# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10795-2011

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

AURANG KHATTAK First Respondent

and

[SECOND RESPONDENT] – NAME REDACTED Second Respondent

and

SHANE ZEB KHATTAK Third Respondent

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Before:
Mr J. N. Barnecutt (in the chair)
Mrs E. Stanley
Mrs V. Murray-Chandra

Date of Hearing: 24th and 25th July 2012

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**Appearances**

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

The First Respondent Aurang Khattak, was present and represented himself.

The Second Respondent was present and represented himself.

The Third Respondent Shane Zeb Khattak was present and represented himself.

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# JUDGMENT

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**Allegations**

1. The allegations against the First Respondent, Aurang Khattak on behalf of the Solicitors Regulation Authority ("SRA") in the Rules 5 and 8 Statement dated 1 August 2011 were as follows:

1.1 In breach of Rule 32(1) of the Solicitors Accounts Rules 1998 he failed to keep books of account properly written up at all times;

1.2 In breach of Rule 32(7) of the said Accounts Rules he failed to carry out reconciliations in accordance with the requirements thereof;

1.3 In breach of Rule 22 of the said Accounts Rules he withdrew money from client account in circumstances other than permitted by the said Rule;

1.4 He had breached Rule 1 of the Solicitors Code of Conduct 2007 in either or both of the following respects:

- he failed to act in the best interests of clients;
- he allowed his independence to be compromised;

1.5 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for either or both of the following:

- compliance with the duties of the principal to exercise appropriate supervision over all staff and ensure adequate supervision and direction of client matters;
- control of undertakings;

1.6 In breach of Rule 10.05 of the said Code he failed to fulfil an undertaking and/or in breach of Rule 1.02 of the said Code failed to act with integrity.

2. The allegations against the Second Respondent in the Rules 5 and 8 Statement dated 1 August 2011 were as follows:

2.1 [Withdrawn]

2.2 [Withdrawn]

3. The allegations against the Third Respondent Shane Zeb Khattak in the Rules 5 and 8 Statement dated 1 August 2011 were as follows:

3.1 He acted in conveyancing transactions notwithstanding they bore hallmarks of mortgage fraud;

3.2 He acted in transactions identified in the Rule 5 and 8 Statement in which mortgage monies were paid away to fictitious sellers' solicitors and thereby lost, having failed to make adequate checks that the firms were genuine;

3.3 Having been put on notice during the course of the investigation referred to below that in one transaction he had paid mortgage money to fictitious seller's solicitors he continued to conduct further such transactions;

3.4 The files he maintained contained inadequate or conflicting documentation and he was unable to explain his conduct to the SRA's Investigation Officers.

3.5 He failed to act in the best interests of lender clients by not informing them that buyer clients had paid deposits directly to sellers' solicitors;

3.6 When informed by solicitors acting for sellers that his buyer clients had paid them deposits direct, he failed to take any steps to verify the truth of this thereby failing in his duty to his lender clients;

3.7 He failed to ensure that lenders' mortgages were duly registered as first legal charges.

(Dishonesty was alleged against the Third Respondent in respect of allegations 3.1 to 3.7 above but withdrawn with the consent of the Tribunal, see below. It continued to be alleged that the Third Respondent was grossly reckless.)

The Applicant sought an order against the Third Respondent pursuant to section 43(1)(b) and (2) of the Solicitors Act 1974 as amended.

4. The allegations against the First Respondent, Aurang Khattak on behalf of the SRA in the Rule 7 Statement dated 15 December 2011 were as follows:

4.1 He had failed to pay the premium due for indemnity insurance for the indemnity year 2009-2010 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the SRA within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Rules 2009;

4.2 He had failed to pay the run-off premium within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.

5. The allegations against the First Respondent, Aurang Khattak on behalf of the SRA in the second Rule 7 Statement dated 12 January 2012 were as follows:

5.1 In breach of Rule 1 of the Solicitors Code of Conduct 2007 he failed to act with integrity (Rule 1.02); and/or

- behaved in a way that diminished the trust placed in him or the profession (Rule 1.06);

(An allegation of dishonesty was made in relation to the alleged breach of Rule 1.02 but withdrawn with the consent of the Tribunal, see below.)

5.2 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for:

- the control of undertakings; and/or

- compliance with the duties of a principal to exercise appropriate supervision over all staff and ensure adequate supervision and direction of client matters;

5.3 In breach of Rule 10.05 of the said Code he failed to fulfil undertakings dated 25 January 2010, and 9 and 10 February 2010 (or any of them);

5.4 In breach of Rule 20.05 of the said Code he failed to deal with the SRA in an open prompt and cooperative way.

6. The allegations against the First Respondent, Aurang Khattak and the Second Respondent on behalf of the SRA in the third Rule 7 Statement dated 25 April 2012 were as follows:

6.1 They had failed to deliver their Accountant's report for the period 1 January 2009 to 31 December 2009, due on or before the 30 June 2010;

The further allegations against the First Respondent only were that:

6.2 He had failed to deliver his Accountant's report for the period 1 January 2010 to 29 January 2010 due on or before the 29 July 2010;

7. In breach of Rule 1.02 of the Code he wrote a false and misleading letter to the SRA dated 9 July 2010 in which he stated that Caffrey and Co ceased to hold or deal with client money on the 29 January 2010 whereas this was not so.

(An allegation of dishonesty was made in relation to the alleged breach of Rule 1.02 but withdrawn with the consent of the Tribunal, see below.)

**Documents**

8. The Tribunal reviewed all the documents including:

Applicant:

- Rules 5 and 8 Statement dated 1 August 2011 with exhibit;
- Rule 7 Statement dated 15 December 2011 with exhibit;
- Second Rule 7 Statement dated 12 January 2012 with exhibit;
- Third Rule 7 Statement dated 25 April 2012 with exhibit;
- Statement of Sumith Dabrera dated 23 January 2012 with exhibit with Notice to Admit dated 27 January 2012;
- Notice to Admit documents by letter addressed to the First Respondent dated 26 June 2012 in respect of the third Rule 7 Statement;
- Statement of Parbjit Sidhu dated 26 June 2012 with exhibit with Notice to Admit of even date;
- Applicant's Schedule of Costs.

First Respondent:

- None

Second Respondent:

- Unsigned undated witness statement of the Second Respondent for the interlocutory hearing on 16 February 2012;
- Police log report;
- Letter dated 3 February 2012 from the Second Respondent's GP;
- Report of Margaret Webb Certified Document Examiner dated 14 March 2012;
- Undated supplementary witness statement of the Second Respondent;
- Bundle of testimonials.

Third Respondent:

- Statement of the Third Respondent dated 13 February 2012 with accompanying Notice;
- Bundle of testimonials.

**Preliminary Issue**

9. Following discussions between the parties Mr Barton, for the Applicant, updated the Tribunal as follows:

Rules 5 and 8 Statement dated 1 August 2011:

- The First Respondent admitted allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6. Mr Barton reminded the Tribunal that dishonesty was not alleged in respect of any of these allegations;

- The Second Respondent had been a salaried partner in Caffrey & Co for a relatively short period of time. Allegations 2.1 and 2.2, which were against the Second Respondent only, were almost wholly reliant on the authentication of his signature on Certificates of Title. He had submitted evidence to the Tribunal from a Certified Document Examiner and the Applicant had not sought to challenge that evidence. Given that evidence, it was thought unlikely that the Tribunal could be sure that the signatures on the documents in question were his and accordingly the Applicant sought to withdraw the allegations against the Second Respondent set out at 2.1 and 2.2;

- The Third Respondent was an unadmitted person and the First Respondent's son. He would admit allegations 3.1 to 3.7 absent dishonesty and would agree to submit to an Order under section 43 of the Solicitors Act 1974 as amended. The Applicant regarded his conduct as serious but asked for permission to withdraw the dishonesty allegation against him.

Rule 7 Statement dated 15 December 2011:

- The First Respondent admitted allegations 4.1 concerning ARP premiums due for the 2009/2010 year and allegation 4.2 regarding run-off premiums.

The second Rule 7 Statement dated 12 January 2012:

- The First Respondent admitted allegations 5.1, 5.2, 5.3 and 5.4 absent dishonesty in allegation 5.1. The dishonesty allegation was discretely put in the context of a letter which he accepted that he wrote with a high degree of carelessness. The Applicant asked for leave to withdraw the dishonesty element of allegation 5.1.

The third Rule 7 Statement dated 25 April 2012:

- Both the First and Second Respondents admitted allegations 6.1 in respect of failure to submit their accountant's report for the period 1 January 2009 to 31 December 2009;

- The First Respondent admitted allegation 6.2 in respect of failure to deliver his accountant's report for the period 1 January 2010 to 29 January 2010;

- Allegation 7 concerned a letter written by the First Respondent dated 9 July 2010 in which he represented to the Applicant that Caffrey & Co had ceased to hold or deal with client money on 29 January 2010. Mr Barton advised the Tribunal that following the Directions Hearing in February 2012, the Applicant had obtained bank statements which showed that there were credit balances in the two client accounts and that held at HSBC showed significant movement after the closure of the firm. The First Respondent accepted that he wrote the letter but said, and the Applicant could not gainsay it, that he did not look at any bank statements. He said that he did not check the position and accepted information from the bookkeeper. The First Respondent admitted that he had been reckless. In order to succeed with the allegation of dishonesty the Applicant would have to show that the First Respondent positively knew at the time that what he said in the letter was wrong and that he did so dishonestly. Mr Barton was not able to satisfy the Tribunal to that standard and therefore sought permission to withdraw the dishonesty element of that particular allegation. The evidence of Mr Sumith Dabrera ("Mr SD") of the firm CS (see below) was accepted. He had taken a considerable interest in the proceedings and had come to give evidence. The evidence of the Intervention Officer Mr Sidhu was also accepted and no issue was taken on the other documentary evidence.

10. The Tribunal had heard the submissions by Mr Barton and confirmation by the First, Second and Third Respondents of their admissions. In view of the evidentiary difficulties in pursuing the allegations of dishonesty which Mr Barton had described, the Tribunal agreed that the allegations of dishonesty in respect of allegations 5.1 and 7 against the First Respondent and allegations 3.1 to 3.7 against the Third Respondent should be withdrawn. No allegations of dishonesty had been brought against the

Second Respondent. The Tribunal also accepted all the admissions made by the Respondents.

**Factual background**

11. The First Respondent was born in 1966 and admitted in 2000. His name remained on the Roll.

12. The Second Respondent was born in 1958 and admitted in 2002. His name remained on the Roll.

13. The Third Respondent (unadmitted) was born in 1987.

14. The First and Second Respondents practised in partnership as Caffrey and Company ("the firm") in Birmingham from 2005, moving premises within the city on 1 July 2009. The Second Respondent was a salaried partner between 1 April 2006 and 1 July 2009 when he became an assistant solicitor. The First Respondent was the owner of the equity throughout. The firm closed on 29 January 2010.

15. The Third Respondent was employed or remunerated by the First Respondent who was also his father. He was a student member of the Law Society.

16. On 5 May 2009 Mr Akram, a Senior Investigation Officer ("SIO") employed by the Applicant commenced an investigation of the books of account and other documents of the firm at its original address. The investigation was continued by Mr Howells accompanied by Mr Parmar and Mr Becconsall ("the IOs") at the subsequent address. A Forensic Investigation Report ("FI Report") was prepared dated 23 March 2010.

17. The First Respondent told Mr Akram that he had joined the firm in 2005 in partnership with his brother. He had invited the Second Respondent to become a salaried partner in January 2006 with effect from 1 April 2006.

<u>Allegations 1.1, 1.2, and 1.3 against the First Respondent only</u>

18. The firm's books of account were approximately three months out of date, and no client account reconciliations had been performed since the end of October 2009.

19. The First Respondent told Mr Howells in interview on 26 January 2010 that no entries had been made in the firm's accounting system since the end of October 2009.

20. There was an entity RB Ltd ("RB") which appeared to have brokered the sales of properties for those in financial difficulties in return for substantial fees. The firm was involved in a number of sales brokered by RB after the First Respondent began to accept referrals from RB which he told the SIO on 26 January 2010, had begun 18 months earlier (see under allegation 1.4 below). On about 29 May 2009, the firm was instructed to act for Mr and Mrs B in connection with their sale of a property in Birmingham brokered by RB. The First Respondent supervised the transaction.

21. On 3 July 2009, solicitors instructed by Mr and Mrs B sent a fax to the firm telling it not to undertake any further work in connection with the sale.

22. In breach of the instruction to stop acting, money was withdrawn from client account in breach of Rule 22 of the Solicitors Accounts Rules 1998 ("SARs") as follows:

| | |
|---|---|
| £13,439.34 | on 22 July 2009 accompanied by the narrative "fundir g corp" (sic) |
| £21,192.75 | on 6 August 2009 with the narrative "G E Money" |
| £1,026.94 | on 9 September 2009 in respect of the firm's fees. |

Allegation 1.4 against the First Respondent only

23. The First Respondent signed an unqualified Certificate of Title in relation to a property transaction in which Ms SK instructed the firm to purchase a property in Rednal, Birmingham in which RBS was the lender. The purchase price was given as £145,000 and the loan was £109,749. The purchase and mortgage completed on 28 April 2009 and the purchaser was said to have paid a deposit direct to the seller. The lender RBS, which also instructed the firm, was not informed despite the First Respondent having given an undertaking in the Certificate that he had complied with its instructions. The IO calculated the deposit at £36,280 and the matter file contained nothing to show that such a deposit had been paid.

24. The First Respondent introduced to the firm the five RB property transactions referred to in the FI Report. He stated that a package of documents would be received from RB at the commencement of the transaction. It contained pre-printed documents which were already signed by the seller; the agreement between RB and the seller was in what appeared to be a templated format with spaces left for manuscript completion of details including the sums respectively to be received by the purchaser out of the sale proceeds and those paid to RB, with the firm's name printed in the authority to pay section. The FI Report described two transactions in detail; for Mr and Mrs B and for Mr W. In the latter transaction the client was due to receive £25,897.67 from the sale proceeds but received nothing. Sale proceeds of £72,500 were received and £45,946.33 was paid to GE and £25,897.67 to RB. The IO saw nothing on the file providing evidence of Mr W's instructions clarifying his understanding of the position or of any enquiry by the firm into that aspect.

Allegation 1.5 against the First Respondent only

(The factual background to the allegations against the Third Respondent in the Rules 5 and 8 Statement was also relevant to this allegation against the First Respondent.)

25. The First Respondent was responsible for supervising compliance with the Solicitors Accounts Rules ("SARs"). He was absent during the period 1 November 2009 to 24 January 2010 when no entries were made in the firm's books of account and no reconciliations were carried out.

26. The First Respondent was responsible for supervising the conduct of eight property transactions referred to in the FI Report which were conducted variously by the Third Respondent a student, RBa an assistant solicitor, SS a trainee and MSS. All these transactions contained undertakings.

27. During interview, the Third Respondent said that he had been undertaking conveyancing work since 2007 and that his father the First Respondent and the Second Respondent were; "who I used to turn to if I needed any help" and that he had approached both of them in the past.

28. The First Respondent stated in interview on 26 January 2010 that he had responsibility (with the Second Respondent and a Mr R) for supervising the Third Respondent. He specifically supervised a transaction for Mr S in respect of property in Walsall as he was named in the retainer letter dated 29 July 2009 as the person having overall responsibility for the case. His supervision duties extended to undertakings given in Certificates of Title.

29. In every one of these transactions the mortgage advance exceeded the monies paid through client bank account as a result of deposits allegedly paid direct. No money other than the mortgage advance passed through client account; the matter files contained documents stating that substantial deposits has been paid by the purchaser directly to the seller's solicitors. Two such payments were said to have been £100,000 each and none was verified. The lender client Abbey denied having received any notification in the four of the eight matters in which it loaned funds. The Third Respondent's fees were considered very high for little work.

30. The vendor's solicitor appeared to have been fictitious in seven of the eight matters. Only one of the eight firms had a record with the Applicant. The similarity between the headed paper of two of the firms was striking. Solicitors had been warned to be alert to the possibility of fraudulent firms. The investigation identified six such firms acting in transactions over five months, with a pattern of repeated conduct by the Third Respondent.

31. The last seven transactions were conducted after the SIO commenced his investigation in May 2009 at which point he had raised the issue of dealing with fictitious firms of solicitors. The Third Respondent conducted five transactions after he had been interviewed by Mr Howell on 23 July 2009; for clients S, V, W and A in August 2009 and K in September 2009, all involving fictitious firms of solicitors with substantial direct payments.

32. The FI Report exemplified two transactions, Ms SK and Mr S, as shown by the matter files. They are referred to below in relation to the allegations against the Third Respondent. The First Respondent signed the Certificate of Title in the Ms SK transaction and on 26 January 2010, stated that he relied on a file review form when asked to sign Certificates.

33. In respect of the transaction for Mr S, on 7 September 2009 Nationwide sent a fax marked for the attention of the First Respondent stating that it had received information from third parties that completion of the transaction had not taken place, expressing concern about its money and asking for an explanation.

34. The First Respondent replied on 8 September 2009 to say the completion had taken place on 12 August, that funds had been transferred to ROA Legal Solicitors ("ROA") and that:

> "The documentation has been sent to the Land Registry for registration."

This was contrary to the position as set out by E Solicitors acting for Nationwide in their letter of 8 October 2009 which said that the monies had not been used to purchase the properties against which they had been advanced for client S and another client A, but instead money had been transferred to a bank account not connected to either vendor of the two properties in question. The documentary evidence pointed to a fraudulent transaction in the case of S in which Nationwide lost £425,500.

35. The First Respondent told the IOs that when it emerged that the seller's solicitors in the Ms SK transaction were fictitious, he sent a memorandum to all staff advising that they must check authenticity on the Applicant's website. He could not recall any further action being taken and he could not find a copy of the memorandum.

36. When presented with the Applicant's schedule of the eight property transactions (exhibited to the FI Report) and asked who was responsible for checking the authenticity of solicitors, he stated that it was in his view the responsibility of the bookkeeper. He also stated that it was for the bookkeeper to check the credentials of all payees. He further said that a fee earner having conduct of the transaction also had responsibility for it.

Client W

37. The client care letter stated that W's sale was to be supervised by the First Respondent. Mr W had liabilities to GE of £45,946.33 and to LF Ltd ("LF") of £4,875.33. LF had obtained a charging order on Mr W's property.

38. The firm sought a redemption figure from LF on 27 April 2009 "for the end of May 2009" and was provided with the figure by letter dated 5 May 2009. In answers to standard requisitions on title dated 5 May 2009, the firm undertook to redeem the charges in favour of GE and LF and to forward notification of discharge to the buyer's solicitors. The obligation to fulfil the undertaking rested with the First Respondent as the person named in the retainer documentation as having conduct.

39. The sale completed on 17 June 2009. The ledger showed the receipt into client account of the sale proceeds of £72,500 on 17 June. RBa of the firm wrote to LF on 19 May 2009 stating that the transaction had completed on 20 March 2009 (in advance of LF's charging order) and that the property was no longer owned by Mr W.

40. The charge in favour of GE was duly discharged on completion. On 12 August 2009 the firm sent form DS1 in relation to this charge to the purchaser's solicitors. The letter also stated:

> "as soon as we receive the DS1 in relation to the [LF] charge we will supply to you."

41. The ledger showed that by 22 June the firm had disbursed the entire sale proceeds paying £35,946.33 to GE, £25,897.67 to RB and taking £656 in respect of its own costs. By 22 June the balance on the client ledger was zero.

42. By letters dated 17 and 25 August 2009, the purchaser's solicitors wrote to the First Respondent asking for evidence of discharge in relation to LF, and in the absence of a

response wrote again on 16 September and 14 October 2009. The First Respondent did not deal with these letters.

Clients - Mr and Mrs B

43. The transaction involving Mr and Mrs B, mentioned above in connection with allegations 1.1, 1.2 and 1.3 where a transaction was continued in spite of the clients' instructions and money paid away was also relevant to allegation 1.5. The First Respondent had overall responsibility for the transaction. It was conducted post completion by Mr S a trainee.

44. On 1 June 2010, the Applicant wrote to the First Respondent with a copy of the FI Report requesting his explanation. He did not provide one.

Allegation 1.6 against the First Respondent only

45. On 6 March 2009 C and W Solicitors made a report to the Applicant of a failure by the firm to fulfil an undertaking in breach of Rule 10.05 of the Code. C and W acted for the prospective sellers of shares in a company running residential care homes. The firm acted for the prospective purchasers.

46. In about September 2008, preliminary negotiations were being conducted. The sellers expressed reluctance to engage in protracted negotiations unless they could be sure their legal costs would be paid by the purchasers if they proved not to be serious. C and W invited agreement on the deposit by the buyers with the firm of £5,000 to be paid in the event they withdrew. It was thereafter agreed in correspondence that the buyers would deposit £5,000 with the firm as security for such wasted costs. The firm's letter dated 11 September 2008 included:

> "We confirm we are in receipt of a cheque for £5,000 from our clients.
>
> Our clients require a similar undertaking that should your clients pull out from the sale, any costs our clients have incurred in arranging finance, valuation, legal costs and other disbursements will be paid for by your clients. They estimate the costs to be in the region of £10,000.00.
>
> Kindly confirm this is agreed."

47. There was a manuscript note of a telephone conversation dated 12 September 2008 between the firm and C and W. This preceded a meeting between the sellers and buyers scheduled for six o'clock that evening and the note stated as follows:

> "T/O Caffrey and Co in response to fax received of 15.42.
>
> Asked for confirmation that the terms for payment of abortive costs from the respective deposits which we held, as set out in my fax sent to them today at 11.30 were agreed.
>
> They confirmed that that was the case – i.e. both to hold £5,000 on terms set out in our letter, & their clients were still proposing to attend meeting at 6 pm tonight."

48. By letters faxed on 11 and 12 September 2008, the firm confirmed its statement that it held a cheque for £5,000 and that its clients were agreeable to C and W also holding a cheque for the same amount.

49. The initial meeting and preliminary legal work proceeded. By about December 2008, negotiations had broken down and the prospective buyers withdrew. By letter dated 6 January 2009, C and W wrote to the firm asking for payment of £5,000 which they believed the firm held. The firm's response dated 7 January 2009 stated:

> "…We are at a loss how confirming we hold a cheque for £5,000 would be construed as an undertaking on our part. We provided no undertaking at any time and therefore cannot forward any funds to you…"

This was challenged by letters from C and W dated 8 and 14 January 2009. The firm wrote on 20 January to assert that the cheque was held as deposit towards the purchase price. The firm wrote again on 16 February 2009 stating:

> "… We confirm we were holding a deposit of £5,000 for our Client. We are not disputing this point. Our instructions were that these funds were to be held on Account as a potential deposit, which were only to be utilised as a deposit upon exchange of Contracts. Throughout the transaction, we advised you that we were holding these funds as our Clients wanted to make clear the fact to your clients that they were serious purchasers and not simply "wasting time". We have never provided your firm any undertaking that monies would be held to be utilised for your Legal Fees and are somewhat startled to discover that you and your Clients think the contrary…"

50. On 2 July 2009, the Applicant wrote to the First Respondent. He replied on 22 July 2009 and following further correspondence provided a copy of the client ledger. He stood by what had been said before. The ledger revealed a credit on 26 September 2008 of £1,300 which was reversed when the cheque was dishonoured. A cash payment of £4,800 was credited on 26 September 2008 and on 29 September 2008 the ledger was debited effectively removing the credit balance. The Adjudicator found on 9 June 2010 that the First Respondent had failed to fulfil an undertaking. The Adjudicator expected him to fulfil it within 14 days of being informed of the decision. He was informed by letter dated 6 July 2010 and having failed to do so he was referred to the Tribunal.

<u>Allegations 2.1 and 2.2 against the Second Respondent</u>

51. Withdrawn

<u>Allegations 3.1 to 3.7 against the Third Respondent only</u>

52. These allegations were based on the eight purchase transactions referred to in the FI Report and already referred to above in connection with allegation 1.5 against the First Respondent. The clients involved were Ms SK, Mr H, Mrs C, Mr S, Mr V, Mr W (see above), Mr A and Mr K. At the commencement of the interview on 19 January 2010, Mr Howells had presented the Third Respondent with a schedule of the transactions which was later attached to the FI Report and asked him if he was the fee earner in each case. The Third Respondent said that he had conduct of the transactions

in the names of Ms SK and Mr S from start to finish. He confirmed that documents with a reference "SK" or "SZK" were his and that other members in the firm named by him also had some conduct of some transactions.

53. The irregular characteristics of the transactions are set out above in respect of allegation 1.5.

Ms SK's purchase

54. The case of Ms SK was exemplified in the FI Report. The transaction involved the purchase of a property in Rednal. The Third Respondent's signature was on the Memorandum of Exchange on the copy contract.

55. The lender RBS delivered its instruction by letter dated 1 April 2009, providing £108,750 towards a purchase price of £145,000. The transaction was completed on 28 April.

56. By letter dated 3 April 2009, the Seller's solicitors, InterCity Legal Solicitors ("ICL"), wrote to the firm stating:

> "Please note the full deposit has been paid directly to our clients."

The letter did not specify the amount of the deposit and the file did not show what steps were taken by the Third Respondent to verify this. On the file was a copy letter dated 7 April addressed to RBS reporting the direct payment but it did not specify an amount. A telephone attendance note dated 13 April 2009 was also silent as to the amount. The contract did not state a figure, it simply contained the words "paid direct". None of the documents examined by the IOs specified an amount.

57. ICL was not a genuine firm of solicitors.

58. The transaction ledger recorded the receipt into client account on 28 April 2009 of the net mortgage advance of £108,720. On the same day £106,652.22 was paid to ICL and the sum paid direct would therefore have been £38,347.78, about 25% of the purchase price.

59. The Third Respondent at first stated to Mr Akram and Mr Howells that he did not carry out any checks on the validity of ICL. Later, on 19 January he said that he had found a Mr M (the name of the person he said he had dealt with at ICL) on Law Society records and believed him to be a solicitor. He expressed disbelief that he may have sent completion monies to a fictitious solicitor.

60. Mr Howells interviewed the Third Respondent again on 23 July 2009 when he carried out further examinations of the transaction file. The file contained a letter written by the Third Respondent on 1 June 2009 to ICL stating that he had been attempting to contact them on numerous occasions. These attempts had been by telephone, although there were no attendance notes to confirm this. There was a letter dated 10 June 2009 again written by the Third Respondent submitting an application in form AP1 lodging with it a TR1, Stamp Duty Land Tax ("SDLT") form and mortgage deed. The AP1 form was dated 11 June. The Third Respondent told Mr Howells on 23 July 2009 that at some stage he received a form DS1 to discharge the seller's mortgage and believed

it was accompanied by a covering letter from ICL. He was unable to find either the letter or a copy of the DS1. On 19 January 2010 Mr Howells asked the Third Respondent if he had located the form and covering letter and was told that this had not been done.

61. The Third Respondent informed Mr Howells that he added ICL's name to the TR1 to protect his client's position.

62. The IOs found correspondence on the file which on its face should not have been there. There was a letter dated 9 March 2009 from a firm of solicitors QL (apparently previously instructed by Ms SK) to a firm G which was registered with the Applicant and who appeared at one stage to act for the seller. There was also a retainer letter to Ms SK from her earlier solicitors QL dated 5 March 2009. The Third Respondent was unable to explain the presence of these documents on file.

Mr S's purchase

63. The Third Respondent commenced the purchase of this property in Walsall by letter dated 28 July 2009 addressed to ROA, a fictitious firm. Mr Howells asked the Third Respondent about the letter in the interview on 19 January 2010. In respect of how the Third Respondent knew what ROA reference to be inserted in the letter, he replied that he did not know but that he may have spoken to the solicitors. The letter did not contain the name of the seller or the purchase price. This transaction commenced after Ms SK's transaction, when the Third Respondent had had cause to question the authenticity of the seller's solicitors.

64. A letter from ROA dated 29 July 2009 contained the Third Respondent's name in the reference section of the letter with nothing to indicate how his name had become known as his letter had only shown the initials "SZK". The IO asked the Third Respondent how his name had become known and he could not remember. The letter was addressed to the firm's former office address. The Third Respondent said he did not know how ROA would have got this address as his previous letter dated 28 July showed the firm's new address. Again a deposit of an unspecified amount was said to have been paid directly to ROA and the Third Respondent had made no enquiries to verify that.

65. In respect of how he could calculate a completion statement the Third Respondent said he would telephone the seller's solicitors to find out if it was unclear but he could not recall if it had been unclear in this case. The file did not contain anything from the purchaser to confirm the payment of the deposit.

66. The lender Nationwide was not notified of the payment which was calculated by the IO at over 27% of the purchase price. The Certificate of Title stated that completion took place on 7 August 2009 and the advance monies of £425,000 were credited to client account on that date. The Third Respondent had no comment when it was put to him in interview that there was no evidence that Nationwide was notified of the alleged direct payment of the deposit. Nationwide's money was paid out on 11 August to an account in the name R of A. One of the signatures on the authority was that of the Third Respondent.

67. The transaction file contained limited documentation for example there was no seller's signed contract. The FI Report recorded that the file contained two buyer's contracts. One was signed in S's surname. The second was endorsed in manuscript apparently to record an exchange of contracts under Formula B at 11.30 am. It also purported to describe a deposit received of £150,000 and after deducting £5,890 a balance of £419,110 was left and paid out as set out above on 11 August. This contract was dated 12 August 2009 and there was no explanation of date discrepancy. The Third Respondent apparently sent the buyer's part of the contract to ROA by letter dated 12 August 2009, the day after he had dispatched the mortgage money.

68. The retainer letter dated 29 July 2009 was addressed to Mr S but signed in another name. The exchange of contracts authority bore Mr S's surname but was undated.

69. The transaction was completed in eight days. The documents showed very little work had been undertaken in that period. There were no communications with the purchaser, no searches, no enquiries before contract and no report on title. There were no attendance notes recording any legal work undertaken. The firm's bill charged legal costs of £4,403.26 including a charge of £76.63 for acting for Nationwide. During the interview on 19 January 2010, the Third Respondent said he did not think the fees were particularly unusual.

70. The bill and retainer letter did not specify the purchaser's liability for SDLT which he had not been charged and there was no SDLT form on the file. The Third Respondent stated in an interview that he was sure there were responses from the Inland Revenue. Mr Howells had not seen any and the Third Respondent was unable to offer an explanation.

71. The Third Respondent wrote to HM Land Registry on 9 September 2009 purporting to register the transfer although the AP1 form was not seen. The TR1 form dated 12 August 2009 was unsigned and no other documents relevant to a registration were found such as a mortgage deed properly executed by the buyer, a pre-requisite to the release of Nationwide's money. There was no transfer signed by the seller. The money was released without either document. Nationwide's conditions for release of the mortgage money were not satisfied.

72. The IO also found on the matter file a letter dated 25 September 2009 in which the Third Respondent threatened the senior partner of ROA with a report to the Applicant if he did not forward the transfer deed. This letter post-dated the letter purporting to register the transfer. The Third Respondent told Mr Howells that it was his understanding that it was possible to make an application to the Land Registry without the documents and that the Land Registry would simply hold the application.

73. A letter from the Land Registry dated 14 October 2009 recorded the receipt of an application to register a transfer dated 12 August 2009 together with a charge to Nationwide. The application was rejected because there was no transfer signed by the vendors Mr and Mrs K whose solicitors had written to confirm they had not signed one. It appeared that this was a fraudulent transaction purporting to sell a property owned by persons who knew nothing about it and involving a lender whose money had been lost. In interview on 19 January 2010 this was explained to the Third Respondent who offered no comment.

Allegations 4.1 and 4.2 against the First Respondent only

74. These allegations arose out of the operation of a statutory scheme for professional indemnity insurance for solicitors pursuant to Section 37 of the Solicitors Act 1974 (as amended) ("the Act").

75. Solicitors were required by the Solicitors Indemnity Insurance Rules ("the Rules") from time-to-time in force, to maintain a minimum level of professional indemnity insurance on the minimum terms appended to the Rules. The Rules however recognised that some firms might be unable to obtain insurance on the open market in a particular year and the ARP existed for such firms. It operated as a buffer providing time for firms with temporary insurance difficulties to obtain Qualifying Insurance and for those with greater difficulties to wind down their practice.

76. Should a firm within the ARP cease to practise then they would be required to pay a run-off premium, as calculated by the ARP in accordance with Appendix 2 to the Rules.

77. The costs of the ARP were partly covered by premiums paid by firms within the ARP. The balance was funded by Qualifying Insurers who passed this on to the rest of the profession in the premiums charged in providing Qualifying Insurance. The ARP was not an end in itself and its scope was limited.

78. The regulatory framework made pursuant to Section 37 of the Act was contained in the Solicitors Indemnity Insurance Rules made each year. The relevant rules in this matter were the Solicitors Indemnity Insurance Rules 2009 ("SIIR09"). Appended to each set of rules were the minimum terms for insurance policies provided by Qualifying Insurers. The Rules required all firms in private practice to take out and maintain professional indemnity insurance (PII). PII taken out for this purpose must be Qualifying Insurance within the meaning of the Rules i.e. insurance on the minimum terms. Evidence of PII was a requirement for obtaining a practising certificate.

79. The commentary to Rule 4 stated that there was a continuing obligation to ensure that firms had Qualifying Insurance in place at all times.

80. As set out in the commentary to Rule 5.1, the duty to ensure that Qualifying Insurance was in place rested not just on the firm as a whole but also on every principal within that firm.

81. The commentary to Rule 12.2 SIIR09 stated that firms could not remain insured through the ARP for more than 24 months in any five year period. These firms must either obtain Qualifying Insurance on the open market or cease carrying on practice.

82. Failure to pay premiums due for indemnity insurance for more than two months after the due date for payment was policy default. Rule 16 referred to the disciplinary consequences of failing to comply with the Rules and Rule 16.2 provided:

> "… it shall be a disciplinary offence for any Firm or any person who is at the relevant time a Principal in a Firm to be in Policy Default, or to fail to implement any Special Measures to the satisfaction of the Society."

83. The allegations arose out of the First Respondent's failure to pay the 2009-2010 indemnity premium for cover within the ARP to Capita. The first payment of £123,595.40 was due on 1 January 2010 and run-off premium in the same amount was due within 30 days of a debit note dated 15 April 2010. The total amount owing was £247,190.80. The details were set out in a letter from Capita dated 19 April 2011. Interest had also accrued. The matter was raised by the Applicant with the First Respondent on 24 May 2011 and he replied dated 27 May. On 9 August 2011 enquiries were made of Capita to find out if the First Respondent had made any arrangements and he had not done so. The Applicant invited the First Respondent to communicate with Capita direct but he had not done so. He had provided no information nor had he made any payment.

Allegations 5.1 to 5.4 against the First Respondent only

84. The allegations arose out of the conduct by the firm of a conveyancing transaction commencing on about 7 January 2010. The firm acted in connection with the sale of a property in East London. CS Solicitors ("CS") acted for the buyer and her mortgagee Halifax. The buyer was Ms RK and the registered proprietor was Ms RS now known as Ms RC. The property had been the subject of proceedings before the Principal Registry of the Family Division in September and October 2009 resulting in court orders being made, in turn leading to entries in the Charges Register. Those proceedings were between Mr RSC and Ms SKC, apparently awarding her an interest in the property.

85. On 25 January 2010 the firm wrote to provide replies to standard requisitions. In so doing, it undertook to remove the charge in favour of Clydesdale Bank and the Unilateral Notice in favour of S[K]C. Both appeared as entries in the Charges Register.

86. According to the Applicant's records the firm closed on 29 January 2010.

87. By letter dated the 1 February 2010, CS wrote to the firm to state that it was acting for the buyer, and noted that the firm had given an undertaking, the effect of which was to secure the removal of entries 3 to 6 of the Charges Register. The firm replied on 9 February 2010 to provide express confirmation that it would remove the entries and that it was instructed to complete on 11 February. The letter was faxed from the number appearing on the firm's headed paper as its fax number. The person conducting the transaction after closure had access to the fax machine.

88. On 10 February 2010 CS attempted to speak with the firm about the entries in the Charges and Proprietorship Registers and did on a separate occasion that day speak with a Mr Ra K. By fax dated 10th February 2010 and sent at 13.30 hours, the firm gave its further undertaking in relation to the stated entries in the two registers.

89. Exchange of contracts and completion took place simultaneously on 12 February 2010 and as evidenced by the CHAPS payment form and a bank statement from CS's client account sent the firm the sum of £249,940.15 to complete the purchase.

90. The copy contract bore an endorsement evidencing that exchange of contracts took place at 2.10 pm that day pursuant to Law Society Formula B between SD and Mr Ra K.

91. By letter dated 25 February 2010, CS applied to register their client's purchase. There were requisitions from the Land Registry which were copied to the firm on 3 March 2010. An enquiry of the Applicant on 17 March revealed to CS that the firm had ceased to trade on 29 January and the First Respondent's mobile telephone number was provided because he was dealing with matters relating to his firm. The number was used and there was a message on his phone to say that he was on holiday and to send a text. CS sent a fax on 17 March stating that unless the firm complied with its obligations it would make a report to the Law Society.

92. On 17 March 2010, a further attempt to register was made resulting in requisitions. On 18 March a fraud report was made to the Applicant.

93. By letter dated 26 March 2010, the buyer's lender Halifax enquired about the registration of its mortgage and on 30 March, CS sent a fax to Clydesdale Bank asking it to confirm it had received funds on completion to discharge its charge. Questions were asked of the solicitors who had placed the restrictions. This resulted in the provision by BB Solicitors of confirmation of the court order behind the Unilateral Notice in favour of Ms SC, being entries 5 and 6 in the Charges Register. The subsequent correspondence resulted in an e-mail from BB Solicitors dated 1 April 2010 stating that

> "…the signature of the seller is not the actual signature."

94. On 7 April 2010, the First Respondent contacted CS and an attempt was made to explain what had happened. He asked for information to be sent to his home address. A letter was sent to him that day and he was asked if he had the file and if the charge in favour of Clydesdale had been discharged. There was no response. CS reported to Halifax stating that it had been contacted by the First Respondent.

95. CS applied to register a Unilateral Notice on 8 April 2010. It resulted in requisitions. On 12 and 15 April 2010, Clydesdale Bank stated it was unaware of the sale and had not received any money to discharge its mortgage. This was confirmed by its solicitors on 12 May.

96. Further attempts were made to register a Notice. On 12 May 2010 a person purporting to be Ms RS contacted CS and stated that she had never been to the firm or signed any documents.

97. According to a letter from the Land Registry dated 21 October 2010, the property was transferred as a result of the court proceedings referred to above. The Copy Register showed it had been transferred to Mrs SC on 13 September 2010. On 18 October 2010, K solicitors wrote to CS to state that Clydesdale's charge had been discharged.

98. It was not known how the Halifax mortgage advance paid to the firm was used.

99. By letter dated 21 June 2010, the Applicant wrote to the First Respondent and he replied on 28 June. He confirmed that his practice closed in January 2010, that he had

not undertaken any further work after closure and that he was not aware of the matter complained of. The First Respondent further stated that property work had never been his area of practice and addressed the undertaking breach by submitting that it had to be given in the course of his practice. As it was not given by him and was dated after the closure of his firm he argued that he had not breached Rule 10.05 of the Code.

100. By letter dated 19 July, the Applicant wrote again and the First Respondent effectively repeated his earlier submissions in his letter dated 20 July. On 29 July the Applicant wrote to ask a series of precise questions and to seek the matter file. In particular the First Respondent was asked who had given the undertaking. There was no reply and the Applicant wrote again on 19 August and 1 September. The letters were not answered.

Allegations 6.1 against the First and Second Respondents only and allegation 6.2 against the First Respondent only

101. On 6 July 2010, the Applicant wrote to the First and Second Respondents to ask them to deliver their accountant's reports for the period ended 31 December 2009 due by 30 June 2010.

102. The First Respondent replied on 9 July 2010 and stated that he had that day spoken with his accountants who were in the process of preparing the report. He further stated that his firm ceased to trade on 29 January 2010 and:

> "the partners ceased to hold/deal with the client monies and/or trust funds upon such date".

103. On 16 July 2010 the Applicant responded and asked the First Respondent to supply the two reports then due.

104. On 9 August 2010 the Applicant wrote again to the First Respondent and on 22 September to the First and Second Respondents.

105. On 19 October 2010 the Second Respondent telephoned to ask for extra time and that was granted.

106. On 19 October 2010 the Applicant wrote again to the First Respondent and his reply said:

> "Please find enclosed receipt from City of London Police.
>
> I am unable to finalise the account as the computer towers have been seized which were stored at my home address.
>
> I understand the computers where (sic) seized in respect of an investigation in respect of [M&K] solicitors.
>
> Upon receipt of the computers I will be able to finalise the accounts."

It was not possible to ascertain the date of seizure.

107. On 27 January 2012, the Adjudicator made a decision expecting the First and Second Respondents to deliver the outstanding reports and the decision was sent by post on 1 February 2012. Neither Respondent had delivered the reports due.

Allegation 7 against the First Respondent only

108. The Applicant had obtained bank statements relating to the two client accounts operated by the First Respondent covering the period 28 December 2009 to 12 March 2012.

109. Statements for the HSBC client account showed that it had a credit balance of £991.89 as at 12 March 2012. The statements showed that contrary to the First Respondent's statement that his firm had ceased to hold client money after closure on 29 January 2010, there was considerable activity after that date demonstrating that the firm continued to hold and deal with client money.

110. The credit balance on 29 January 2010 was £9,101.83. The statements showed that after 29 January 2010 a significant number of cheques were drawn and that there were electronic debits and credits.

111. During the period 29 January 2010 to 12 March 2012 a total of 46 cheques were drawn and debited to client account. A sample obtained by the Applicant were all signed "AZ Khattak".

112. A number of round sum cheques were drawn, four of which were evidenced to the Tribunal two in the amounts of £500 each and two for £250 each.

113. The firm was the named payee of a cheque for £1,968.14 dated 16 March 2010 and that sum was credited to its office account on 15 March 2010. The First Respondent was accordingly the beneficiary of the receipt.

114. The electronic receipts and payments were on their face consistent with the conduct of transactions.

115. On 3 February 2010 the sum of £27,098.46 was received into client account with the narrative "[N] PROPERTY MANAG" and a further credit with the same narrative took place on 10 February in the sum of £49,500. The sum of £75,713.07 was sent to AR Solicitors on 11 February 2010.

116. On 12 February 2010, the firm received £249,940.15 from CS solicitors. This was the purchase money for the property in East London the subject of allegations 5.1 and 5.2 and was detailed in a witness statement by SD the senior partner of CS dated 27 January 2012. On 12 February 2010 £249,232.50 was paid to CPE Ltd.

117. In March/April 2010, two receipts totalling £22,934.83 were shown and there was payment out on 1 April of £19,419.13 to "D and A Property A"

118. On 1 October 2010, £80,000 was credited with the narrative "[W] Solicitor" and the same sum was debited on 8 November 2010 with the narrative "[W] CLIENT ACC".

119. The firm's office account was closed on 5 October 2010 when the debit balance £39,028.78 was cleared.

120. The Barclays client account remained open until 6 December 2010 when the balance of £24,141.04 was sent to GP.

**Witnesses**

121. There were no witnesses.

**Findings of Fact and Law**

122. **Allegation 1: The allegations against the First Respondent, Aurang Khattak on behalf of the Solicitors Regulation Authority ("SRA") in the Rules 5 and 8 Statement dated 1 August 2011 were as follows:**

**1.1: In breach of Rule 32(1) of the Solicitors Accounts Rules 1998 he failed to keep books of account properly written up at all times;**

**1.2: In breach of Rule 32(7) of the said Accounts Rules he failed to carry out reconciliations in accordance with the requirements thereof;**

**1.3: In breach of Rule 22 of the said Accounts Rules he [the First Respondent] withdrew money from client account in circumstances other than permitted by the said Rule.**

122.1 In respect of allegations 1.1 and 1.2, it was submitted on behalf of the Applicant in the Rule 5 and 8 Statement that the firm's books of account were three months out of date. The First Respondent admitted in interview that no entries had been made in the firm's accounting system since the end of October 2009 and no client account reconciliations had been performed since that date. In respect of allegation 1.3 it was submitted that in breach of the instruction from Mr and Mrs B to stop acting, money was withdrawn from client account on three occasions.

122.2 For the Applicant, Mr Barton reminded the Tribunal that there were two client bank accounts and the First Respondent was a signatory to both. The practice had ended in disarray as evidenced by the photographs provided by the Intervention Officer showing the state in which the files and other documents of the firm were stored. The Intervention Officer had attended by arrangement with the Third Respondent who was the only Respondent engaging at that level. What the Intervention Officer found was highly unsatisfactory and represented serious dereliction of duty. This would make it extraordinarily difficult to reconstruct transactions, files and accounts. The client account at Barclays still contained money. Mr Barton had had discussions with the bank recently and there had been little activity since the closure. Funds in this dormant account had been transferred to a Sundry Account at Barclays and were being retrieved in the course of the intervention into the firm which took place on 30 April 2012. The First Respondent said that the HSBC account had been opened by his brother and that he had no idea at the date of closure of the firm that there was any money in it, but the bank statements obtained after the February 2012 directions hearing showed the position. The HSBC account was still open. After the February hearing the First Respondent had signed written authority for the Applicant to obtain

bank statements. As at 12 March 2012, the date the statements were obtained, the HSBC account contained the relatively modest amount of £981.83. At the date of closure of the firm there was £9,101.83 in the HSBC account and Mr Barton submitted that there had been significant movements on the account after that and the First Respondent said he knew nothing about it. The Applicant had very serious concerns about this but could not gainsay what the First Respondent said. He would tell the Tribunal that the sample cheques exhibited in the Applicant's bundle were not signed by him. The Tribunal was referred to transactions shown on the HSBC account of the receipt of the sum of £249,940.15 from CS Solicitors on 12 February 2010 and the payment out of £249,940.50 on the same day to CPE Ltd. No one knew who CPE Ltd was and the Applicant had obtained no information from the First Respondent regarding where the cheque books were kept. It was not known who received the bank statements. The First Respondent said that he did not get them and read them. From checking them it would have been obvious that money was coming in and out. Mr Barton submitted that the First Respondent had absolute authority and he was grossly reckless in the way he went about closing down the firm. He referred the Tribunal to his letter to the First Respondent dated 26 June 2012 containing his Civil Evidence Act notice in which he invited the First Respondent to provide as much information as he could about the movement of money on both client accounts after he said the firm was closed. Someone had access to the HSBC account after the firm closed and had pin numbers and was able to complete the CS transaction. The fax number used at completion tied up with that on the firm's notepaper. Mr Barton submitted that it was plain that if it was a genuine closure it was not conducted in the responsible way it should have been. There was a clearly identifiable loss of £250,000 of client money. Forty-three cheques were drawn on client account to varying recipients, some of which were for round sums. A cheque was written on 16 March 2010 for £1,968.14 from client account to the firm and there was an entry in office account for that sum. The First Respondent accepted that the cheques were drawn but could not provide information about the recipients. He would say that he thought that in the aftermath of closure efforts were being made to account to clients for monies due to them and that he had no idea the account remained in credit and that money was passing through it as it did. The Tribunal might think it slightly curious that cheques were drawn on 12 and 18 May 2010 in the sum of £40 each in favour of HMCS. This was quite some time after the closure of the firm. It suggested that there were court proceedings after closure. There was one other transaction that Mr Barton wished the Tribunal to note. On 3 February 2010 £27,098.46 was paid in from N Property Management. On 31 March and 1 April two sums making up that amount were paid out of client account. These were not cheques but as with the CS transaction, debits which showed there was continuing access to the client bank account. On 1 October 2010, the HSBC client account was credited with £80,000 from W Solicitors and on 8 November 2010 the same amount was paid out to W's client account. There was nothing to explain the receipt in and payment out seven days later. Mr Barton submitted that in combination with the photographic evidence from the Intervention Officer it could be seen why the Applicant regarded these transactions as grave.

122.3 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 1.1, 1.2 and 1.3 proved on the evidence against the First Respondent indeed they had been admitted.

123. **Allegation 1.4: He [the First Respondent] had breached Rule 1 of the Solicitors Code of Conduct 2007 in either or both of the following respects:**

- **he failed to act in the best interests of clients;**
- **he allowed his independence to be compromised.**

**Allegation 1.5: In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for either or both of the following:**

- **compliance with the duties of the principal to exercise appropriate supervision of all staff and ensure adequate supervision and direction of client matters;**
- **control of undertakings.**

123.1 For the Applicant, Mr Barton submitted that these allegations arose as a result of the First Respondent's failure during the time covered by Mr Howells' FI Report to supervise conveyancing transactions properly. The Schedule in the FI Report at Appendix 1 was useful in giving an overview of how the transactions were conducted by various members of the firm, principally by the Third Respondent but the First Respondent had overall responsibility for supervision of staff and for the transactions. Mr Barton submitted that the transactions were punctuated by classic features of questionable transactions which would suggest to a responsible conveyancer that there was mortgage fraud. Mr Howells pointed out to the Third Respondent that one firm was fictitious and after that other transactions involving fictitious firms followed. Significant amounts of money were involved and deposits were supposedly paid direct. There was no evidence that these were checked and verified. Mr Barton submitted that this was a serious omission of supervision.

123.2 On behalf of the Applicant in respect particularly of allegation 1.4, it was submitted in the Rules 5 and 8 Statement that in the transaction for Ms SK that by signing the Certificate of Title and giving an undertaking in it that he had complied with its instructions, the First Respondent had failed to act in the best interests of the lender RBS. In the RB transactions which the First Respondent introduced to the firm, in each case the firm acted for vulnerable sellers. The transactions were conducted in such a way so as to ensure maximum funds were paid to RB. In the transaction for Mr W, the firm's letter to the purchaser's solicitors was misleading and compounded a breach of undertaking. Mr W's liability to LF remained undischarged from the sale proceeds of his home. An e-mail dated 17 June 2009 from RB Ltd to the firm said:

> "…Sale price agreed with Vendor…clear mortgage but not secured loan = 44k
> Fees to be deducted:
> Agent's Fees: Circa - Full £28k circa straight to [RB] account"

Little or no regard was paid to the interests of the firm's clients such as Mr W and Mr and Mrs B. There was a compromise of independence in favour of RB. In respect of the eight transactions where seven involved fictitious firms of solicitors, the First Respondent's conduct constituted a failure to act in the lender clients' best interests.

123.3 On behalf of the Applicant in respect particularly of allegation 1.5, it was submitted in the Rules 5 and 8 Statement that in interview with the SIO, the First Respondent

stated that he exercised close supervision of all his staff. The way the conveyancing transactions referred to above were conducted, as demonstrated by the files, showed this not to have been so.

123.4 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 1.4 and 1.5 proved on the evidence against the First Respondent indeed they had been admitted.

124. **Allegation 1.6: In breach of Rule 10.05 of the said Code he [the First Respondent] failed to fulfil an undertaking and/or in breach of Rule 1.02 of the said Code failed to act with integrity.**

124.1 On behalf of the Applicant in respect of allegation 1.6, it was submitted in the Rules 5 and 8 Statement that an undertaking was given by virtue of a statement in the firm's letter dated 11 September 2008 in the course of practice and upon which C and W Solicitors relied. It was for the First Respondent as principal to fulfil it. C and W believed in the context of the various communications from the firm that holding a cheque for £5,000 meant that funds were held in client account. They believed this because they informed their clients by email that an agreement had been reached. The correspondence from the firm clearly stated that it was holding £5,000 and the ledger demonstrated that this was not so. This would have been apparent to the First Respondent when he engaged in correspondence with C and W and the Applicant.

124.2 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegation 1.6 proved on the evidence against the First Respondent indeed it had been admitted.

125. **Allegations 2.1 and 2.2 against the Second Respondent**

125.1 [Withdrawn]

126. **Allegation 3: The allegations against the Third Respondent Shane Zeb Khattak in the Rules 5 and 8 Statement dated 1 August 2011 were as follows:**

**3.1: He acted in conveyancing transactions notwithstanding they bore hallmarks of mortgage fraud;**

**3.2: He acted in transactions identified in the Rule 5 and 8 Statement in which mortgage monies were paid away to fictitious seller's solicitors and thereby lost having failed to make adequate checks that the firms were genuine;**

**3.3: Having been put on notice during the course of the investigation referred to below that in one transaction he had paid mortgage money to fictitious seller's solicitors he continued to conduct further such transaction;**

**3.4: The files he maintained contained inadequate or conflicting documentation and he was unable to explain his conduct to the SRA's Investigation Officers.**

**3.5: He failed to act in the best interests of lender clients by not informing them that buyer clients had paid deposits directly to sellers' solicitors;**

**3.6: When informed by solicitors acting for sellers that his buyer clients had paid deposits direct he failed to take any steps to verify the truth of this thereby failing in his duty to his lender clients;**

**3.7. He failed to ensure that lenders' mortgages were duly registered as first legal charges.**

These allegations were taken together as they arose out of the same set of transactions.

126.1 For the Applicant, Mr Barton submitted that the allegations against the Third Respondent were confined to the Rule 5 and 8 Statement and based wholly on the matters set out in Mr Howells' FI Report. The Third Respondent had acted in conveyancing transactions notwithstanding that they bore hallmarks of mortgage fraud. After he had been alerted about one fictitious firm where the transaction had been completed he went on to undertake other transactions. Mr Barton submitted that it did not matter whether the Third Respondent undertook the whole or part of these transactions. He had acted in transactions where money was paid to fictitious firms and he had not checked that the firms were genuine. He had been reckless in continuing to act. There were inadequate or conflicting documents in the files for these transactions and he could not explain adequately some aspects of the transactions to the IOs. He did not inform lenders that deposits in significant amounts were being paid direct to the vendor's solicitors. He took no steps to verify the truth and he had failed to ensure that the lenders' mortgages were secured by first legal charges as required. Mr Barton referred the Tribunal to the FI Report for the detail of the transactions. The Third Respondent had accepted in dealing with the IOs that the letters with the references SK or SZK were his but it seemed that others in the firm had had a hand in the transactions at different times. It was difficult to find someone to take responsibility for the transactions. The First Respondent would say that it was his responsibility as the sole principal of the firm and responsible for the supervision of his son but the Third Respondent had positively conducted these transactions. It was submitted that the Third Respondent had been realistic in agreeing to the imposition of an Order under section 43 which he understood to be a regulatory order enabling the Applicant to have some control over where he worked, who supervised him and the overall environment in which he worked. Mr Barton submitted that this was required in order to protect the public and the reputation of the profession.

126.2 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 proved on the evidence against the Third Respondent indeed they had been admitted.

127. **Allegation 4: The allegations against the First Respondent in the Rule 7 Statement dated 15 December 2011 were as follows:**

**4.1: He had failed to pay the premium due for indemnity insurance for the indemnity year 2009 – 2010 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the SRA within the prescribed period for payment and is in policy default in breach of Rule.2 of the Solicitors Indemnity Rules 2009;**

**4.2: He had failed to pay the run-off premium within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.**

These allegations were taken together as they both related to the firm's PII position.

127.1 For the Applicant, Mr Barton submitted that the allegations related to a factual state of affairs. The Applicant had brought a considerable number of applications relating to ARP matters to the Tribunal. They represented a significant problem for the profession.

127.2 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 4.1 and 4.2 proved on the evidence against the First Respondent indeed they had been admitted.

128. **Allegation 5: The allegations against the First Respondent in the second Rule 7 Statement dated 12 January 2012 were as follows:**

**5.1: In breach of Rule 1 of the Solicitors Code of Conduct 2007 he failed to act with integrity (Rule 1.02); and/or**

- **behaved in a way that diminished the trust placed in him or the profession (Rule 1.06);**

**5.2: In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for:**

- **the control of undertakings; and/or**

- **compliance with the duties of a principal to exercise appropriate supervision over all staff and ensure adequate supervision and direction of client matters;**

**5.3: In breach of Rule 10.05 of the said Code he failed to fulfil undertakings dated 25 January 2010, and 9 and 10 February 2010 (or any of them);**

**5.4: In breach of Rule 20.05 of the said Code he failed to deal with the SRA in an open prompt and cooperative way.**

These allegations were dealt with together as they related to one transaction.

128.1 For the Applicant, Mr Barton referred the Tribunal to the history of this matter. The First Respondent accepted the evidence of Mr SD of CS. He had conducted this property purchase in complete good faith and relied on the provision of unexceptional undertakings in the course of the transaction to pass on his client's money and it had been lost.

128.2 In respect of allegation 5.1, it was submitted on behalf of the Applicant in the second Rule 7 statement that the First Respondent failed to act with integrity (Rule 1.02)

because he gave a false and misleading explanation to the Applicant when on 28 June he stated that he was:

> "not aware of the matter complained of or any such or otherwise dealing(s) with [CS]"

This was untrue. He would have known it was untrue because he had spoken with CS on 7 April and it would have been fresh in his mind on 28 June. Mr Barton reminded the Tribunal that these documents had been the subject of a Civil Evidence Act notice. It was further submitted in the second Rule 7 Statement that the First Respondent diminished the trust placed in him or the solicitors' profession (Rule 1.06) because by April and June 2010 he had in his possession documents and facts which demonstrated that someone at his firm had conducted a conveyancing transaction after the firm had apparently closed, and that on a simple analysis of the facts £250,000 of Halifax money had gone missing or been used other than in accordance with an undertaking. The First Respondent had done nothing to assist the Applicant or CS whose clients had been adversely affected.

128.3 In respect of allegation 5.2, it was submitted on behalf of the Applicant in the second Rule 7 statement that the First Respondent was a sole practitioner and was responsible for properly supervising the closure of his firm. That another person was at liberty after closure to access notepaper, use an office fax and telephone, conduct the CS transaction, give undertakings and to utilise the firm's client account was consistent with a breach of Rule 5.1 of the Code.

128.4 In respect of allegation 5.3, it was submitted on behalf of the Applicant in the second Rule 7 statement that the undertakings in question were given on the firm's notepaper and that the First Respondent was responsible as principal.

128.5 In respect of allegation 5.4, it was submitted in the second Rule 7 statement that it was the First Respondent's duty to assist the Applicant to investigate the transaction and his failure to answer letters and to provide material information was a serious breach. It effectively handicapped an investigation. Mr Barton reminded the Tribunal that the Applicant wrote to the First Respondent on 29 July, on 19 August and 1 September 2010. These letters were not answered.

128.6 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 5.1, 5.2, 5.3 and 5.4 proved on the evidence against the First Respondent indeed they had been admitted.

129. **Allegation 6: The allegations against the First Respondent and the Second Respondent on behalf of the SRA in the third Rule 7 Statement dated 15 December 2011 were as follows:**

**6.1: They had failed to deliver their Accountant's report for the period 1 January 2009 to 31 December 2009, due on or before the 30 June 2010;**

**6.2. The First Respondent failed to deliver his Accountant's report for the period 1 January 2010 to 29 January 2010 due on or before the 29 July 2010.**

129.1 For the Applicant, Mr Barton referred the Tribunal to the facts of the matter. He submitted that the correspondence included in the exhibit to the third Rule 7 statement showed how the Applicant had tried to persuade the First and Second Respondents to fulfil their obligations, beginning with letters written to each of them on 6 July 2010. The First Respondent wrote from his new firm on 9 July close in time to his letters to the Applicant of 28 June 2010 and 20 July 2010 in respect of the CS matter in both of which he said that the firm had ceased practice in January 2010. He advised the Applicant that the accountant's report was being prepared up to 29 January 2010. The Applicant had then written both to the First Respondent's office address on 16 July and 9 August 2010 and to his home address on 22 September 2010 and again on 19 October. The Second Respondent has been allowed extra time until 4 November in a telephone call he made to the Applicant on 19 October 2010. The reports had never been delivered.

129.2 In respect of the First Respondent, Mr Barton pointed out the difference in position between his response to the Applicant in his letter of 9 July 2010 where he said that his accountants were preparing the report and his letter of 28 October when he said he could not finalise the accounts as his computer towers had been seized by the police. There was a significant quantity of material before the Tribunal to demonstrate that the firm closed in a haphazard way that attributed little significance to the interests of the clients and that after closure significant activity took place on the HSBC account. Mr Barton submitted that in the case of the First Respondent the absence of the reports was serious and as it stood there was no way of knowing what efforts have been made during the time covered by the HSBC bank statements and whether clients had been properly accounted to for their monies. The cumulative effect of all the allegations against the First Respondent was a set of very serious breaches even after withdrawal of the allegations of dishonesty. The First Respondent had paid little regard to be his regulatory obligations in the operation of his practice and in his failure to fulfil undertakings. His failure to deal openly with the Applicant meant it was unable to carry out its regulatory functions properly. After the closure of the practice he had apparently even failed to supervise basic matters such as the use of pin numbers and the operation of fax machines.

129.3 In respect of the Second Respondent, Mr Barton reminded the Tribunal he was a salaried partner from 1 April 2006 until 1 July 2009. The only remaining allegation against him was allegation 6.1 the failure to deliver an accountant's report.

129.4 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 6.1 proved on the evidence against the First and Second Respondents indeed it had been admitted.

129.5 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegations 6.2 proved on the evidence against the First Respondent indeed it had been admitted.

130. **Allegation 7: The further allegation against the First Respondent only in the third Rule 7 Statement was that:**

- **In breach of Rule 1.02 of the Code he wrote a false and misleading letter to the SRA dated 9 July 2010 in which he stated that Caffrey and Co ceased to**

**hold or deal with client money on the 29 January 2010 whereas this was not so.**

130.1 The Applicant relied on the facts as set out in the third Rule 7 Statement and the First Respondent's admission that he had been reckless. See also the submissions for the Applicant in respect of the preliminary issue and allegations 1.1, 1.2 and 1.3 above.

130.2 The Tribunal had considered the evidence and heard the submissions on behalf of the Applicant. It found allegation 7 proved on the evidence against the First Respondent indeed it had been admitted.

**Previous appearances**

131. None.

**Mitigation**

First Respondent

132. The First Respondent informed the Tribunal that he had taken over the firm in 2005 and prior to that he had been a criminal lawyer including a period working for the Crown Prosecution Service for over 10 years and then for a criminal law firm. He had no experience of commercial work or commercial conveyancing. The Respondent's brother was operating the firm and had problems with the Tribunal and could not continue to practise. The First Respondent had agreed to take the firm over. At that time the firm was obliged to submit three monthly accounting reports to the Applicant. He had previously supervised the accounts at his other firm and all had gone well. He purchased the firm for £250,000 with £50,000 paid upfront and £5,000 per month being paid towards the balance and towards the rent. The firm was primarily dealing with commercial work, and the payments of professional indemnity insurance and his own outstanding debt of £200,000 were being paid off without difficulty. Later in 2005 after he took the firm over, he had been unable to carry on with the legal aid criminal contract with the Legal Services Commission because the solicitor doing the work at the firm was leaving Birmingham. In 2008 the firm was removed from a mortgage panel and this had a domino effect with a series of other lenders removing the firm from its panels so that work generally reduced substantially. When the First Respondent had taken the firm over there were two bookkeepers who maintained the accounts. When the volume of work reduced a number of solicitors, whom the First Respondent regarded as being directly responsible for the firm being removed from lenders panels, left the firm. This left the firm "financially light". The quotes for professional indemnity insurance in 2009 were very high and the First Respondent had applied to the ARP. He had then decided to close the firm down and had notified the authorities accordingly. He reported two people in the office to the police in relation to the eight files [referred to in the FI Report]. He had drawn to the attention of Mr Barton and the Applicant on previous occasions how the problems had come about.

133. The First Respondent said he had asked the Third Respondent to look at outstanding issues such as registration of title. The First Respondent had not known how to carry out registration and how to deal with lenders and their requisitions. The files in question were not the Third Respondent's files. The First Respondent wished to make

it clear that it was he who asked the Applicant to intervene in the firm and arranged for them to come to the building and identified the computers which contained duplicates of the accounts. He accepted that the building was in disarray but submitted that several people had been there before him and some cabinets had been emptied.

134. The First Respondent accepted that a conveyancing transaction had taken place after the closure of the firm and he admitted that he had spoken to a solicitor from CS but he had not given the undertaking. Substantial fraud had been committed which he had drawn to the attention of the Applicant. His staff, Mr V and Mr S were involved in these transactions and working for other firms.

135. The First Respondent accepted that he had not provided the accountant's reports in question. He had had no money to instruct his accountants. As to the pin numbers [for the HSBC account] the principal bookkeeper had these. The First Respondent could barely do an e-mail on a computer or use a word processor and he could not check computerised accounts. He was totally dependent on the accountants and had employed them since 2005. He said that he took full responsibility for what had happened; he had purchased the firm and employed solicitors. When he told the Applicant that he had spoken to his accountants, he was trying to arrange their payment over a period of time. He had paid them a substantial amount of money over five years and they had been his friends until he had no money. He had not been in any trouble in the legal field and had not misled anybody. When he had closed the office the bookkeeper had told the First Respondent that there was only £2,000 or £3,000 of clients' money that they had been holding for years. The bookkeeper, who had left, wanted further monies in order to come to work even though she had been paid to the end of the month. The First Respondent said that he did not know that the firm had a client account at Barclays. When he took the firm over it had a debit of £20,000 in office account. If he had known about the money in the Barclays client account he would have done something with it. He took full responsibility. He did not steal from anyone or mislead CS or the Applicant. If he had wanted to steal, he would have stolen the £10 million turnover not a mere £250,000. He had tried to report the matter to the local police but they had said it was a civil matter and that he should go to his professional body who said it was his responsibility. Something fraudulent had happened and someone needed to investigate. Why would he steal £250,000 when the first person that would be spoken to about it was him? He sincerely hoped that someone would take action regarding the people whom he had described as being involved in these transactions.

136. As to possible sanctions the First Respondent submitted that he had never done any of this type of work before and had ended up in serious difficulty. As to costs, the First Respondent knew that these could be up to £65,000 and needed to be paid off. If he could continue to work he would contribute and continue to make payments to the ARP. If he was struck off there was very little chance of him gaining work aside from being a clerk. He was a bit stressed but confident he could get a good job in a major criminal practice. He was used to doing two-day trials before district judges at two minutes notice and he was confident he could still do that. He would like to pay everything back; the costs, the debt to the ARP and any financial penalty. He was currently living with his youngest son and looking after his son's two daughters. Both his parents had died over a period of time and he had also had medical difficulties.

Second Respondent

137. The Second Respondent referred to the fact that he had been a salaried partner in the firm until 1 July 2009. He was implicated and he accepted responsibility but the overall responsibility for the accountant's report for which he was also liable, rested with the First Respondent. The Second Respondent accepted that he had received a letter from the Applicant and that he had telephoned the Applicant. He had become an ostrich and put his head in the sand and hoped the problem would go away and as a result he had found himself before the Tribunal. The Second Respondent asked the Tribunal to deal with him as leniently as possible.

Third Respondent

138. After leaving school the Third Respondent said that he had joined the firm in 2006 and enrolled with ILEX. He was a qualified member. He had also obtained a diploma from Birmingham University. In the firm he was assigned to duties like administration, copying and answering telephone calls. He was not given compliance duties. He was supervised by the other Respondents. He had no legal training save at the firm. The Applicant had said that he acted on files with his reference initials. He was not actually dealing with the files. Many files were opened that he did not deal with. He had told Mr Barton and the IOs that. He had made it clear in letters that he had sent to the Applicant and in his statement of 13 February 2012. The only allegations against him were that the files bore his references. He submitted that at one point there were 24 members of staff who were all dealing with each other's files as he had stated to the IOs in his letters. He would agree to an order against him under section 43 if it kept the Applicant happy in terms of wanting to know where he was working. He had had a heart attack seven months ago and a pacemaker fitted. This was evidence of the amount of stress that this matter has caused him. He had never been dishonest. He had never benefited. He had given the IOs and the Applicant information regarding the people involved.

**Sanction**

139. In respect of the First Respondent, the Tribunal considered that the allegations which had been brought against him, and which he had admitted, were very serious even absent any allegation of dishonesty. There were 15 allegations in all. The matter which had caused the Tribunal some of the greatest concern was that the First Respondent was the sole principal of the firm, during most of the relevant period. Under his supervision and management disgraceful events took place in the firm including mortgage transactions where significant amounts of money were paid away to fictitious sellers' solicitors; clients' property was sold in breach of their wishes and large sums of clients' money went missing. He had responsibility to supervise the Third Respondent an unadmitted person but admitted that he knew nothing about conveyancing and instead relied on the Third Respondent. The First Respondent had showed an almost total disregard of the need to protect his clients and their interests. He was guilty of gross dereliction of duty both as a partner and as a trustee of his clients' monies. The Tribunal had concluded that he was not a fit and proper person to remain on the Roll of solicitors. He would be struck off.

140. In respect of the Second Respondent the Tribunal had had regard to the testimonials he had submitted. After withdrawal of most of the allegations against him the only

allegation remaining which he had admitted, was failure to deliver an accountant's report for the period 1 January 2009 to 31 December 2009, due on or before 30 June 2010. He had stated that he relied solely on the First Respondent and that he buried his head in the sand. That was not a satisfactory explanation for a solicitor to give. All solicitors were under a duty to comply with the SARs and the rules and regulations imposed by their governing body. This was too serious for a reprimand and a fine of £3,000 would be imposed.

141. In respect of the Third Respondent, the Tribunal had had regard to the testimonials he had submitted. He had admitted, absent dishonesty, all the allegations against him. Allowing for the absence of dishonesty, these were still at the highest end of the scale of seriousness. The Tribunal considered that his conduct was such that it was appropriate to make an Order under section 43.

**Costs**

142. For the Applicant, Mr Barton sought costs in the sum of £65,897.78. The costs of the forensic investigation and of bringing the prosecution had been significant. He had been before the Tribunal for some time in February 2012. Unusually some investigation work had been undertaken after February 2012 in respect of the Barclays and HSBC accounts. The drafting in this case had been a not insignificant amount of work. The state of the premises where the firm's files were stored had made the investigation a difficult if not impossible task. Mr Barton understood that the Respondents took no issue with the totality of the costs claim and had agreed a broad division of it amongst themselves. The First Respondent would take responsibility for two thirds of the costs and the remaining third would be split between the other two Respondents unequally.

143. The First Respondent confirmed that he did not dispute the costs claimed. He informed the Tribunal that he had initially suggested to Mr Barton that he could take responsibility for all the costs as it was his practice and he hoped to come into funds from an inheritance. He understood that the Applicant wished to have recourse also against the Second and Third Respondents. If the Tribunal could suggest a better way of approaching costs the Respondents would be guided by that.

144. The Tribunal decided to approve the division of costs agreed between the parties, that was as against the First Respondent, £43,897.78, against the Second Respondent £5,000 and against the Third Respondent £17,000.

**Statement of Full Order**

145. The Tribunal Ordered that the First Respondent, Aurang Khattak, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £43,897.78.

146. The Tribunal Ordered that the Second Respondent, solicitor, do pay a fine of £3000.00, such penalty to be forfeit to Her Majesty the Queen and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £5000.00.

The Tribunal Ordered that as from the 25th day of July 2012 except in accordance with Law Society permission:

(i) no solicitor shall employ or remunerate in connection with his practice as a solicitor Shane Zeb Khattak;

(ii) No employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Shane Zeb Khattak;

(iii) no recognised body shall employ or remunerate the said Shane Zeb Khattak;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Shane Zeb Khattak in connection with the business of that body

(v) no recognised body or manager or employee of such a body shall permit the said Shane Zeb Khattak to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Shane Zeb Khattak to have an interest in the body;

And the Tribunal further Ordered that the said Shane Zeb Khattak do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £17,000.00.

Dated this 4th day of September 2012
On behalf of the Tribunal

Mr J.N. Barnecutt
Chairman