SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10788-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

OGBONDAH NKEM OMODU Respondent

Before:

Mr R B Bamford (in the chair)
Mrs K Thompson
Mr P Wyatt

Date of Hearing: 15th February 2012

Appearances

Mr Timothy Dutton QC of Fountain Court Chambers, Temple, London, EC4Y 9DH instructed by Katrina Elizabeth Wingfield, solicitor of Penningtons Solicitors LLP of Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

Mr Philip McGhee, Counsel of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London, EC4R 0EU instructed by W&J Solicitors of 109 Victoria Road, Romford, Essex, RM1 2LX for the Respondent.

JUDGMENT

Allegations

The allegations against Ogbondah Nkem Omodu, the Respondent were that:

1.1 He acted in breach of the Solicitors Accounts Rules (SAR) in particular:

1.1.1 Rule 1(e) 1(f) in that he failed to maintain accounting systems and proper internal control over those systems, so as to ensure compliance with the SAR;

1.1.2 Rule 1(f) 1(g) in that he failed to keep proper accounting records to show accurately the position with regard to the money held for each client;

1.1.3 Rule 32(7) in that reconciliations did not include the sum of the client balances;

1.1.4 Rule 32(8) in that a central record or file of copies of bills of costs given or sent was not maintained;

1.1.5 Guideline 2.3 of Appendix 3 in that cash book entries did not always identify the relative client and therefore do not provide "adequate information about the transaction".

1.2 That he acted in breach of Rules 1(a), (c), (d) and (e) of the Solicitors Practice Rules (SPR) in that he failed to report material facts to lender clients and failed to comply with undertakings given in the Certificate of Title at the Appendix to 25.01 of the Guide to the Professional Conduct of Solicitors.

1.3 That he acted in breach of Rules 1(a), (c), and (d) of the SPR in that he was involved in transactions which bore the hallmarks of mortgage fraud contrary to the Law Society 'Green Card' warning on property fraud.

1.4 That he acted in breach of Rules 1.01, 1.02, 1.03, and 1.06 of the Solicitors Code of Conduct (SCC) in that he made false statements on an insurance proposal form in respect of his firm's Professional Indemnity Insurance.

1.5 That he acted in breach of Rules 1(a) and (d) SPR and Rules 1.02 and 1.06 SCC in that he purported separately to be in partnership with Mr Raji Viswanath and Mr Prasant Chaudury when no real partnership agreement existed and these arrangements misled the public and clients.

For avoidance of doubt, it was alleged that the Respondent acted dishonestly and/or recklessly in respect of allegations 1.2, 1.3, 1.4 and 1.5 above, although it was not necessary to prove dishonesty to prove the allegations themselves.

2. At the commencement of the hearing it was confirmed that the Respondent admitted allegations 1.1.1, 1.1.3 and 1.1.4. All the other allegations were denied.

Documents

3. The Tribunal reviewed all the documents which included:

Applicant:

- Rule 5 Statement dated 28 July 2011 with exhibit consisting of documents numbered 1 to 13
- Applicant's Further and Better Particulars dated 13 January 2012
- Green card warning on property fraud from the Guide to the Professional Conduct of Solicitors 1999
- Updated Schedule of Costs dated 14 February 2012

Respondent:

- Rule 14 Statement with exhibit consisting of documents numbered 1 to 36
- Bundle of testimonials

Factual background

4. The Respondent was born in 1964 and was admitted to the Roll in 2005. He held a current practising certificate. At all material times the Respondent was practising, and continued to practise, in the style of W&J Solicitors ("the firm") then in Harrow, Middlesex.

5. On 2 September 2009 an inspection of the books of account and other documents was commenced by Ms Kathleen Beenham, an Investigation Officer (IO) of the Applicant. A Forensic Investigation Report ("the FI Report") dated 24 August 2010 was produced following the investigation.

6. At his first meeting with the IO on 2 September 2009, the Respondent said that he started the firm in October 2005 in partnership with Mr Raji Viswanath ("V"). The Respondent subsequently said that Mr V had left the partnership in September 2009 and Mr Chaudury ("C") of A&T subsequently joined the firm as a partner.

<u>Allegations 1.1.1, 1.1.2, 1.1.3, 1.1.4 and 1.1.5</u>

7. The IO found that the firm had not been producing a list of client balances for reconciliation purposes. In addition, it was found that although the firm had been producing client cash books, entries in those books did not always include a reference to the particular client to which the entry related. The firm also failed to maintain a central file containing the bills of costs generated by the firm. In a letter to the Applicant dated 24 September 2009 the Respondent said:

> "1. …As far as I am concerned I have kept up to date with the reconciliations of my accounts. I relied on the services of the professional Accountants who were employed to undertake this task. However, I was sorry to learn that they did not do their work properly…
>
> 8. I confirm that I have now created a central record of the Bills of Costs generated by the firm."

The Respondent produced copies of the firm's three-way reconciliations, which included lists of client balances, for the IO to review.

Allegations 1.2 and 1.3

8. These allegations arose in the main out of the Respondent's work for Mr CEE who was the Respondent's client between February 2006 and May 2007. The Respondent stated that he had acted for Mr CEE on two property sales and three to four property purchases, which were "routine".

9. The Respondent was arrested in July 2009 in connection with a police investigation into Mr CEE, who was charged with falsifying 10 mortgage applications. Mr CEE was remanded in custody until his trial in July 2010 and was sentenced to five years' imprisonment following a guilty plea. No charges were brought against the Respondent.

10. During his time as a client of the firm, Mr CEE used a number of names. The Respondent admitted that CM, CEr and CEg, all of which appeared in his client register, were in fact the same person.

11. The IO asked the Respondent for the client files relating to Mr CEE's property transactions, but was informed that these had all been stolen during a burglary in August 2007. In a later letter dated 24 September 2009 the Respondent said that there had been a misunderstanding and that the firm's office had in fact been burgled on 6 August 2006 and 23 August 2008. The Respondent stated that he believed that both burglaries had been targeted at Mr CEE's files, although he also stated that many other clients' matter files had been stolen.

12. As the firm operated paper ledgers for its client accounts, which were stapled to the inside of particular clients' files, the Respondent was asked to reconstruct some of Mr CEE's client ledgers for the benefit of the investigation.

13. The FI Report exemplified the Respondent's actions in respect of Mr CEE's purchases of 25 C House and 10 H Close, in summary:

13.1 The Respondent said that the file relating to the purchase of 25 C House was not available because it had been stolen in one of the burglaries at his premises. The equivalent matter file was obtained by the IO from the vendor's solicitors, S and the Respondent reproduced the client ledger for the purchase at the request of the IO.

13.2 A Mr CM had offered to purchase 25C House for £263,000. The Respondent confirmed that CM was Mr CEE.

13.3 On 25 April 2006, some two weeks before the completion of the purchase on 8 May 2006, the Respondent wrote to S solicitors to say that his client now wished to purchase the property in the name of his sister Ms JC, "because he intends to purchase another property simultaneously".

13.4 On 3 May 2006 the sum of £296,951 was received into the firm's client account from a lender BM. Mortgage offer documents provided by BM showed that the advance

was in respect of a mortgage offer dated 5 April 2006 to CM for the purchase of 10 H Close for £330,000. A certificate of title signed Nkem Omodu on 27 April 2006 confirmed these details.

13.5 On 8 May 2006 the purchase of 25 C House was completed. The sum of £263,268.87 was transferred from the firm's client account to S solicitors.

13.6 The firm's client account statements showed that approximately £55,000 had been held in excess of BM's mortgage advance during this period. The IO concluded that BM's advance made on 3 May 2006 had been used to purchase 25 C House instead of 10 H Close because sufficient additional funds were not available at the time.

13.7 On 23 January 2007 payment of £248,800 was made from the firm's client account to TR solicitors in respect of "10 [H]". On 3 March 2007 a further payment of £18,900 was made in respect of "10 [H] Close".

13.8 On 11 May 2007 the Respondent wrote to BM to inform it that registration of 10 H Close had been completed at the Land Registry. The Land Registry Official Office Copy entries showed that registration was competed on 27 March 2007. However, the Official Copies stated that the purchase completed on 4 May 2006 and the price paid was £330,000.

13.9 Thus the mortgage advance from BM, which was to be secured against 10 H Close, was in fact used on behalf of a different purchaser (Ms JC), to purchase a different property (25 C House). In addition, the Respondent prepared and filed Land Registry papers which incorrectly recorded the date of the purchase of 10 H Close. Correspondence provided by BM showed no evidence that the Respondent had informed BM of the manner in which he was intending to use the mortgage advance of 3 May 2006.

13.10 The Respondent told the IO that he may have become confused between the two purchases because he may have had two or three conveyancing transactions on at the same time. However, the firm's client bank account did not show any other mortgage advances retained at the time of completion of 25 C House. In a later letter to the Applicant dated 13 September 2010, the Respondent stated:

> "…it would appear that I utilised the mortgage advance relating to 10 [H] Close to purchase 25 [C]. Likewise, I must have utilised the mortgage advance relating to 25 [C] to purchase 10 [H] Close. The net effect, however, was that both purchases completed and were duly registered with no loss to clients. There was a delay as a consequence for which I apologise but the key point is that it was nothing more than an honest mistake."

14. The Respondent's actions in respect of ledger transactions involving Mr CEE were exemplified in the FI Report. In summary:

14.1 On 4 May 2006 £10,000 was paid to Mr CEE from BM's mortgage advance of £296,951 which had been received by the firm the previous day. The following day an additional £10,000 was paid to Mr CEE. The firm's cash book recorded that the

payments were made on Ms JC's instructions. A total of £20,000 was then repaid to the firm three days later. The Respondent stated that the sum of £20,000 was to be paid to Mr CEE at the time of completion, but that the funds had been transferred early by mistake and were therefore returned. However, after completion the balance of the mortgage sum, namely £23,521.20 was paid to Mr CEE by the firm on Ms JC's instructions. A further payment of £1,055.05 was made to Ms JC in respect of "[Cs] Hse". Those two figures together equated to the residual funds from the mortgage advance of 3 May 2006, less costs and disbursements.

14.2 The Respondent said that he believed that Mr CEE had paid a deposit directly to the seller, and could not recall whether the lender had been informed of this. However, the documents provided by S solicitors showed that the total purchase price was paid on the date of completion. The Respondent later said in a letter to the Applicant dated 13 December 2010:

> "I said that I had "assumed" that Mr [CEE] paid a deposit directly to the "seller" and that was principally because we were asked by the seller's solicitors to send only the "balance" of the purchase price…"

The Respondent also said that the entry in the firm's cash book stating that the transfer to Mr CEE of £23,521.20 was on Ms JC's instructions was incorrect.

14.3 The Respondent told the IO that he believed that it was Mr CEE's duty, not his, to return the funds to the lender. The Respondent further stated that in the past, this particular lender client lent mortgages of 100% or 110%. However according to the Respondent's certificate of title the mortgage in this case was for 90% of the purchase price. In the letter to the Applicant of 13 December, the Respondent said:

> "33. Mr [CEE] and Ms [JC] were entitled to the excess held on their account because those monies properly belonged to them. They did not belong to the lender because the lender had lent the monies and the same was secured as a first legal charge on the property register".

The Respondent also stated that there could be:

> "34….many valid reasons why there is a residue on clients bank account, i.e. client having paid too much monies on account in the first instance, i.e. deposit or there being a change in stamp duty land tax i.e. exempt property or an honest miscalculation in the first instance".

15. In respect of CEE's use of aliases, the IO identified two matters in respect of which Mr CEE obtained, or intended to obtain mortgages using two aliases, namely CM in respect of 10 H Close and CEr in respect of 34 C House. The relevant client files for these matters were allegedly stolen in the burglaries at the firm.

15.1 When the IO asked if he thought that it would be a material fact to inform the lender that CEE used aliases, the Respondent said that CEE used names which were his own and not totally different ones. He said that he always informed the lender of the same

over the telephone and also sent a letter "probably along with the C of T [Certificate of Title]".

15.2 The IO specifically asked BM to provide copies of all correspondence that they had on record with the firm. There was no evidence in those documents or elsewhere that the Respondent had informed them of CEE's use of aliases.

15.3 Having regard to informing the lender about control over the payment purchase monies and family relationships between sellers and purchasers of properties, the FI Report exemplified three transactions.

The purchase of 323 BO, Edgware

16. The Respondent acted for the purchaser of this property, Mr BB, as well as the lender's A&L. The seller was Mr SB and the sale was a private transaction. The Respondent said that he thought that the vendor and his client were brothers.

17. Documentation provided by the vendor's solicitors showed that £12,311.50 had already been paid directly from the purchaser to the seller, and that £172,688.50 was to be paid on completion. The firm's client ledger showed that the mortgage advance, in the sum of £175,750 was lodged into the client account on 6 September 2006 and the next day £172,688.50 was transferred to the vendor's solicitors on completion.

18. The excess funds after the completion funds were transferred to the vendor's solicitors were used to pay Stamp Duty Land Tax, costs and other related disbursements.

19. There was no evidence to show that the Respondent had notified the lender that approximately £12,000 of the purchase price had been paid directly to the vendor and had not passed through the firm.

20. The Respondent told the IO that his client was an FSA-approved mortgage broker and had told him that he, Mr BB had informed the lender that the sale was between family members and about the fact that the deposit had been paid directly between them. The Respondent also stated that he had not confirmed this with the lender client because he believed Mr BB's claim that the lender had been informed. The Respondent acknowledged that conveyancing transactions that were not at arm's length and those which involved deposit paid directly to the vendors were material facts that should be brought to the attention of the lender.

21. The Respondent later stated in his September 2010 letter to the Applicant that there was no doubt that the deposit was paid. He also stated "I also recall verbally informing the lender client that the deposit was being paid direct."

22. In his December 2010 letter to the Applicant, the Respondent said that he had a document from the vendor's solicitor, confirming that the deposit had been paid direct, which "…was as good as the monies passing through my client account as I did have "control" over the monies i.e. written confirmation…". He also stated that he was not aware of any obligation to inform the lender client that the vendor and purchaser were related.

31 DH Lane

23. The Respondent acted for the purchaser Ms PR, as well as for the lender, BoS, in the purchase of 31 DH Lane for an agreed price of £425,000.

24. The property was owned by Mrs MUR, who had been served with a notice of eviction dated 2 January 2007. The Respondent confirmed that the purchaser was the seller's daughter.

25. The purchaser PR appeared to be an occupier of the property since her driving licence, issued in 2003, showed her address as 31 DH Lane. However, the contract for the purchase of the property recorded her address differently.

26. The mortgage advance of £397,470 was received into the firm's client account on 2 April 2007. Two days later £381,422 was sent to the vendor's solicitors on completion. The balance of £16,028, comprised solely of the excess mortgage advance, was used to pay Stamp Duty Land Tax, solicitors' costs and other related disbursements.

27. The completion statement for the transaction showed that the deposit payable was "000.00" and that the total payable on completion was "£nil". There was no evidence that the Respondent's client, the purchaser, had paid anything towards the property.

28. Including costs and disbursements, the mortgage advance was £27,530 less than the purchase price of £425,000 and £43,558 less than what should have been required to complete and pay all the related costs and disbursements listed in the client ledger. There was no evidence to show how the shortfall was made up, or that the Respondent informed the lender about the situation regarding the deposit or about there being a relationship between the vendor and the purchaser/borrower.

29. The Respondent told the IO that he had informed the lender over the telephone and not in writing that he did not have full control of the purchase price. He stated that he thought the shortfall in the purchase price could have been a "gift". In his September 2010 letter to the Applicant he said that he recalled verbally informing the lender by telephone that the deposit was paid direct between the seller and the buyer.

30. The Respondent told the IO that the lender was aware of the relationship between the seller and buyer because the mortgage broker had told him that the application form disclosed this fact. The Respondent said he did not recall if he told the lender but said that he could have done so over the telephone. In his December 2010 letter, the Respondent said that he recalled reading that the buyer and seller were mother and daughter on the mortgage application, which had been sent to him in error. Accordingly the lender client was on notice of the relationship. In his September 2010 letter, the Respondent said that he was not aware of any requirement to inform the lender client that the seller and buyer were related by blood.

31. The IO noted that Ms PR 's address in the agreement for the sale matched the address of a property which Mr CEE had intended to purchase, 7 W Way. Ms PR's full name was also not shown in the agreement for sale, which recorded her name as Ms PN. In his September 2010 letter to the Applicant, the Respondent said:

> "The fact that the contract did not contain the buyer's full name and correct home address was overlooked by me but it made no difference to the transactions since the property was registered correctly."

32. The Respondent told the IO that he was not aware of the eviction notice until late in the transaction, possibly at a time when he was chasing for completion of the sale.

6 L Road

33. The Respondent acted for Mr BB and the lender, KM, in the purchase of 6 L Road for £185,000.

34. The relevant client ledger showed that the mortgage advance of £175,715 was received into the firm's client account on 8 March 2007 and on the same date £171,000 was transferred to the vendor's solicitors on completion. The contract for the purchase indicated that the £14,000 deposit was to be by way of an "allowance".

35. Following completion the balance of the funds (£5,015) was used to pay costs, disbursements, and Stamp Duty Land Tax

36. There was no evidence on the client matter file to show that the lender had been notified that £14,000 of the purchase price had been reduced in respect of a loan between the vendor and the purchaser/borrower. The Respondent told the IO that he must have told the lender in writing, adding that he did believe it would have been a material fact.

Allegation 1.4

37. This allegation related to the Respondent's application for professional indemnity insurance for 2009. The insurance proposal form was signed by the Respondent on 2 October 2009, one month after the Applicant's investigation commenced.

38. Question 7 on the form asked whether in the last 10 years any fee earner in the practice or any fee earner previously employed in the practice had practised in a firm subject to an investigation or an intervention by the Applicant. The Respondent answered "No".

39. In his September 2010 letter the Respondent said that he had completed the form and sent it to the broker in July 2009 for the purpose of obtaining quotations. As the form had been unsigned, in October 2009 the broker sent it back to the Respondent for his signature. The Respondent said that he signed and returned the form without checking it, "presuming that it was accurate and that nothing had changed".

40. In signing the form, the Respondent was confirming (inter-alia) the following statement:

> "I declare that I have informed the insurer of all the facts which are likely to influence an insurer in the acceptance or assessment of this

> insurance. I understand that the failure to do so could invalidate the insurance accepted by my practice. I accept that if I am in doubt whether any fact may influence an insurer I should disclose it."

41. The Respondent had been arrested in July 2009 in connection with the police investigation into Mr CEE. However, the insurance proposal prepared and signed by the Respondent contained no disclosure regarding his arrest. In his September 2010 letter to the Applicant the Respondent stated that he did not disclose his arrest because he "did not consider it to be a material fact", noting that he was not charged and no further action was taken against him.

42. The Respondent told the IO that he would inform the insurer of the investigation "in due course".

Allegation 1.5

43. In the course of the investigation, the IO noted that Mr V was not present at the firm's premises. The Applicant's records indicated that Mr V had been a partner at the firm from 3 November 2005 to 2 October 2009 (with an interval between June 2008 and February 2009).

44. The FI Report recorded that the Respondent described Mr V as a "dormant partner" who did not handle any client matters. When he was later asked to explain why he was anything other than a sole practitioner, the Respondent apologised for having described Mr V in such terms. He said that his use of the words "dormant partner" was a reference to the fact that Mr V generally struggled to bring in new work and generate fees. He explained that since returning to the partnership in February 2009, Mr V had not handled any matters but had assisted with immigration and administrative matters when his help was required. The Respondent noted that there had very few matters to hand due to the recession.

45. The Respondent said that he could not give an accurate breakdown of how many cases Mr V had dealt with on his own and how many he had dealt with under the Respondent's supervision, "without physically trawling through a huge quantity of files". He also said that there was no obligation on Mr V to be present during the course of the IO's investigation. He said that he could not give an accurate record of Mr V's attendance, since he did not keep an attendance register and because he was a partner of the firm, Mr V could come and go as he pleased. Mr V said in a letter to the Applicant dated 4 January 2011 that:

> "During 26th of February 2009 to 1st of September 2009 I used to visit once or twice a week. I used to visit and left the office as deemed fit."

46. Mr V also stated that he "did not handle any client's matters or client's accounts" and that his administrative duties during his "part time work" included "managing the office, ensuring the office equipments (sic) were all up and running, ensuring the letters are replied to and that the posts are sent off

etc…" He also said that since joining the firm in February 2009, there had not been much work due to the recession.

47. The Respondent stated in his December 2010 letter that as far as he was aware, Mr V "worked exclusively for this firm from its inception to about 2008. Thereafter, Mr [V] may have had other business interest but I am not aware of any". When asked whether he had worked for any other law firms and/or other businesses at the same time as he was a partner at the firm, Mr V stated in his January 2011 letter that he was "working in [L] solicitors".

48. In his December 2010 letter to the Applicant the Respondent stated that he did not have any correspondence between himself and Mr V and/or Mr C in relation to the partnership. He also said that there were no written partnership agreements and that the arrangement was a "partnership at will" (i.e. an oral agreement) based on the Partnership Act of 1890. He stated that because Mr V was a salaried partner he did not introduce any capital into the firm. While Mr V had initially received a salary, this proved too costly and he later received only a share of the fees he generated. Mr V said that his salary for the period 26 February to 1 September 2009 had been "£600 in total". He confirmed that he had invested no capital in the business.

49. The Respondent said that there was nothing improper about the partnership and that he and Mr V had decided in September 2009 to go their separate ways because things had not gone the way they had hoped. Mr V, in his January 2011 letter, stated that he had "left the partnership due to [the Respondent's] arrest and my committed involvement with [L] Solicitors it fully transpired that I was no longer contributing to the level as partner".

50. The Applicant's records indicated that Mr C was a partner of the firm from 20 January 2010 to 20 December 2010. Mr C stated that while a partner at the firm he had also "operated" A&T solicitors, where he was the sole principal. He said that he had not introduced any capital into the partnership, that there was no written partnership agreement, and that he had received only two cheques of £400 and £380 respectively with respect to immigration work undertaken. He also confirmed that he had not undertaken any client work without the Respondent's assistance.

51. On 29 November 2010 the Applicant's caseworker sent copies of the FI Report to Mr V and Mr C, together with additional questions, including questions relating to their partnership arrangements with the Respondent. Mr V replied by the letter dated 4 January 2011 and Mr C replied by way of e-mails dated 10 January 2011. Mr V sent a further letter to the Applicant on 3 May 2011 and letters were sent to the Applicant on behalf of Mr C by GC solicitors on 4 May and 14 June 2011.

52. On 24 August 2010 the Applicant's caseworker forwarded a copy of the FI Report to the Respondent for his comments. The Respondent replied by way of a letter dated 13 September 2010. The case worker sent a further letter dated 29 November 2010 containing additional queries to the Respondent, to which the Respondent reply by letter dated 13 December 2010.

Witnesses

Ms Kathleen Beenham

53. Ms Kathleen Beenham, the IO gave sworn evidence. She was a qualified accountant and confirmed the correctness of the facts and contents of the FI Report which she had prepared dated 24th August 2010, save for some minor errors which she pointed out. In cross examination by Mr McGhee for the Respondent, the witness confirmed that she had visited the firm on possibly three occasions including collecting and returning files. She did not recall what the Respondent's expectations of the interview had been at the outset of the visit on 11 May 2010 which she had made with senior investigation officer Mr Nick Ireland. [The transcript included the Respondent having said "I just thought maybe you'd come to tell me ... based on what you've investigated, these are your findings, for instance and then, you know, this is the course of action for instance, you know what I mean?"]. She confirmed that interviews varied in length; this one had lasted about an hour or so.

54. The witness did not agree that the fact that the accountant could balance the firm's books showed that there was sufficient detail to post monies to the correct place. She considered that they could be balanced provided the amounts had been posted somewhere, whether to the right or wrong ledger. If client references had been shown she could have created ledgers. The witness confirmed she had asked the Respondent to recreate his ledgers for the client CEE. She had not visited the building society BM but had visited S solicitors because of the lack of correspondence available at the firm. She had requested correspondence from BM.

55. The witness had not asked for Mr V to attend the firm when she was conducting her investigation. She had written to him. She had not interviewed either Mr V or Mr C.

56. In respect of the crime report form, the witness had not conducted any investigations about what it related to.

57. In respect of the transaction concerning 323 BO, the witness was referred to a letter from FMRG solicitors dated 31 August 2006. They acted for Mr SB the seller of the property. Enclosed with the letter was the Completion Information and Requisitions on Title form which at section 5.1 bore a handwritten annotation "£12,311.50 already paid directly". The form was signed by FMRG. The witness had not investigated with that firm concerning the handwritten annotation.

58. In respect of the transaction relating to 6 L Road the witness was referred to a letter from MS solicitor acting for the vendor, who wrote on 12 February 2007 "… I understand that my client owes your client money and that the net price I am told I will receive is £171,000.00…" The witness had not made any enquiries with MS solicitors regarding the allowance referred to on the contract because her concern was with what the lender had been told.

The Respondent, Ogbondah Nkem Omodu

59. The Respondent gave sworn evidence. It is reported under the relevant allegations. The Respondent confirmed the truth of his Rule 14 statement dated 9 February 2012.

Findings of Fact and Law

60. **Allegation 1.1: He acted in breach of the Solicitors Accounts Rules (SAR) in particular:**

1.1.1 Rule 1(e) 1(f) in that he failed to maintain accounting systems and proper internal control over those systems, so as to ensure compliance with the SAR;

1.1.2 Rule 1(f) and 1(g) in that he failed to keep proper accounting records to show accurately the position with regard to the money held for each client;

1.1.3 Rule 32(7) in that reconciliations did not include the sum of the client balances;

1.1.4 Rule 32(8) in that a central record or file of copies of bills of costs given or sent was not maintained;

1.1.5 Guideline 2.3 of Appendix 3 in that cash book entries did not always identify the relative client and therefore do not provide "adequate information about the transaction".

60.1 On behalf of the Applicant, Mr Dutton reminded the Tribunal of the alleged breaches of the SAR, allegations 1.1.2 and 1.1.5 were denied and Mr Dutton intended to focus on those. The Respondent blamed his bookkeeper and accountant for the SAR breaches but Mr Dutton submitted that this did not constitute a defence; compliance was the responsibility of the Respondent. His reliance on others might be mitigation in some circumstances and that was a matter for the Tribunal to determine and weigh regarding penalty. Mr Dutton submitted that there was a second feature of the case, the topic of burglary. The Respondent said that his accounts records for Mr CEE's files had gone missing because he had had two burglaries in August 2006 and August 2008. It was submitted that the burglaries did not account for the three admitted breaches of the SAR. It also appeared in the course of the investigation that when application was made to his accountants for client balances, the firm's files had disappeared in burglaries at their premises. Mr Dutton questioned the ability of the accountants to issue the unqualified year end reports in October 2006, October 2007 and October 2008 upon which the Respondent relied, if they had been burgled, when they were unable to produce client balances for 3 October 2006 to 2 October 2007 and 3 October 2007 to 2 October 2008.

60.2 In respect of allegation 1.1.2, the Respondent had reconstructed the client ledgers for the transactions relating to Mr CEE and his case was that some of them were not accurate. The ledger for Mr CEE which showed payments on 4 and 5 May 2006 of £10,000 each described as "cash you" and a further entry marked "cash you" of £23,521.20 on 8 May. Mr Dutton submitted that the evidence showed that the Respondent was not running a proper ledger system. The only documents before the

Tribunal were ex post facto reconstructions which the Respondent had done at the Applicant's request and in which he did not want to express confidence. His accountants had produced no documents, claiming they had suffered burglaries. The Respondent did have balanced accounts but this was because the same accountants signed off reports under section 34 of the Solicitors Act 1974. Mr Dutton submitted that it did not follow that the Respondent had a satisfactory ledger system. He submitted that his accounting records were demonstrably unsatisfactory.

60.3 In respect of allegation 1.1.5, Mr Dutton drew the Tribunal's attention to a page of the cash book showing the client bank balance as at 31 January 2009. Occasionally there was a code that might assist in identifying the client matter file to which a transaction related but as often as not, payments were made in or out with no identification, as with a payment of £180,000, the details of which were "Johal and Co Sol". It should be self evident where entries were reliable and possible to work both backwards and forwards from the cash book and the file to create the ledger. Mr Dutton submitted that there was a strong indication that the cash book entries were not reliable.

60.4 In evidence the Respondent said that his knowledge of accounts at the time of his admission was quite moderate which made him employ an expert bookkeeper Mr O. He also employed Mr A to prepare his accountant's reports for the Law Society. Mr O would advise him when completion monies and mortgage funds came to the firm. The Respondent accepted responsibility for faults in how the accounts were kept but had relied on his bookkeeper for advice on issues of compliance. He had cross checked with other solicitors who were clients of Mr O and had no reason to worry about him. He had been surprised to learn of breaches of the SAR from the IO as he thought everything was fine. He had had to undergo some further accounting and other courses to ensure that he could deal with matters himself. In respect of the admitted allegations, the Tribunal was referred to his statement where he set out the corrective action that he had taken. In respect of allegation 1.1.1 his statement covered the burglaries and the loss of files and records.

60.5 In respect of allegations 1.1.2 and 1.1.5, the Respondent confirmed that he had certain disputes with what it was said that he had failed to do. He thought that his bookkeeper would have kept the accounts in the way that it should be. When he was told about the breaches he had remedied them immediately. He took the view that if there had not been corresponding entries in ledgers and cashbook, the books would not balance.

60.6 On behalf of the Respondent, Mr McGhee submitted that there were some examples in the cash book where information was not readily apparent but when the client ledgers were looked at, information regarding the financial position of each client was set out, demonstrating that there was enough for the situation regarding each client to be discovered. Mr McGhee quoted the guideline referred to in allegation 1.1.5:

> "2.3 Proper books of accounts should be maintained on the double-entry principle. They should be legible, up to date and contain narratives with the entries which identify and/or provide adequate information about the transaction. Entries should be made in chronological order and the current balance should be shown on client ledger accounts, or be readily ascertainable, in accordance with rule 32 (5)."

He submitted that the guideline was not as particular as the allegation suggested. If the information could be found somewhere in the books of account then it did not matter if you could find fault in the cash book. Where the Respondent was obliged to provide information to identify the client, Mr McGhee submitted that it was present.

60.7 The Tribunal had carefully considered the evidence, the submissions on behalf of the Applicant and Respondent and had heard the evidence of the IO and the Respondent. The Respondent had admitted allegations 1.1.1, 1.1.3 and 1.1.4 and the Tribunal found these allegations also to have been proved to the higher standard of proof that is beyond reasonable doubt. In respect of the allegations which he denied, the Tribunal found as a fact that the Respondent had failed to keep proper accounting records to show accurately the position with regard to the money held for each client (allegation 1.1.2) and that the cash book entries did not always identify the relevant client, indeed it had been admitted during the course of the hearing that there were faults with the cash book entries. The Tribunal was satisfied that within the wording of Guideline 2.3 to Appendix 3, the books of accounts including the cashbook did not contain narratives with the entries which identified and/or provided adequate information about the transaction (allegation 1.1.5). Accordingly the Tribunal found allegations 1.1.2 and 1.1.5 to have been proved on the evidence to the same higher standard.

61. **Allegation 1.2: That he acted in breach of Rules 1(a), (c), (d) and (e) of the Solicitors Practice Rules (SPR) in that he failed to report material facts to lender clients and failed to comply with undertakings given in the Certificate of Title at the Appendix to 25.01 of the Guide to the Professional Conduct of Solicitors.**

Allegation 1.3: That he acted in breach of Rules 1(a), (c), and (d) of the SPR in that he was involved in transactions which bore the hallmarks of mortgage fraud contrary to the Law Society 'Green Card' warning on property fraud.

(These allegations were dealt with together as they arose out of the same facts.)

Submissions on behalf of the Applicant regarding allegations 1.2 and 1.3

62. On behalf of the Applicant, Mr Dutton submitted that having had sight of the Respondent's Rule 14 statement, it appeared that there was no significant factual dispute regarding any of the transactions. The dispute was whether there was anything dishonest in the Respondent's conduct. The Respondent had 13 years' experience as a solicitor/barrister in Nigeria before he was admitted as a solicitor here, more so than his relatively recent experience would suggest. In respect of the allegation of dishonesty relating to allegations 1.2, 1.3, 1.4 and 1.5 Mr Dutton referred the Tribunal to the Applicant's Further and Better Particulars dated 13 January 2012. He submitted that the Respondent's conduct could not be explained by carelessness or recklessness but by dishonest conduct in respect of each of those allegations.

62.1 In respect of allegations 1.2 and 1.3, Mr Dutton submitted that the client Mr CEE had been convicted for fraud and false accounting in respect of the lender BM. It was not the Applicant's case that CEE's convictions related to the particular transactions which were the subject of the allegations before the Tribunal but it was relevant that Mr CEE was known to be a fraudster. He used aliases and the Respondent admitted that CM, CEr and CEg were the same person. There was a fourth name CH which

seemed to be linked to Mr CEE. The Respondent denied that CH was another alias of CEE. The IO thought that it was linked in the Respondent's mind. In support of this Mr Dutton drew the attention of the Tribunal to an entry number 37 in the Respondent's client register for CH which was ONO/ [M]/C/037/06. [The spelling of M varied by one letter from that for CM.] He submitted that this might ultimately relate to credibility. C for Charles was a name often used by CEE. Mr Dutton also drew the attention of the Tribunal to an entry number 20 in the client register for CE[M] which appeared originally to have been CEE and amended. There was a multifarious use of names and regardless of the position concerning CH the position overall was extraordinary. The Respondent accepted that he was acting for a borrower purchasing property who was using aliases. He said there was nothing untoward. He accepted it was his duty to let the lender know that CEE used aliases and he contended that he had told the lender over the telephone. Mr Dutton also submitted that burglaries were a feature of allegations 1.2 and 1.3. The IO was told that a burglary had occurred in 2007 and then dates in August 2006 and 2008 were given. The Respondent had produced a document dated 6 August 2006. It was the only independent record of any kind of crime and didn't help regarding this crime being at the Respondent's premises. There was also a letter from the Respondent's office landlords dated 23 September 2009 referring to an incident on 23 August 2009 which was subsequently corrected to August 2008. The letter included:

> "We write to confirm that there was a break-in at the offices in [Y] House where the burglars broke into all the offices and then knocked a hole in the floor into the [CW] premises.
>
> They ransacked the shop but, of course, [CW] claimed off their own Contents Insurers and the damage to [Y] House would not have been covered by the excess so we, ourselves, as the Landlords, paid for the work…"

Mr Dutton submitted that there was no documentary record of the CEE files being targeted by burglars in 2006 and 2008. It was the Respondent's case that burglars had targeted and stolen CEE's files and also the CH file. The IO had asked for them and been told that they had gone in the burglaries. The Applicant did not accept that the Respondent was being truthful about the theft of the files. It might have been that he had been burgled in 2006 but he had continued to act for CEE after August 2006. Lightning was unlikely to strike twice regarding CEE and the pseudonyms under which he operated. Mr Dutton submitted that the letter from the landlord was very clumsy and there was no other contemporary record indicating the disappearance of the files. He submitted that the disappearance of the files was not indicated by a burglary but by dishonesty as set out in the Rule 5 Statement.

62.2 In respect of 25 C House, Mr Dutton referred the Tribunal to the history of the transaction by which a leasehold flat in a block was acquired for Ms JC who was associated in some way with CEE. The memorandum from the lender (H, which had taken over BM) to S solicitors faxed on 19 April 2006 recorded the purchaser's name as CM with a purchase price of £263,000 with exchange due by 4 May 2006 and completion due by 11 May. Mr Dutton submitted that the Respondent had to advise the vendor's solicitors in writing on 25 April 2006 that Miss JC was to purchase 25 C House in order to get the property into her

hands. The mortgage monies used to acquire 25 C House came from the advance from BM for 10 H Close. In respect of what had been reported to the lender, Mr Dutton referred the Tribunal to the letters from BM to the IO dated 11 November [incorrectly dated October] 2009 which recorded:

> "- Advance of £296,951 sent on 3rd May 2006
> - Mortgage Offer sent to W&J solicitors on 5th April 2006 - You will note the customer was a [CM].
> - Correspondence dated 11th May 2007 from W&J Solicitors to [H plc] confirming registration of the transaction had been completed.
> - I still await a signed copy of the Certificate of Title and this will be sent on receipt.…"

and of 12 November 2009 which said:

> "… Unfortunately you will note that the property of 25 [C House]… is not consistent with the information provided on the Certificate of Title namely the property address of 10 [H] Close…"

62.3 Mr Dutton submitted that the Certificate of Title for 10 H Close was misleading. It showed CM completing on 4 May 2006 when in fact he had not completed until March 2007. CM should have purchased 10 H Close in May 2006 for £330,000 with a mortgage of £297,000 but the Respondent had placed the mortgage monies into the ledger accounts to fund the purchase of 25 C House in the name of CM's sister knowing all the while that CM used aliases. The mortgage received was £55,000 in excess of what was needed to purchase 25 C House and the ledger before the Tribunal for Mr CEE already referred to, showed what the Respondent had done with that money; amounts had been paid to CM on 4 and 5 May of £10,000 each and there was a further cash payment of £23,521.20. There was no explanation why on a transaction for Ms JC, money should be coming from 10 H Close to CEE. It was not possible to say, because of the absence of files, where the monies had come from which funded the transaction in March 2007 to purchase 10 H Close. The charges register showed a charge dated 4 May 2006 in favour of H plc [which had taken over BM] dated 22 March 2007. The Tribunal was taken to the claimant's cash book and an entry of 8 March 2007 under the heading 'Details' showing 10 H Close and under 'Payments' £18,900 with the code, ONO/ [M]. [The spelling of M varied by one letter from that for CM.] It was the Respondent's case that he had made errors regarding 10 H Close and 25 C House as he had a number of transactions going on at the time. His client premium account bank statements for May 2006 showed few other transactions; the balance bought forward was £26,841.95 and the only significant receipt was £296,951, the mortgage advance from BM. It was submitted that this fitted with dishonesty rather than confusion. The lender was not told of the change of the purchaser from CM to Ms JC although the vendor's solicitors were. The client register showed Ms JC in April 2006. As to the actual purchase of 10 H Close, the cash book showed a payment on 23 January 2007 of £248,800 to TR solicitors, acting for the vendors of 10 H Close and under 'Comments' "10 [H]". There was a further entry on 8 March 2007 under 'Details' "10 H Close" a payment of £18,900 and the code ONO/[m] [with the same one letter variation in spelling]. This showed the transaction for 10 H Close occurring between January and March 2007. It completed 10 months

after the advance made for it by BM. The upshot was that CEE received £20,000 in cash, £20,000 was paid back in and then another cash payment of £23,521.20 was made according to the cash book on Ms JC's instruction. This amount and £1,055.05 that was paid to Ms JC on 13 June 2006 by reference to 25 C House, was the cash left over from the mortgage advance which BM believed was to be used to purchase 10 H Close. It was submitted that an honest solicitor would simply not undertake any of these transactions and the only explanation was that the Respondent had become dishonestly involved in a transaction that was a mortgage fraud. The FI Report recorded the Respondent's explanation:

> "The Senior Investigation Officer asked Mr Omodu the reason, considering he received a mortgage advance in the region of £30,000 more than the purchase price (£296,000.00 - £263,000.00) he did not return funds back to the lender rather than paying some of it out to Mr [CM]. Mr Omodu said that the amounts were there for the client and it is the client who pays the money back to the bank…"

Mr Dutton submitted that this was fundamentally wrong and could not be a genuinely believed explanation. The suggestion that there was no obligation to refund to BM and instead to pay monies to CM and his sister beggared belief. The Respondent said that some banks loaned 110%; this was not so here. This was a hopeless attempt to explain the matter away.

62.4 Regarding CEE's aliases, the FI report showed the firm being aware of three matters where CEE obtained or intended to obtain mortgages in the name shown on his passport as well as in the name of two of his aliases. As CM he purchased 10 H Close; as CEr [Er being his second forename] he purchased 34 C House at a purchase price of £320,000 with a loan of £272,000 in July 2006; a third transaction related to 7 W Way which he was to purchase as CEE. This transaction did not complete as the mortgage offer was withdrawn on 14 May 2007. The Respondent knew that his client was using three aliases and considered that there was nothing untoward. The Respondent's attempts to rely on CEE's passport showing his full name were hopeless; CEr and CM did not work. The Respondent also said that he had advised the lenders over the telephone. It was submitted that an honest solicitor would not deal with the client using aliases and if a solicitor realised that aliases were being used to purchase properties he would write to create a record with the building society and he would probably withdraw from the transactions. The lenders would have said that they would not go ahead if the Respondent had told them about the use of names. There was no written record with BM of any notification in writing and it was submitted that the absence of it was very telling regarding dishonesty. It was the Applicant who had raised the issue with BM by letter dated 20 October 2009. The Tribunal was referred to a letter dated 5 April 2006 to W&J solicitors from BM in respect of 10 H Close, instructing the firm to act for the lender and specifically referring to the CML Handbook and the need to comply with it and the lender's instructions. The Tribunal was referred to the FI Report which summarised the questions the Respondent had been asked about informing the lender. Mr Dutton referred the Tribunal to the transcript of the interview in which the Respondent contended that he had told the lender in writing in both cases. Mr Dutton submitted that the Respondent now had to say that he had given the information orally over the telephone to the lender to firm up his case because it was now known there was no

written record of the building society being informed of the aliases. His evidence that that he rung up lenders or brokers was not clear and his case that by giving them the name CM or whatever was being used during the transaction, he had somehow told them about the use of different names acknowledged that he had to tell something to the lender. It showed that his attempt to persuade the Tribunal regarding the telephone calls was not true and could not be believed. Mr Dutton submitted that here was a client using aliases and on the Respondent's case embarking on purchase of another property, a situation which fell fall square within the Green Card warning which the Respondent accepted he knew about. The inference was that he was consciously embarking on dishonest wrongdoing in the course of these transactions.

62.5 In respect of the Respondent's alleged absence of control over the purchase monies, it was a tell-tale sign of mortgage fraud where there was a link between vendors and purchasers and/or a deposit was allegedly paid direct and not in the hands of the purchaser's solicitor. It was nonsense for a solicitor to say that when the other side had money for a direct payment that he controlled it. In the case of the sale from Mr SB to Mr BB, the certificate of title was signed by the Respondent on 1 September 2006. The client ledger showed that the only monies received by the firm were £300 on account of costs and A&L's mortgage advance of £175,750. The Completion Information and Requisitions on Title form recorded that a deposit of £12,311.50 had already been paid directly to make up the £185,000 purchase price. The Respondent's explanation was that the mortgage broker should have told the building society. In the case of Mrs and Ms R the facts were even more extraordinary. The documents included the eviction notice served on Mrs R [dated 2 January 2007]. The client ledger showed the only monies received as the building society mortgage advance of £397,470. The completion statement showed the deposit as "000.00" with no explanation for the difference of £27,530 between the purchase price of £425,000 and the mortgage advance. It seemed that the daughter had not paid the full purchase price to her mother. There was no evidence that the client had paid any of her own funds towards the purchase of the property. Moreover the mortgage advance was £43,558 less than would have been required to complete and pay all of the related costs and disbursements (£16,028) according to the client ledger. It was submitted that when challenged, the Respondent said that he could not remember what happened in this case but did recall that the lender had been aware that this was a family sale. According to the FI Report he said that the mortgage broker had told him that the lenders knew of the relationship and that it was disclosed in the original mortgage application, adding, however, that he himself had not seen the application. The FI Report then recorded in respect of the balance of the purchase price he had said it could have been a "gift" and that he informed the lender of this "over the phone" and not in writing. It was submitted that this did not explain his breach of duty to the lender. The Tribunal was reminded that the agreement for sale recorded the purchaser's address as 7 W Way. The agreement might well go to the lender. That property was to be purchased by CM but fell through. The Respondent's explanation as set out in the FI Report was "he must have overlooked the fact that the contract did not contain his client's full name and her correct address. He further said that he does not know if there was a relationship between PR and CEE other than that they were introduced by the same mortgage broker…". It was submitted that this transaction had all the hallmarks of mortgage fraud and deep involvement by the Respondent. He had no satisfactory evidence that the full price had been paid as told to the mortgagee. The solicitor on the other side had not confirmed that their client had received the

money. Mr Dutton then referred the Tribunal to the transaction involving 6 L Road, where the deposit has been described as an "allowance" of £14,000 in the contract. There was no evidence that this money had gone through the Respondent's account. The lender KM set out in its General Mortgage Conditions Booklet (England and Wales) at paragraph 25.2:

> "2 its purchase price must not in any way be reduced (for example, because the vendor is providing a cashback or some other collateral advantage or because fixtures and fittings or furnishings are included or a reduction is negotiated) nor must any part of it be left outstanding on completion. We must be told if there is an arrangement like this;
>
> 3 the full purchase price must pass through a Solicitor's client account;
>
> 4 you must provide the balance of any purchase money from your own resources. The balance must not be provided from any other loan, whether secured on the Property or not, nor must it be provided by anyone else in return for any interest in the Property;…"

62.6 It was submitted that allegations 1.2 and 1.3 were very serious matters and that all of the evidence pointed to dishonesty rather than simple carelessness. There were so many extraordinary features including reliance on burglaries to explain away the missing files regarding fraudulent transactions. There was no written record of warnings to lenders and no record at the lenders. The Respondent had been in breach of Rule 1 of the SCC. He accepted that he took money that he controlled for the purchase of 10 H Close and misapplied it to 25 C House, a transaction which was not in the name of the purchaser CM, but of his sister and that he took excess proceeds intended for use by BM the mortgagee in the 10 H Close transaction and ended up paying cash sums to Mr CM a fraudster. Regarding the Respondent's admissions in the course of evidence, he knew at some point in the weeks after March or April 2006 that he had misapplied funds. He decided to embark on a course of improper conduct which was on any view dishonest. He failed to notify BM that he had misapplied and used their funds to give cash to CM, and he still didn't tell BM and he left them with a document, the Certificate of Title that would lead them to believe that 10 H Close had completed when he was scrabbling around hoping monies would come in that he could apply to 10 H Close so he could complete it. He could not even tell the Tribunal where that money came from. If it came from another lender than BM, then the Respondent had misapplied that other lender's money. It was submitted that his position became worse because of his evidence. If he had acted honestly he would have told BM that he had misapplied the money. He would have given a written explanation and they would have sought to secure their surplus funds. The only explanation was that he had been dishonest. Mr Dutton referred the Tribunal to the Applicant's Further and Better Particulars in support of the Rule 5 Statement. He asked the Tribunal to draw the inference that the Respondent was dishonest and submitted that his evidence before the Tribunal, his manner of answering and the answers he had given, were so unsatisfactory because the Respondent was trying to persuade the Tribunal he was not dishonest when he was.

Submissions on behalf of the Respondent regarding allegations 1.2 and 1.3

62.7 The Respondent said that he had never had much experience of conveyancing when he arrived in the UK in August 2005 but that he had begun conveyancing work and had been on some courses. He also had a mentor, an experienced solicitor Mr K and when he had problems he referred to Mr K for assistance. The Respondent denied in giving evidence that he had acted dishonestly but said that he had probably made some mistakes. So far as he was concerned CEE was a client for whom he acted between 2006 and 2007. He had not known at that time that CEE was a fraudster and had only learned that in 2009 or so. There had been burglaries in 2006 and 2008. As to telling the IO initially that there had been a burglary in 2007, it was because it was not easy for him to recollect immediately, but he had eventually confirmed 2006. In respect of the recorded interview with the IO and the senior IO the Respondent had not had advance notice. He had thought that the purpose of the visit was to convey to him the results of the investigation. He did not have any documents before him during the interview but relied on his memory. He was asked about things which had happened four or five years previously. The reason why he said one thing in the interview and something slightly different later in documents and his statement was that after the interview he had had time to think back.

62.8 In respect of the properties 10 H Close and 25 C House the Respondent confirmed that money meant for one property had gone to the purchase of another and vice versa. His expert bookkeeper had a duty to inform him when completion monies came in and when money came from lenders. He had not realised at the time that he was applying the money for 10 H Close to 25 C House. As to the fact that he had said that he had other transactions going on at the time and he got confused and that he now said that the bookkeeper said funding was available and he applied it to the wrong transaction, what had happened was a genuine mistake and not dishonest. It arose out of a misunderstanding between himself and his bookkeeper. He had realised a few weeks afterwards. When it was put to him in examination in chief that he had done nothing to correct it and did not contact the lender, the Respondent said that at the time he knew he was going to fix the error. He was waiting for the other mortgage money. He could not make good £297,000 immediately. No one had lost anything, he had purchased the properties concerned and registered them but late because of the initial mistake. He had thought that telling the lender would aggravate things. In respect of the monies paid to Mr CEE and Ms JC out of the mortgage advance, the Respondent referred to his stolen files and said that no doubt there was an understanding or communication between Ms JC and himself regarding the mortgage transaction and that the balance of the sum was obviously due to the borrower client or on her instructions. He had made payment to her brother and then realised it was a mistake and asked for the money to be returned and it was. On completion, on the client's instructions he had to pay the residual balance to her brother and to his client Ms JC. The Respondent confirmed his view that once the lender had provided its money to the borrower it became the borrower's money. Where monies came from the lender and were not all used for the purchase, they should go to the person taking out the mortgage because the monies had been lent secured. In respect of the transactions shown in the ledger, the Respondent emphasised that he had attempted to reconstruct what had happened as he had been asked to do. He also maintained that even at 8 May 2006 he had not known that he had applied the wrong funds. If he had known he wouldn't have paid money to CEE. The monies paid to Ms JC on 13 June 2006 were

the balance of her account. The monies paid to CEE were following her instructions. He was bound to do that and he never knew he was using lender's money. It was also his understanding that mortgage companies lent mortgages of 100% or more. Thus, if her mortgage had come through, it could have been more than £263,000 but he did not have the files. Her mortgage could have been 100% or 105% or she could have been selling and buying at the same time when there would be money left over.

62.9 In cross-examination the Respondent said that he knew that Ms JC would be able to service the mortgage because she was getting another borrowing from a different lender. In respect of the fact that 25 C House was purchased for £263,000 as against the mortgage of £297,000, the Respondent denied that at the time of the transaction he knew that he was paying £30,000 more into the client ledger than the house was being purchased for, notwithstanding the various documents on file. The Respondent said he relied on the bookkeeper who confirmed funds had come. There had been some confusion. If he had completed the other property he would still have had some residue. He would have known about the problem if he had exchanged and completed on another date but this was a simultaneous exchange and completion. The problem was that 10 H Close had not completed. When it was put to the Respondent in cross-examination that he knew that he had to explain to the BM what he'd done, he responded 'No' because when he knew it was not possible for him to rectify. He agreed that he had made a choice not to tell BM that he had misapplied their money but denied this was dishonest because other monies were coming in. The Respondent said that he didn't know that it would be 10 months. During that period he was chasing the monies. If he did not correct the error he would tell the lender but it took a long time and no one lost money. In terms of where the money came from for the 10 H Close transaction, he could not now recall which lender it was. He said that he had been negligent regarding the transaction and had tried to get documents to find out where the money had come from. He agreed that the only entity which had lent to CM for 10 H Close was BM. He agreed that he was now telling the Tribunal that he had used someone else's money for 10 H Close to rectify his misapplication of BM funds 10 months earlier. He knew that he had to act in the best interests of BM and that was what he did in the long run. When it was put to him that he had kept quiet in the hope that BM would not find out, he said that he didn't have monies in his reach to rectify and he agreed it was right that he knew that he was not going to tell them in the hope that he'd rectify and they'd not find out. The Respondent agreed that the only lender for 10 H Close was BM and he had not used their money for it. The monies had been crossing. He could use both mortgages from different lenders and said that he had protected their interests. He was sorry that it had happened and it had not happened since. He agreed that BM did not have security for their money in respect of 10 H Close before it completed. He agreed that the certificate of title before the Tribunal [received by BM on 28 April 2006] showed 4 May 2006 as the completion date for 10 H Close. He regarded that completion date as a mere formality and but this did not necessarily mean that he misled the lender. He agreed that the certificate of title led BM to believe that the completion would normally take place on 4 May 2006.

62.10 In respect of CEE's use of aliases, the Respondent testified that he had seen CEE's passport and that he had mortgage offers in the names on it. The names came abbreviated but they featured on his identification. By reference to his own name the Respondent gave examples of the abbreviation of long African names so that they would be easier to pronounce. He had telephoned the lenders and the mortgage broker

that had referred CEE to him, regarding the different formulations of his name. In cross-examination the Respondent confirmed that he was familiar with the Green Card. When referred to the examples of unusual features on the Card, he agreed that CEE had been buying another property and would have had current mortgages on two or more properties; he denied that CEE used aliases but said that he used names which appeared on his passport. It was put to him that the name CM was not on his passport. He considered that it was. He took the view that the lender would have seen CEE's passport in processing the mortgage offer and it was common knowledge [that this happened] if you applied for a mortgage. A copy of CEE's passport had been certified by the mortgage brokers which had made him think the lenders had seen it. He agreed that three names had been involved but that in any event, he did inform the lenders. He was asked why, if he thought there was nothing untoward regarding the use of differing names because these were merely abbreviations, that he had felt any need to notify the lender. The Respondent replied that this was because all the names were from the passport but were not on the mortgage offer. He said that he had informed the mortgage broker and the building society by telephone and had spoken to a Mr R at an office in Wolverhampton. He clarified that he would call if they (the building society) asked him to confirm the name and he would confirm the name Mr Eg or Mr CM. In respect of the fact that during the recorded interview he had appeared to say that he had both given oral confirmation and had written, the Respondent said that it was difficult to prove now that he had written as he did not have the file. It was difficult for him to say why the building society did not produce documents to show that he had ever written to tell them that CEE was known by different names. He insisted that he always telephoned every time he sent a certificate of title to lenders. He agreed that there had been nothing to stop him writing a letter to the lenders regarding the identity of Mr CEE rather than relying on telephone calls.

62.11 In respect of the other transactions, the Respondent testified that regarding 323 BO he had confirmation from the solicitors on the other side that they had received the deposit monies. Their letter was like an undertaking. In respect of 31 DH Lane, he had informed the lender by telephone. For some reason he was sent the application form from the mortgage brokers. He confirmed that he had seen a document that disclosed the relationship between Mrs and Ms R as mother and daughter. He said that the only time that he would tell the lender regarding relationships was if he acted for the buyer and seller at the same time and so he had no obligation to inform the lender. In respect of the different addresses given for Ms PR, the Respondent said that the agreement for the sale was drawn up by the seller's solicitors. He maintained that the difference between the mortgage advance and the purchase price in that transaction had been made up by a direct payment and that his defence was the same as elsewhere; he had been informed by the other solicitor. He also maintained that he had informed the lenders by telephone but could not remember the name of the person to whom he spoke. Mr Dutton accepted that there was an assertion of a deposit of £21,250 in the agreement prepared by the solicitors acting for Mrs R, but suggested that there was no evidence of it being paid and in any event that was not the correct amount. The Respondent said that he had no information on the file as to where it came from. He denied in respect of this and the 323 BO property that he had been dishonest. In respect of 6 L Road, the Respondent had been informed by MS solicitors that the deposit had been paid following a debt owed by the seller to the buyer and he had seen that letter like an undertaking. He believed that he had control because it was coming from the solicitors. He had telephoned on this matter as well. There was

no record in writing of that because he had an undertaking from MS solicitors that it had been paid. He denied that his view that he had control of all the purchase monies if he had confirmation from the solicitor on the other side that they had control, was a tortuous attempt to explain away his lack of control.

62.12 Having regard to the hallmarks of mortgage fraud, when engaged in the conveyancing the Respondent had never thought of mortgage fraud, for his understanding of what looked like a mortgage fraud was that it would result in some kind of investigation of money not applied to the property at all; or where following it [a fraud] there was some kind of investigation. In this case there had been no form of investigation or anything untoward.

62.13 As to the burglaries, the Respondent could not say whether burglars had any reason to target Ms JC's file. They had taken everything they could lay their hands on. In respect of the burglary in 2006, the Respondent was referred to the fact that there had been no correspondence to warn clients that their files had gone missing. The Respondent said that there had been no prejudice to clients; Mr CEE and Ms JC's matters had completed; BM's charge was secured and it had had title documents at completion. It was pointed out that BM could not have had documents relating to 10 H Close but only the putative certificate of title, as the property had not completed. The Respondent replied that there had been two burglaries so he couldn't tell which files [had gone missing]. He accepted that he should have written to clients where they had live files at the time of the burglaries. In respect of the landlord's letter about the second burglary and its lack of any reference to files being stolen from the office of the Respondent, he said that the landlord would not know. The Respondent refuted the suggestion that there might have been a burglary but that he had used it as an excuse for there being no proper explanation for what had happened on files.

62.14 Mr McGhee submitted that the Respondent accepted broadly and specifically that he had acted negligently with regard to the misapplication of funds for 10 H Close to 25 C House. Similarly regarding the use of names by Mr CEE, it was his understanding that he had discharged his duty and that the use of names had been no cause for concern. Mr McGhee submitted that it was difficult to be sure if the names were used as aliases in the true sense meant by the Applicant, so that failure to discharge the Respondent's duty had occurred and therefore he was dishonest. Regarding the other conveyancing transactions, Mr McGhee submitted that the Respondent could not be without control of funds simply by virtue of the existence of deposits or allowances. All solicitors would be at risk of breach of the rules if a legitimate deposit or other arrangement was in place or where solicitors took over at a later stage in the transaction and such payments were already in place. Mr McGhee also reminded the Tribunal that the inference which the Applicant wished to draw was that the transactions bore the hallmarks of fraud but there was no evidence that they were frauds. On the Respondent's account he was aware of the Green Card and when looked at, it was inescapable that a number of matters such as deposits being in place, did potentially lead to a flag being raised. The Respondent's evidence was clear that he felt he had sufficient information to reassure himself that there was no matter for concern, including letters from solicitors representing to him that a sum of money was in existence. The question was if one solicitor was told by another that he had evidence of a sum of money paid as deposit, did it include control of the monies.

62.15 Mr McGhee submitted that the inference of dishonesty in this case boiled down to the view that it was too extraordinary to be anything else. Clearly the evidence disclosed that the Respondent's firm was run far from well and in the Respondent there was someone who made some colossal mistakes. There was no evidence that he stood to gain in any sense from conducting business in this way. The absence of evidence was important in drawing an inference as to whether he had been dishonest or incompetent. There was no suggestion that any of CEE's frauds had anything to do with the Respondent. When the Tribunal had to decide what the Respondent's state of mind was when the work was carried out, it should bear in mind that he could not have known what CEE truly was. Having regard to drawing an inference about the burglaries, it was submitted that it was disingenuous to the Respondent. The burden of proof was on the Applicant. If the Applicant had any confidence that the burglaries were a smokescreen, it could have contacted the police to see if the crime report related to it or not. It was not right for the Applicant to suggest that because the report form did not specifically relate to the burglary and the listed items taken, that the only way the situation could be treated was that the report could be from anything. Having regard to the two limbs of the test for dishonesty, Mr McGhee submitted that while it was forgivable to look and say a lot of reasonable honest people would say this was dishonest but regarding the subjective element of the test, you would need to be sure that the Respondent knew that what he was doing was dishonest. The evidence that he had given, although far from a perfect exposition of what went right and wrong was far from proving that he knew that all was wrong and that he was dishonest. Almost as regrettable a conclusion was that he was very bad at doing his job. If the Tribunal had that doubt, it could not be sure that there had been dishonesty without a view to gain. Mr McGhee prayed in aid the evidence of the Respondent's character. Not all, but some of the testimonials had been written in clear knowledge of the proceedings before the Tribunal. An attempt had been made to make a point regarding inconsistencies between the Respondent's interview and subsequent statements and his evidence. Mr McGhee submitted that it would be extraordinary if there were 100% consistency. It would be rare and a cause for suspicion. At the interview the Respondent had been recounting details from long ago without papers to assist him. There was broad consistency in what he said; he was not very good at what he did, he had got in over his head and had made some mistakes but was not dishonest. It was submitted that the Applicant had not discharged the burden of proof.

Tribunal's findings in respect of allegation 1.2

63. In respect of allegation 1.2, the Tribunal had carefully considered the evidence, the submissions on behalf of the Applicant and Respondent and heard the evidence of the IO and the Respondent. There was no significant dispute about the facts of any of the conveyancing transactions which gave rise to allegations 1.2 and 1.3.

63.1 Having regard to the transactions involving Mr CEE the Tribunal found that the Respondent had failed to report material facts to lender clients and failed to comply with the undertakings given in the certificate of title at Appendix 25.01 of the Guide to the Professional Conduct of Solicitors. He had failed to advise lender clients that Mr CEE was using different names in property transactions and mortgage applications, when this was clearly something that the lender would wish to know about and if it had, would almost certainly have withdrawn from the transactions. The Tribunal had considered it to be significant that when Ms JC was substituted for

"CM" as the purchaser of 25 C House, the Respondent had notified the seller's solicitors because it found that he had no choice if the transaction was to go through, but he chose not to inform the lender. It was satisfied beyond reasonable doubt based on the evidence which the Applicant had obtained from the building society BM, that it had not been notified either in writing or by telephone of the fact that while CEE was applying for a loan in one name he also made use of others. The Tribunal did not consider the fact that some of these other names consisted of elements of his full name shown on his passport, relieved the Respondent of his duty to the lender. The Respondent appeared to have admitted in cross-examination that the content of any telephone calls was only to confirm the name on the certificate of title. The Tribunal also rejected the Respondent's rationale for paying surplus monies out of the misapplied mortgage advance to Mr CEE and Ms JC. These monies had continued to belong to the lender client and did not pass to the borrower. They should have been returned if unused in the transaction for which they had been provided. The Tribunal considered that the Respondent had ignored the best interests of his lender client and preferred those of Mr CEE and Ms JC.

63.2 The Tribunal found that the Respondent had not consciously acted wrongly at the time he used the mortgage advance provided for the property 10 H Close, to purchase another property 25 C House. The Tribunal accepted that he had made a mistake. However as soon as he discovered the error he should have notified his lender client BM, so that it could take steps to protect its position and instruct other solicitors but he had not done so. Instead he chose to protect his own back. In respect of the SPR, the Tribunal found that the Respondent was in breach of Rule 1(a) in respect of his independence or integrity in his decision not to report his error to his lender client and in failing to comply with undertakings given in the Certificate of Title. He was in breach of Rule 1(c) because he had completely ignored his duty to act in the best interests of his lender clients; he was also in breach of Rule 1(d) regarding the good repute of the solicitor or solicitor's profession and Rule 1(e) regarding the solicitor's proper standard of work.

63.3 In respect of the other conveyancing transactions, the Tribunal found that the Respondent had again failed to report material facts to lender clients. In two cases SB to BB and Mrs R to Ms PR, there were issues about the family relationship between buyer and seller and in the case of Ms PR, the Tribunal found that the Respondent was aware that she resided at the property she was purchasing and not at the address 7 W Way. There was also the issue about the Respondent's control of the purchase monies. The Tribunal rejected his argument that information provided either on an agreement for sale or in correspondence or other communications by the other side's solicitor about the sum making up the difference between the sale/purchase price and the mortgage advance, however described, constituted any form of "undertaking" upon which he could rely. He had conduct of the transactions and acted for the lender client. The Tribunal found as a fact that he did not have full control over the purchase monies and had failed to inform his lender clients that that was so.

63.4 Regarding the allegation of dishonesty in respect of allegation 1.2, the Tribunal found in respect of the misapplication of the purchase monies for 10 H Close to 25C House, that the Respondent had made a mistake. It did not find that he had been dishonest at that stage. However the Tribunal found that after the error came to light the Respondent deliberately misled the building society BM, by allowing it to think that

completion of the purchase of 10 H Close had taken place as scheduled and that its charge was protected. He seemed to have kept everything to himself because to say something would have landed him in serious trouble. The Respondent had maintained this conduct for some 10 months. The Tribunal was particularly concerned that the Respondent had allowed the incorrect Certificate of Title to stand. The Tribunal considered that the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people and having heard his admissions about his conduct during his evidence, the Tribunal considered that the Respondent has been aware that by those standards he was acting dishonestly. The Tribunal had not found it necessary to attempt to determine whether the burglaries which had been said to have taken place at both the Respondent's firm and at his accountants were genuine, nor did it find it necessary to determine whether Mr CH was another alias of Mr CEE. The Tribunal found allegation 1.2 to have been proven with dishonesty to the higher standard of proof that is beyond reasonable doubt in respect of the Respondent's decision to conceal from his lender client that he had misapplied the mortgage advance for 10 H Close to 25 C House. The Tribunal considered that while the payments to Mr CEE and Ms JC were unacceptable for the reasons set out in respect of allegation 1.3 below, dishonesty had not been proved in respect of them.

Tribunal's findings in respect of allegation 1.3

64. In evidence the Respondent had said that he was aware of the contents of the Green Warning Card against mortgage fraud but if this was the case, in his practice he had clearly ignored it. The Tribunal agreed with the submission on behalf of the Applicant, that many of the transactions it had heard about, fell clearly into the indicators on the Green Card, for example the unusual nature of various transactions including Mr CEE's use of aliases; his being involved in current mortgages on two or more properties; the unusual instructions from Ms JC to remit monies to Mr CEE from the surplus on the misapplied mortgage advance; and the deposits being paid direct if at all in the cases of the two purchases by Mr BB, that by Ms PR and by Mr CEE in respect of 25 C House. There were other unusual features such as the last minute change of purchaser from Mr "CM" to Ms JC regarding 25 C House and Ms PR's use of two addresses in the purchase of 31 DH Lane, one of which was not where she lived. The Respondent's actions were in breach of Rule 1(a) (independence or integrity); Rule 1(c) (the best interests of his lender clients); and Rule 1(d) (the good repute of the solicitor or the solicitor's profession). However the Tribunal was not satisfied to the higher standard that is beyond reasonable doubt, that the Respondent's conduct was dishonest. It did not consider that it had seen any evidence to support that contention. Accordingly it found allegation 1.3 to have been proved but without dishonesty.

65. **Allegation 1.4: That he acted in breach of Rules 1.01, 1.02, 1.03, and 1.06 of the Solicitors Code of Conduct (SCC) in that he made false statements on an insurance proposal form in respect of his firm's Professional Indemnity Insurance.**

65.1 On behalf of the Applicant, Mr Dutton referred the Tribunal to the professional indemnity insurance proposal form which the Respondent accepted he had signed and sent to UIB UK on 2 October 2009 by which time the Respondent was already under investigation by the Applicant, had met the IO and had also been arrested by the

police and released on bail pending further investigation. In response to the question at section 7 regarding investigation by the Applicant, the Respondent had answered 'No'. The Tribunal's attention was also drawn to the disclosure notice in bold on the form and it was submitted that oversight or forgetfulness did not explain the Respondent sending the document in completed as it had been. The Respondent described his arrest as a precautionary measure while still under investigation by the Applicant and Mr Dutton submitted that that did not hold water. The Respondent knew that he had to declare these material facts to his insurers and it was submitted that his answers had been untruthful and therefore dishonest. The Applicant did not accept that the Respondent's explanation that he had sent the form to brokers in July 2009 and did not check his answers before signing it in October 2009 was correct. It was accepted that he may have been checking with brokers in July 2009 but it was submitted that he would not have signed the form in October 2009 unless he was giving answers he intended the insurers to believe were accurate at that date. The details on the form showed that he must have had regard to what he was answering. He had recorded at '14. Risk Management Section' that cash book checks were carried out daily; bank reconciliations five weekly; that he had written work instructions or checklists for the services provided; and had "A CHECKLIST OF REVIEW AND THIS IS DONE BY GOING THROUGH THE SAME, ENSURING ID CHECKS, RELEVANT ENTRY OF DATES CENTRALLY ETC." In answer to Question 14 k) "Are all relevant telephone conversations the subject of a note on the file?" The Respondent had answered 'Yes'. In response to Question 14 l) "Please describe the diary system in operation (including back-up procedures)." He had answered "CENTRAL DIARY, REGISTER OF CLIENTS AND DATES DIARY. BACK-UPS ON COMPUTER". His earlier assertion that he had faxed the form back to the broker fell apart in evidence. The faxed document consisted of eight pages and the document sent consisted of nine. More significantly there were no fax notations on the document submitted. The Respondent then said he had provided the proposal form in hard copy, making an adjustment to his case as he had gone along. The proposal form had details to the year end and was signed on 2 October, the date of the Respondent's year end. It contained details regarding the practice which all looked contemporaneous.

65.2 The Respondent testified that he had sent the insurance proposal to his brokers in July 2009 and it was accurate at the time. He confirmed that he had sent a few applications to several brokers all in July, as evidenced by the fax sheets in his bundle. The Respondent referred to a fax to Ms IS at brokers UIB UK dated 6 July 2009 and confirmed that this was the one that the Tribunal was concerned with. When it came back, he did sign it without checking its truth again. Obviously it was inaccurate after it was sent back. He took it for granted and signed and posted it. He had been arrested shortly after sending it off on 6 July. He was then bailed to return to the police station. No action had been taken against him and he had informed the brokers in January or February 2010. He had not added to the form that he had been arrested in July because it said nothing regarding arrests, just if there had been a criminal judgement against you, or anything else that would influence insurers. As to the final declaration in bold on the form, at the time he had known that he had done nothing wrong at all. The arrest was precautionary. He was not part of any fraud. He was innocent from the start and there was no need to inform the insurance company. He had informed the brokers of the investigation by the Applicant within the first two months of 2010. It didn't change anything at all. It never affected the premium; he had not been declined [for insurance] and had got insurance for 2009, 2010, 2011 and to date. He would

have thought that if it was material he wouldn't have had insurance. He regretted that he had never informed them at the time but he had not been dishonest.

65.3 In cross-examination the Respondent confirmed that he received the insurance proposal form which was before the Tribunal back in the form of a fax from the brokers and that this was the document which had been provided to them in July 2009 with the fax in his bundle. He then said that it must have been sent back by post as his fax of 6 July referred to '8' pages and this was nine, but a proposal had been sent to them. When it was pointed out to the Respondent that the document before the Tribunal had no fax notations, the Respondent said that the hard copy had been sent to the brokers and agreed that they had sent hard copy back. He repeated that before signing the proposal in October 2009 he had never read through it. He confirmed that he knew that he had a duty to disclose all material matters and must be truthful. He agreed that Mr V was listed as a partner although he had resigned by October 2009. In respect of when the document had been completed, it was put to the Respondent that the year-end figure for gross fee income for 2009 was shown as £62,000 and not said to be an estimate and the only estimated figure was that for 2010 at £65,000. The Respondent agreed that as his year end was 2 October, he would have known a precise figure for 2009 when sending in the form. He said he wondered how he could account for the earlier fax. He was also referred to the apportionment of work between the different areas of his practice for the last financial year, and he agreed that no one suggested that these were estimated. In respect of the way he had completed the Risk Management Section of the form, it was put to him that he couldn't answer these questions in this way until he had taken corrective measures as a result of the investigation. The Respondent said that he had made a mistake at question 14 b) because the firm did have a time recording system but he completed that it did not, and at 14 d) about how often checks were carried out on cash book entries when he said that this was daily. The Respondent said that there were obvious mistakes when he had submitted the form in October.

Tribunal's findings in respect of allegation 1.4

66. The Tribunal had carefully considered the submissions on behalf of the Applicant and the Respondent, the evidence and the oral evidence of the IO and the Respondent. It had noted that his account of the preparation of the form and its submission to brokers had varied between his interview and his Rule 14 Statement, and his evidence before the Tribunal. In oral evidence he had changed his account about the way the form had passed between him and the brokers. It had also been clear from his answers in cross-examination that the form submitted dated 2 October 2009 contained information, not qualified by any statement that it was based on estimates, which could only have been available to him at his year end, the same date as the form. The Tribunal found the Respondent's evidence in respect of this allegation to lack credibility. The Tribunal found as fact that elements at least, of the form had been completed at the time the signed form was submitted, rather than it being signed without being checked at all, as the Respondent had stated. It rejected the Respondent's explanation that factors such as the Applicant's investigation and his own arrest by the police which he described as precautionary, were not material facts and therefore that he had no need to advise the insurers. The Tribunal was satisfied that the Respondent had deliberately omitted these facts when he completed the form signed 2 October 2009. The Tribunal found that the Respondent's conduct in making false statements on the insurance proposal

form constituted a breach of Rule 1.01 (upholding the rule of law and the proper administration of justice), Rule 1.02 (integrity), and Rule 1.06 (public confidence) of the SCC. The allegation contained a reference to a Rule 1.03 (independence), after careful consideration the Tribunal was not satisfied that the Respondent's conduct constituted a breach of this rule and to that extent only, the allegation was not found proved. Having regard to the allegation of dishonesty, the Tribunal was satisfied to the higher standard of proof that is beyond reasonable doubt that the Respondent had falsified the professional indemnity insurance proposal form dated 2 October 2009 and that the Respondent had acted dishonestly in respect of the form by the ordinary standards of reasonable and honest people and had been himself aware that by those standards he was acting dishonestly. Accordingly the Tribunal found allegation 1.4 to have been proved with dishonesty.

67. **Allegation 1.5: That he acted in breach of Rules 1(a) and (d) SPR and Rules 1.02 and 1.06 SCC in that he purported separately to be in partnership with Mr Raji Viswanath and Mr Prasant Chaudury when no real partnership agreement existed and these arrangements misled the public and clients.**

67.1 On behalf of the Applicant, Mr Dutton submitted that neither Mr V nor Mr C were in truth partners with the Respondent. His motive may have been so he could undertake lender type work, but it was not necessary for the Tribunal to determine his motive. In interview the Respondent had described Mr V as a "dormant partner", and then wrote on 24 September 2009 to the Applicant apologising for that explanation saying:

> "6) I apologise for describing Mr [V] as a "dormant Partner" as such was not the case. Since returning as Partner on 26th February 2009 Mr [V] has not handled any matters but he has been assisting especially in immigration and administrative matters when and if I require his help as we have very few matters to hand due to recession."

The evidence indicated that there was no partnership with Mr V. The assertion of a partnership at will did not correspond with the absence of almost any significant documentation with reference to Mr V in the practice itself. There was no partnership profit share or investment of assets. You would expect to see an agreement and arrangements for regular payment as a salaried partner. This did not have the appearance of partnership; Mr V was assisting from time to time. The position was even more stark when looking at Mr V's letter to the Applicant of 4 January 2011 at 5b): "During 26th of February 2009 to 1st of Sept (sic) 2009, I received a salary of £600 in total." This indicated that the partnership was not genuine.

67.2 Having regard to Mr C, who was said to have been a partner in 2010 after the investigation had got under way, the Tribunal's attention was drawn to his e-mails of 10 January 2011 to the Applicant which included:

> "b) I have not introduced any capital in this partnership
>
> c) I hardly received a share of fees generated
>
> d) Being a partner in this firm I also operate [A&T] Solicitors where I am a Principal

e) There was no written agreement. "

and

"He paid me two cheques of 400 and 380 only, since the day I have been incorporated as a partner with W&J Solicitors, he paid this amount of money with respect to the Immigration work"

67.3 Mr Dutton submitted that the Respondent was the principal in W&J Solicitors and his contention that there was a genuine partnership was an untruthful and dishonest one. There was no evidence of an agreement to share profits because there wasn't one. The two individuals had referred to receipt of, in one case one modest payment and the other had two. Even though it had been stated that there was a partnership at will, it was not a genuine one. It was the use of the names of individuals who worked at other firms to make it seem as if there was a partnership. It was submitted that it was appropriate to draw a conclusion of dishonesty. In terms of the test for dishonesty employed by the Tribunal; on the objective test once you acknowledged that the partnership was a sham and that the Respondent knew, then you arrived at the conclusion that he knew that it was dishonest and therefore the test was satisfied although it was not necessarily to establish dishonesty to establish that the rules had been breached. Mr Dutton referred to the test for dishonesty as set out in the cases of Bryant and Bench v Law Society [2007] EWHC 3043 (Admin) and Salisbury v Law Society [2008] EWCA Civ 1285. The Applicant accepted that the Tribunal would weigh up, that (according to his testimonials) the Respondent was a person of good character but the Applicant still submitted that he was guilty of dishonesty.

67.4 The Respondent testified that he had been engaged in a genuine partnership. Most of the correspondence with the Applicant had been through Mr V. He was jointly and severally liable and worked full time at the firm. He received a full salary of £1,000 per month. Unfortunately the Respondent did not have his books of account right now to show that. He had a caseload. He never said that he was not a partner and each time he resigned from the firm he informed the Applicant. The Respondent had described Mr V as a dormant partner regarding the period after [his return in] 2009. When he came back the second time he had not been able to raise anything regarding the client base and he was also a partner at L solicitors. The Respondent referred the Tribunal to his description of the partnership in his statement. He denied that he had been dishonest.

67.5 The Tribunal had carefully considered the history of the firm at the relevant time. There did not appear to be a dispute about the time periods during which Mr V and Mr C were at the firm. The Tribunal accepted that if there was a true partnership it could have operated as a partnership at will. In respect of Mr V's first period of work at the firm, 3 November 2005 to June 2008, the Tribunal was not satisfied to the higher standard of proof that is beyond reasonable doubt that the partnership between the Respondent and Mr V was a sham. However the Tribunal considered that the situation was quite different during his second period at the firm from February to October 2009. It had considered Mr V's own description of his role in his letter dated 4 January 2011. It did not consider

that his role which on the Respondent's own admission, was restricted to assisting with immigration and administrative matters when his help was required, was indicative of a partnership relationship. In respect of Mr C, he had only been connected with the firm from 20 January 2010 to 20 December 2010, all the while being sole principal of another firm and in respect of that period he had only received two payments totalling £780. The Tribunal was satisfied to the higher standard of proof that there was no evidence to show that Mr C had been a partner in the firm and that what had been claimed to be a partnership relationship was in fact a sham. In respect of these later periods of time when the Tribunal had found the partnership arrangements with Mr V and Mr C to be a sham, the SCC applied and the Tribunal found that the Respondent had been in breach of Rules 1.02 (integrity) and 1.06 (public confidence). However the Tribunal was not satisfied to the higher standard of proof that dishonesty had been established. While the Respondent had not in fact been in partnership during the latter period with Mr V and with Mr C not at all, the Tribunal could not discount based on his evidence that he had hoped that his relationship with them would somehow count as a partnership. Furthermore it did not consider that by the ordinary standards of reasonable and honest people that the Respondent's conduct in this matter had been dishonest. Accordingly the Tribunal found allegation 1.5 to have been proved in respect of the latter period of V's relationship with the firm and in respect of the Respondent's relationship with Mr C. However it did not find dishonesty proved.

Previous appearances before the Tribunal

68. None

Mitigation

69. On behalf of the Respondent, Mr McGhee accepted that striking off was an almost inevitable sanction where dishonesty had been found. He asked the Tribunal to consider whether it could see its way to avoid that sanction in the case of this Respondent, given that his dishonesty did not involve client money being mixed with his own and there was no suggestion of personal profiteering or that his dishonesty was motivated by gain, especially regarding allegation 1.2 where he had covered up an originally honest mistake. He referred the Tribunal to guidance in the Solicitors Handbook 2011 and reference to cases where the public interest would be served by suspension and thereafter controls being imposed on the individual. Mr McGhee submitted that the Respondent's failings had certainly been out of character based on the testimonials which were before the Tribunal. He submitted that it would be a merciful approach in the case of a previously honest person who had done some strange and irrational things in so far as allegations 1.2 and 1.4 were concerned, in circumstances of acute stress. Mr McGhee accepted that there was no direct evidence of stress but in respect of allegation 1.2 the Respondent had made a mistake and then panicked. It could be inferred that he had chosen the wrong course of action regarding the misapplied money. The Tribunal was asked to take into account that he was under arrest at the time of the facts giving rise to allegation 1.4 and not thinking straight. [Ironically] if he had been truthful regarding the insurance proposal form, as his arrest had led nowhere, his insurance was unaffected. Mr McGhee

accepted that not to strike off the Respondent would be an exceptional course to take, but asked the Tribunal that taking everything into account and regarding what he described as the limited findings of dishonesty to find that the Respondent fell into that category.

Sanction

70. The Tribunal was obliged to Mr McGhee for his helpful submissions regarding mitigation but the Respondent had had two allegations of dishonesty found proved against him; that relating to his deception of the building society had been sustained over a period of 10 months and the other was in respect of a professional indemnity insurance proposal form which was also a serious matter, the Tribunal did not consider that his case fell into what had been described in the case of Sharma [2010] EWHC 2022 (Admin)] as "a small residual category where striking off will be a disproportionate sentence in all the circumstances…" Accordingly it would order that the Respondent be struck off the Roll of solicitors.

Costs

71. On behalf of the Applicant, Ms Wingfield advised the Tribunal that a schedule of costs totalling £63,347.32 had been served on the Respondent. She submitted that the case had warranted the level of representation which the Applicant had used.

72. On behalf of the Respondent, Mr McGhee said that a substantial proportion of the bill, £16,500 excluding VAT, related to fees for Leading Counsel who had been instructed the previous Friday or on Monday of this week. The submission of the Respondent's bundle had had an impact on the decision to instruct Leading Counsel. On analysis of what the case was about and whether it became more or less complex when the bundle was served, Mr McGhee submitted that the Rule 14 Statement had been presaged by previous statements and the interviews. It nuanced the case and did not so substantially alter it, that very senior counsel should be instructed at that cost. Mr McGhee asked the Tribunal not to visit the entire cost of Leading Counsel on the Respondent. He also reminded the Tribunal that not all the allegations of dishonesty had been proved. He expressed some surprise at the amount of the Forensic Investigator's costs in the region of £29,000. He accepted that it had been necessary to carry out a considerable amount of work at the firm and elsewhere and that it was necessary for the IO to undertake some follow-up. Mr McGhee invited the Tribunal to consider in making an award of costs against the Respondent, his means and to reduce the amount. The firm had made a loss of £1,792 according to the Respondent's latest tax return and because of his low income no income tax had been due. He had a wife and four children all of whom were dependent. He used his credit card as income up to a maximum spend of £5,000 and had available his latest statement dated 11 February. Mr McGhee also asked that the order be made not enforceable without the leave of the Tribunal.

73. On behalf of the Applicant, Ms Wingfield informed the Tribunal that she would prefer summary assessment rather than an order for detailed assessment and

accepted that if summary assessment were carried out it might not be in the full sum sought. She understood that the firm had recently taken on two new partners and acquired a new set of offices. She did not know what impact that would have on the Respondent's financial position.

74. The Tribunal summarily assessed the costs at £40,000 inclusive of VAT but having regard to the representations which had been made; it ordered that they should not be enforced without leave of the Tribunal.

Statement of Full Order

75. The Tribunal Ordered that the Respondent Ogbondah Nkem Omodu, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £40,000.00 such sum not to be enforced without leave of the Tribunal.

Dated this 14th day of March 2012
On behalf of the Tribunal

R B Bamford
Chairman