discharge in Form DS1/ed. A further Power of Attorney incorporating the names of both Mr and Mrs P was attached. On 7 October 2010 the Respondent informed AL by telephone that the completion funds had been received. After that conversation there was no further contact between the Respondent and AL. In particular, the Respondent did not confirm to AL that all existing charges had been discharged or provide any evidence of discharge.
37. On 11 October 2010 AL sent an e-mail marked "EXTREMELY URGENT" to the Firm stating that attempts to make contact by telephone, e-mail and fax since 6 October had met with no response and they had not received the original title deeds. They would be sending a representative to collect the title deeds to the property. On 12 October 2010 Mr A wrote to the Respondent stating his intention to take the matter up with the SRA.
38. On 13 October 2010 a man purporting to be the "real" P contacted AL. He informed AL that Mr N of ED Solicitors was his family solicitor. AL contacted Mr N with

documentation relating to the transaction to find out whether it was genuine. Mr N confirmed that the documents were not genuine as the signatures did not match those of his clients, and in particular that Mrs P did not sign her signature in Gujarati, which was how it appeared on the face of the Power of Attorney.

39. AL immediately wrote to the Respondent to record their clients' extreme concern. The letter stated that they had heard from the true son of the registered proprietors who had confirmed that no sale in respect of the property had been agreed and that it was on the market at a price significantly in excess of £1 million. They had spoken to Mr N who had informed them that the Power of Attorney and other documents sent to them by the Respondent were forgeries. They requested an explanation by return, but no response was received. On 14 October 2010, AL contacted the SRA's "Red Alert" e-mail address, with a detailed summary of the transaction.
40. No signed documentation for the purchase of the property was ever received by AL. In due course the SRA's Intervention Agents reported that, after receipt from AL of the completion funds of £596,483 into the Firm's client account, three payments totalling £572,000 were made out of client account, apparently to foreign exchange facilities, as follows:
- £268,816.42 to Wall Street Foreign Exchange;
 - £155,231.30 Voltrex; and
 - £147,952.28 to Lexicon Finance

These payees appeared to be unconnected to the transaction. The monies received by the Firm were not used to redeem the outstanding charge on the property in accordance with the Firm's undertaking or to account to the sellers of the property. The Intervention Agents recommended that a claim for £596,483 be accepted.

Other Matters

41. The Intervention Agents conducted an analysis of the Firm's available accounting records and documents. They noted that the last reconciliation of the General Client Account was undertaken for the period ending 26 July 2010. The client listing contained a number of entries that the Intervention Agents were unable to clarify, including "inter-bank transfers" and "write backs" where the client could not be identified. They endeavoured to reconcile the client account and to post all payments to particular ledgers based on the information that they were able to obtain from banks and third parties. This was difficult due to the lack of accounting information. They established that there were:
- 17 un-posted debits on a Lloyds Bank account totalling £655,966.14;
 - 13 un-posted credits on a NatWest account totalling £227,323.15; and
 - 12 un-posted debits on a NatWest account totalling £439,979.35.

The Intervention Agents also noted that, where they were able to locate client files and accounting documentation both appeared to be in good order and it was possible to identify the balance held in client account for individual clients. However in

relation to the transactions shortly before the intervention, a number of files were missing and there was little accounting evidence to support 123 transactions valued at £6,714,658.03.

42. The inadequacy of the accounting information was exemplified by (but not limited to) the matters detailed below:

42.1 M Ltd

There was no file and no ledger card. There was a balance on client account as at 26 July 2010 of £400. M Ltd provided evidence that monthly payments were being paid by a third party in respect of rent due to them.

42.2 Clients M – Purchase of South End Road

There was a file indicating that this was a conveyancing transaction, but there was no ledger. The Intervention Agents were able to allocate a large number of transactions to the matter. The sum of £5,095.96 due to the clients remained on the account. This included £300 received into client account with no detail about the source. After reviewing the file, the Intervention Agents noted that £300 had been received from the clients at the beginning of the transaction and decided that the money belonged to them.

42.3 77/79 Hoe Street

The completion monies received by the Firm from the purchasers were no longer available as they had been sent to overseas accounts. A claim was made by BlackStone against the Compensation Fund for the return of their clients' monies.

Witnesses

43. None.

Findings of Fact and Law

44. The Respondent had not responded to the allegations, which were therefore treated as being denied. The standard of proof to be met by the Applicant in respect of each allegation was beyond reasonable doubt. The Tribunal read all the papers and heard submissions from Ms Emmerson.

45. **Allegation 1.1 - Failed to fulfil within a reasonable time, or at all, undertakings given by the Firm in breach of Rule 10.05 SCC namely:**

1.1.1 On 23 September 2010, to BlackStone Solicitors;

1.1.2 On 4 October 2010, to BlackStone Solicitors.

It was alleged that the Respondent was dishonest or alternatively reckless.

- 45.1 Ms Emmerson submitted that the Applicant relied upon the clear breach of undertakings provided by the Respondent to the purchaser in a letter dated 23 September 2010 and in the Requisitions dated 4 October 2010. The funds provided by the purchaser were not used by the Respondent to discharge the charges, but were paid out to overseas accounts. Rule 10.05 SCC required a solicitor to fulfil undertakings within a reasonable time. There was no evidence that these undertakings were ever complied with or that the charges were redeemed. The Respondent had been dishonest, in that he gave undertakings with which he had no intention of complying. The Respondent's conduct by the ordinary standards of reasonable and honest people was wrong and he must have known that it was wrong. The Respondent received funds and did not use the funds for the purposes for which they were remitted. He knew that the properties were subject to charges and that he had given an undertaking to redeem the charges.
- 45.2 The Tribunal found that the Respondent had given undertakings in his letter to BlackStone dated 23 September 2010 and in his replies to the Requisitions addressed to BlackStone dated 4 October 2010 to discharge the charges in favour of NatWest and the LSC secured on the properties at 77 and 79 Hoe Street, London of which he was the registered proprietor. The Respondent received the deposit of £20,500 and the purchase price of £386,320 into his Firm's client account. Those funds were not used to discharge the charges in accordance with the undertakings but were applied elsewhere, apparently to overseas accounts. The Tribunal found that the Respondent had breached Rule 10.05 SCC as alleged in that he had failed to fulfil the undertakings within a reasonable time. It seemed unlikely that they would ever be fulfilled and BlackStone had made a claim on behalf of their clients on the Compensation Fund. It was also alleged that the Respondent was dishonest, or alternatively reckless. Applying the test for dishonesty set out in the case of Twinsectra Ltd v Yardley [2002] UKHL 12, the Tribunal had to be satisfied beyond reasonable doubt that the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest. The Tribunal found that the Respondent's conduct in failing to fulfil his undertakings to discharge the charges on 77 and 79 Hoe Street was dishonest by the ordinary standards of reasonable and honest people and that the Respondent realised that by those standards his conduct in failing to fulfil his undertakings was dishonest.
- 45.3 The Tribunal therefore found the underlying allegation and the allegation of dishonesty to have been proved on the facts and documents beyond reasonable doubt.
46. **Allegation 1.2 – Failed to keep accounting records properly written up at all times in breach of Rule 32(1) SAR**
- 46.1 Ms Emmerson submitted that documents were requested by the IO, but he was provided only with client account reconciliations as at 31 July 2010 with supporting bank statements and further bank statements from 1 August 2010 to 9 September 2010. No other requested documents were provided. Deficiencies in the books of account were identified in the FIR. The IO noted that there was no evidence of any client reconciliations after 31 July 2010 and no proper accounts records were maintained. There was generally an absence of up-to-date accounting information. This view was supported by the report from the Intervention Agents. They were

unable to identify a number of bank transfers and had difficulty in reconciling the Firm's client account. The breach of Rule 32(1) SAR was therefore clear on the face of the documents. Ms Emmerson relied upon the specific examples identified in the FIR and the Intervention Agents' report.

46.2 The Tribunal accepted Ms Emmerson's submissions. It noted the examples of non-compliance with Rule 32(1) SAR set out in the documents. The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

47. **Allegation 1.3 - Failed to carry out client account reconciliations at least once every 5 weeks in breach of Rule 32(1) SAR**

47.1 Ms Emmerson submitted that Rule 32(1) SAR required client account reconciliations to be carried out at least once every 5 weeks. The last reconciliation was as at 31 July 2010. At the time of the investigation in October 2010 no subsequent reconciliations were located by the SRA.

47.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

48. **Allegation 1.4 - Failed to produce to a person appointed by the SRA records, papers, client and trust matter files, financial accounts and other documents and any other information necessary to enable preparation of a report in compliance with the Rules in breach of Rule 34 SAR and in breach of Rule 20.08 SCC and in breach of section 44B of the Act**

48.1 Ms Emmerson submitted that the Respondent had provided very limited documents in response to the Section 44B Notice and the letter dated 7 October 2010 handed to him by the IO. The Respondent supplied only the out-of-date client account reconciliation and some bank statements. The majority of the documents set out at Appendix A(1) to the letter were never provided. The Respondent failed to complete the Professional History Form and the Investment Business Questionnaire.

48.2 The Tribunal found the allegation to have been proved on the facts and documents beyond reasonable doubt.

49. **Allegation 1.5 - Withdrew monies from client account otherwise than in accordance with Rule 22(1) SAR.**

It was alleged that the Respondent was dishonest or alternatively reckless.

49.1 Ms Emmerson relied upon the facts in the transaction involving Mr H and the purported purchase and mortgage of Gainford House. The Respondent paid out the sum received from his lender clients into client account otherwise than in accordance with his lender clients' instructions. The lenders' funds were not used for the purchase of Gainford House but were instead paid out to parties unconnected with the transaction. The transaction bore the hallmarks of fraud. There was no evidence that the Respondent ever communicated with the seller, LB. Ms Emmerson invited the Tribunal to make a finding of dishonesty in relation to the receipt and subsequent payment out of the lender clients' funds. The Respondent's conduct was wrong in respect of receiving funds from a client, namely the bank, and paying the funds out in

express contradiction of the bank's instructions. It was important to look at the various transactions in the period between June and October 2010 together. There were a number of transactions in which funds were received and paid out to third-party entities, followed very swiftly thereafter by the abandonment of the Firm and the Respondent effectively "going underground".

- 49.2 The Tribunal found that the Respondent had withdrawn monies from client account otherwise than in accordance with Rule 22(1) SAR. He received monies into client account from his lender clients NatWest which were to be applied to the purchase of the property at Gainford House in respect of which he was also acting for Mr H. Those monies were sent to the Respondent by NatWest for that purpose alone and were held by the Respondent in trust for the bank pending completion of the purchase. It was clear from the evidence that the Respondent never in fact completed the purchase of the property for Mr H because completion had taken place on 27 September 2010 via other solicitors. Instead of holding NatWest's money on trust as instructed, the Respondent released it to two entities with no connection to the sellers LB. The Tribunal therefore found the underlying allegation to have been substantiated. Applying the Twinsectra test to the allegation of dishonesty, the Tribunal found beyond reasonable doubt that the Respondent's conduct in paying out the funds from client account otherwise than in accordance with his lender clients' instructions was dishonest by the ordinary standards of reasonable and honest people and that the Respondent himself realised that by those standards his conduct was dishonest.
- 49.3 The Tribunal therefore found the underlying allegation and the allegation of dishonesty to have been proved on the facts and documents beyond reasonable doubt.
50. **Allegation 1.6 - Acted contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC in that he has abandoned his practice or in the alternative has failed to close it down properly**
- 50.1 The Applicant submitted that the IO and parties related to the Devoran and Hoe Street transactions endeavoured to make contact with the Respondent on numerous occasions during October 2010. The practice was closed, the Respondent was unavailable, the telephone was not answered and messages were not returned. The Respondent had abandoned his practice, leaving no contact details and without undertaking any of the necessary work to close files, notify clients and to ensure that he had paid out monies due to clients from client account. Ms Emmerson submitted that there was sufficient evidence before the Tribunal for it to conclude that the practice was abandoned. The IO found the premises to be closed and shuttered when he attended on 13 October 2010. Case papers remained in the office. The Firm held client funds which had not been returned. On 14 October 2010 a locum at the Firm advised the purchaser of Devoran that the Respondent had just sold his house, and his business and had told her not to return to the office. A number of unsuccessful attempts had been to contact the Respondent. This was a classic case of abandonment and a breach of the Rules as alleged.
- 50.2 The Tribunal accepted Ms Emmerson's submissions and found the allegation to have been proved on the facts and documents beyond reasonable doubt.

51. **Allegation 1.7 - In acting for clients in conveyancing transactions that exhibited the characteristics of fraudulent transactions, he acted contrary to Rules 1.02, 1.04 and 1.05 SCC**

It was alleged that the Respondent was dishonest or alternatively reckless.

51.1 The Applicant relied in support of this allegation on the facts relating to the transactions at Gainford House and Devoran. It was submitted in the Rule 7 Supplementary Statement and by Ms Emmerson that the Gainford House transaction bore the following characteristics of being fraudulent:

- The Respondent had no contact with the sellers;
- The Respondent did not request the balance of the purchase monies from his client;
- The Respondent certified a passport as being genuine when it was not;
- The Respondent failed to send the purchase monies to the sellers and instead transferred the monies to two payees who had no connection with the transaction.

51.2 It was further submitted that the Devoran transaction bore the following characteristics of being fraudulent:

- No file relating to the sale was located by the Intervention Agents despite the fact that correspondence had passed between the Respondent and the sellers' solicitors;
- There was no evidence of the contract of sale or the transfer documents being signed;
- As soon as the purchase monies were transferred to the Firm's client account, no further communication took place between the Respondent and the sellers' solicitors, despite efforts on the part of the latter and their clients to contact the Respondent;
- The outstanding charge on the property was not redeemed;
- The purchase monies were paid to three foreign exchange facilities with no connection with the transaction.

51.3 It was submitted that the Respondent first became involved in the transaction on 4 October 2010 and the investigation by the SRA commenced on 7 October 2010 when the IO attended at the Firm's office. The IO was invited by the Respondent to attend at the office again the following week. The Respondent had already informed the sellers' solicitors that he was going on holiday for three weeks. It was not surprising that the contract of sale or the transfer document had not been signed by the sellers as it was now known that, whilst the property was on the market for a much higher value than purported to have been agreed, they had not entered into any agreement for sale.

51.4 In respect of each transaction Ms Emmerson invited the Tribunal to make a finding that the Respondent's conduct was dishonest.

51.5 The Tribunal found that the Respondent, in acting for clients in conveyancing transactions that exhibited the characteristics of fraudulent transactions, acted contrary to Rules 1.02, 1.04 and 1.05 SCC. The Tribunal accepted the facts pleaded in the

Rule 7 Supplementary Statement in respect of the Gainford House and Devoran transactions. There was ample evidence on the face of the documents to support the Applicant's submission that in both cases the characteristics of fraudulent transactions were exhibited. Further, applying the Twinsectra test to the allegation of dishonesty, the Tribunal found beyond reasonable doubt that the Respondent's conduct in acting for clients in conveyancing transactions that exhibited the characteristics of fraudulent transactions set out above was dishonest by the ordinary standards of reasonable and honest people and that the Respondent himself realised that by those standards that conduct was dishonest.

51.6 The Tribunal therefore found the underlying allegation and the allegation of dishonesty to have been proved on the facts and documents beyond reasonable doubt.

52. **Allegation 1.8 - Acted contrary to Rules 1.02, 1.04, 1.05 and 1.06 SCC in that he failed to comply with his lender clients' instructions.**

It was alleged that the Respondent was dishonest or alternatively reckless.

52.1 The Applicant relied in support of this allegation on the facts relating to the Gainford House transaction. The Respondent did not comply with his lender clients' instructions in that he:

- Failed to ascertain how the balance of the purchase price was being provided;
- Failed to report to his lender clients that he would not have control of the payment of all of the purchase price;
- Did not utilise the mortgage advance to assist with the purchase of the property;
- Paid away the mortgage advance to two accounts completely unconnected with the seller of the property;
- Released his lender clients' funds when he was not authorised to do so since he did not hold sufficient funds to complete the purchase and pay all stamp duty land tax and registration fees to perfect the security as a first legal mortgage;
- Failed to register the interest of his lender clients within the priority period afforded by the original Land Registry search or within two months in the case of first registration.

52.2 Ms Emmerson submitted that the CMLH applied to the instructions from the Respondent's lender clients to the Respondent. In particular, the mortgage funds were not to be paid out by the Respondent unless the balance of the purchase price was received by him (which it was not) and the funds were in fact paid by him to third parties and not to the seller. She submitted that the Respondent's conduct in failing to comply with his lender clients' instructions in that regard was dishonest.

52.3 The Tribunal found on the facts and documents that the Respondent failed to comply with his lender clients' instructions and therefore acted contrary to Rules 1.02, 1.04 and 1.05 and 1.06 SCC. The Tribunal accepted the facts pleaded in the Rule 7 Supplementary Statement in respect of the Gainford House transaction. There was ample evidence in support of the Applicant's submissions. Further, applying the Twinsectra test to the allegation of dishonesty, the Tribunal found beyond reasonable doubt that the Respondent's conduct in failing to comply with his lender clients' instructions in breach of the SCC was dishonest by the ordinary standards of

reasonable and honest people and that the Respondent himself realised that by those standards that conduct was dishonest.

52.4 The Tribunal therefore found the underlying allegation and the allegation of dishonesty to have been proved on the facts and documents beyond reasonable doubt.

53. **Allegation 1.9 - Acted contrary to Rules 1.02, 1.06 and 10.05 SCC in that he has failed to comply with an undertaking given on behalf of his firm on 7 October 2010 to Alexander Lawyers LLP in respect of the transaction relating to Devoran.**

It was alleged that the Respondent was dishonest or alternatively reckless.

53.1 The Applicant relied in support of this allegation on the facts relating to the Devoran transaction, and in particular the Respondent's undertaking contained in an e-mail to the purchaser's solicitor Mr A dated 7 October 2010. The Respondent did not discharge the existing charges on the property and did not forward evidence of discharge in accordance with his undertaking. The charge was never discharged and the proceeds of the purported sale were paid out to entities unconnected with the transaction. Ms Emmerson submitted that the Respondent's conduct was dishonest.

53.2 The Tribunal found that the Respondent failed to comply with his undertaking and therefore that he acted contrary to Rules 1.02, 1.06 and 10.5 SCC. The Tribunal accepted the facts as pleaded in the Rule 7 Supplementary Statement in respect of the Devoran transaction. Further, applying the Twinsectra test to the allegation of dishonesty, the Tribunal found beyond reasonable doubt that the Respondent's conduct in failing to comply with his undertaking in breach of the SCC was dishonest by the ordinary standards of reasonable and honest people and that the Respondent himself realised that by those standards that conduct was dishonest.

53.3 The Tribunal therefore found the underlying allegation and the allegation of dishonesty to have been proved on the facts and documents beyond reasonable doubt.

Previous Disciplinary Matters

54. None.

Mitigation

55. The Tribunal received no mitigation from or on behalf of the Respondent.

Sanction

56. The Tribunal had found nine allegations against the Respondent to have been proved. Dishonesty had been alleged and found to have been proved in respect of five allegations. The Respondent had provided no mitigation or explanation for his conduct. He had failed to engage with the SRA or the Tribunal and had effectively "gone to ground" at some point after 8 October 2010 when he was last in contact with the IO. When the allegations were looked at in the round a clear pattern of behaviour over a period of approximately three weeks could be identified, culminating in the

payment out of significant sums of money totalling in excess of £760,000 to entities unconnected with the three material conveyancing transactions upon which the Applicant relied and the abandonment of his practice. The Tribunal viewed as a particularly serious and disturbing aspect of the Respondent's behaviour the fact that he accepted instructions on the Devoran matter on or about 4 October 2010 when he knew that he was about to complete the sale of his premises at Hoe Street from which he ran his practice on 7 October 2010 and when he was, by his own admission, planning to be on holiday for three weeks. He had effectively closed his practice by 13 October 2010, having completed the sale of the premises at Hoe Street and having remitted the proceeds of sale to unconnected entities other than in accordance with his undertaking to the purchasers. The last contact by anyone with the Respondent was on 8 October 2010, the completion funds on the Devoran transaction having been paid into his Firm's client account on 6 October 2010. The Respondent had acted in both the Gainford House and Devoran transactions which exhibited characteristics of being fraudulent transactions and he had done so dishonestly. The report from the Intervention Agents referred to their analysis of the accounts, particularly in relation to transactions shortly preceding the intervention. Ms Emmerson was scrupulously fair in presenting the facts to the Tribunal and made it clear that consideration should only be given to the transactions pleaded in the Rule 5 Statement and Rule 7 Supplementary Statement. The report from the Intervention Agents identified substantial claims on the Compensation Fund. There were a number of unanswered questions relating to the sums of money paid out of client account by the Respondent to unconnected entities, and the identity of the ultimate beneficiary of those funds remained unknown. The Respondent's misconduct was coldly calculating and exhibited a high level of manipulation of circumstances to his own advantage. At the very least he had benefitted from his failure to discharge the charges on the properties at Hoe Street which he owned. His misconduct was extremely serious. He had behaved in a disgraceful way likely to bring shame upon the good name of the profession for honesty, probity, trustworthiness and integrity. The Tribunal, mindful of the need to balance its overriding duty to protect the public and the reputation of the profession from harm with its duty to impose a fair and proportionate sanction in all the circumstances, had concluded that the only option available to it was to order that the Respondent's name be struck off the Roll of Solicitors.

Costs

57. Ms Emmerson applied for costs on behalf of the Applicant totalling £39,141.28, including SRA investigation costs of £12,261.98. The Respondent had not participated in the proceedings. The Applicant's Statement of Costs was sent to the Respondent's last known address. Ms Emmerson asked the Tribunal to assess the costs summarily. The Tribunal invited Ms Emmerson to make submissions on the amount of time engaged on drafting and preparation which seemed to the Tribunal to be on the high side at over 140 hours, bearing in mind that the Intervention Agents had also incurred costs in investigating the matter and had prepared a very full report. Ms Emmerson said that two separate Statements had been prepared with appendices running to almost 300 pages. The transactions were not straightforward. A number of documents had to be considered and the background to the transactions had to be carefully thought through, particularly because the Applicant had anticipated that the Respondent would not participate in the proceedings. In those circumstances there was a heavy burden on the Applicant to ensure that the facts were fairly and

comprehensively pleaded. The time engaged on drafting and preparation had been necessary due to the complexity of the case and the costs were reasonably incurred. In relation to letters, e-mails and telephone attendances, Ms Emmerson submitted that there were a number of different bodies with whom contact had to be made and that the costs incurred were not excessive and were reasonable in all the circumstances. Ms Emmerson also dealt briefly with the Respondent's means, details of which were not before the Tribunal by virtue of the Respondent's non-attendance. If the Respondent wished his means to be taken into account in relation to costs, the burden was on him to provide the Tribunal with evidence of his means.

58. The Tribunal determined that all of the allegations had been properly brought. This was a complicated case, involving three significant, but entirely distinct, transactions which had each required detailed investigation. It was essential for the fair and proportionate disposal of the case that the IO and the Intervention Agents built up as complete a picture of the Respondent's activities as possible. All of the allegations were directly linked in some way to the three core transactions. The Tribunal had carefully considered the Applicant's Statement of Costs and had listened to Ms Emmerson's submissions in relation to the time engaged, in particular, on drafting and preparation. Having reviewed the papers, the Tribunal had concluded that the drafting and preparation element was too high at close to 140 hours (which equated to 28 days in terms of five hours of chargeable time per day) and should be reduced. The Tribunal had been invited to assess the costs summarily and did so, ordering the Respondent to pay costs summarily assessed at £30,000.
59. The Tribunal thanked Ms Emmerson for the helpful manner in which she had presented a very difficult case.

Statement of Full Order

60. The Tribunal Ordered that the Respondent, Kengai Ponnampalam Chetty, 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 the sum of £30,000.00.

Dated this 10th day of August 2012
On behalf of the Tribunal

J. P. Davies
Chairman