SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10797-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ABIODUN OLUDARE ODUNLAMI Respondent

Before:

Mr K. W. Duncan (in the chair)
Miss N. Lucking
Mr. P. Wyatt

Date of Hearing: 3 and 4 March 2014

Appearances

Peter Steel, solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London, EC4M 7RF for the Applicant

The Respondent appeared in person.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 The Respondent failed to deliver an Accountant's Report for the period ending 31 May 2009 promptly or at all, contrary to Rule 35 Solicitors' Accounts Rules 1998 ("SAR").

1.2 The Respondent failed to comply with a direction of a Solicitors Regulation Authority ("SRA") Adjudicator and in so doing acted in a manner likely to diminish the public confidence in the profession, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007 ("SCC").

1.3 The Respondent failed to deal with the SRA in an open, prompt and cooperative manner, contrary to Rule 20.05 of the SCC.

1.4 The Respondent breached Practising Certificate Conditions, contrary to Principles 6 and 7 of the SRA Principles 2011.

1.5 The Respondent failed to fulfil undertakings, contrary to Rule 10.05 of the SCC.

1.6 The Respondent failed to disclose potentially material information to lender clients in conveyancing transactions, contrary to Rule 1.04 of the SCC.

1.7 The Respondent acted in a conflict of interests, contrary to Rules 3.01 and 3.16(2) of the SCC.

1.8 [Withdrawn].

Documents

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

Applicant:

- Application dated 5 August 2011 together with attached Rule 5 Statement and all attached exhibits
- Rule 7 Supplementary Statement dated 21 November 2012 together with all attached exhibits
- Two bundles of documents
- Letters dated 19 and 20 February 2014 from Bevan Britain Solicitors to the Tribunal, copied to the Respondent
- Statement of Costs dated 24 February 2014
- Skeleton Argument on behalf of the Applicant dated 25 February 2014
- Extract of Lending Criteria from CHL dated October 2007

- Internal SRA email from Lorraine Trench to Rachel Gennard dated 6 November 2013
- Emails from Peter Steel to the Tribunal and the Respondent dated 25 and 26 February 2014
- Additional Bundle of Documents containing the Lender's File on F Properties Ltd
- A copy of the SRA Costs Liability Schedule for the Respondent
- A copy of the SRA File in relation to the Adjudicator's Decision of 6 July 2009
- Internal SRA Memo dated 10 August 2011 and attached Cost Notification Referral Form
- Internal SRA Email from Rachel Gennard to Lorraine Trench dated 4 March 2014
- Letter dated 26 July 2011 from the SRA to the Respondent
- Letter dated 22 November 2013 from MWW LLP to the Respondent

Respondent:

- Letter dated 14 July 2008 from Anthony Taylors Solicitors to BM Lenders
- Letter dated 14 July 2008 from Anthony Taylors Solicitors to the Serious Organised Crime Agency
- Letter dated 6 May 2008 from H Solicitors to Anthony Taylors Solicitors
- A copy of HSBC Bank Statement dated from 26 October 2007 to 3 December 2007
- Office Copy of Land Register for 4 H Way, Essex (the Respondent's property)

Application to make amendments and for leave to withdraw Allegation 8

3. Mr Steel, on behalf of the Applicant made an application to amend some of the words contained within allegation 1.2, allegation 1.3, the Rule 5 Statement and the Rule 7 Supplementary Statement. He applied to amend allegation 1.2 to insert the words "a direction" in place of the words "an order". He applied to amend allegation 1.3 to insert the word "deal" in place of the word "act". The amendments to the body of the Rule 5 Statement and the Rule 7 Supplementary Statement were explained to the Tribunal. Most of the amendments related to clarifying the allegation which related to a direction of an SRA Adjudicator rather than a "costs order". In addition there was one amendment which was a typographical error, one amendment to confirm a correct property address and one amendment to correct a date on a passport. It was submitted the amendments did not change the substance of the allegations and it was clear from the Respondent's Response that he had understood them as they had originally been drafted, indeed he had responded to them. There was therefore no prejudice to the Respondent in allowing the amendments. Details of the proposed amendments had been sent to the Respondent on 19 February 2014.

4. Mr Steel also made an application to withdraw Allegation 1.8. This had been a very serious allegation which had included an allegation of dishonesty, but having received

the Respondent's Response, the Applicant considered it would not be appropriate to pursue this allegation any further. The Respondent had provided examples of other files where a similar situation had arisen and it also appeared from the Council of Mortgage Lenders Handbook that the practice alleged was not unusual. In the circumstances, Mr Steel sought leave from the Tribunal to withdraw Allegation 1.8.

5. The Respondent confirmed he had no objections to the amendments sought by the Applicant and he agreed to the application to withdraw Allegation 1.8.

The Tribunal's Decision

6. The Tribunal had considered carefully the amendments sought and noted the Respondent agreed to the amendments. There did not appear to be any prejudice to the Respondent as the amendments sought did not change the nature of the allegations or the facts upon which the Applicant relied. In view of this, the Tribunal granted permission to the Applicant to make the amendments sought.

7. In relation to the application to withdraw Allegation 1.8, the Tribunal was extremely concerned that such a serious allegation had been made without proper enquiry into the procedure involved. Such enquiries should have been made prior to making an allegation of this nature. The Tribunal granted leave to the Applicant to withdraw Allegation 1.8, but also made it clear that the withdrawal of this allegation was likely to be relevant to the question of costs in due course.

Factual Background

8. The Respondent, born on 1 January 1972, was admitted as a solicitor on 2 April 2007, prior to which he was a Registered Foreign Lawyer.

9. From 15 July 2003, the Respondent practised as a partner in the firm of Maxwell Jones Solicitors of 1a Harmood Street, Camden, London, NW1 8DM ("the first firm"). From 7 September 2007 the Respondent was registered with the SRA as the sole principal of Maxwell Jones Solicitors until this firm ceased trading on 30 September 2007.

10. From 10 October 2007, the Respondent practised as a partner, and thereafter on his own account, as Anthony Taylors Solicitors of 232 Royal College Street, London, NW1 9NJ ("the second firm"). This firm was intervened into on 1 June 2009.

11. The Respondent did not hold a practising certificate after 14 August 2009 but by a decision of an Adjudicator dated 17 May 2011, he was recently granted a practising certificate subject to conditions for the practice year 2010 to 2011.

<u>Allegation 1.1</u>

12. The Respondent was a partner in the first firm from 15 July 2003 until 7 September 2007. He then became the sole principal until the firm ceased trading on 30 September 2007.

13. From July 2008 the Respondent had practised as the second firm until the second firm was intervened on 1 June 2009. All the books of account, client files and documents relating to the second firm were uplifted by the SRA during the intervention. The decision to intervene was also applied retrospectively to the first firm but only for the purposes of freezing the client bank account to allow the SRA to take control of the funds that remained on the account at that time. No client files or books of account relating to the first firm were taken or provided to the SRA.

14. On 20 October 2009, the SRA received correspondence from Mr S, the Respondent's former partner in the first firm, who had retired from the partnership on 7 September 2007. In that correspondence Mr S indicated that the accounts records relating to the first firm were in some disarray and he provided copies of reconciliations in respect of the first firm's client account for the months of April 2010 and May 2010. The reconciliations recorded the first firm's client cashbook had a balance of £71,318.85, in addition to which there were unallocated receipts totalling £246,653.84 and unallocated payments of £315,177.56 leaving the account with an indicated credit balance of £2,795.13.

15. The two previous Accountants' Reports for the first firm for the periods 1 June 2006 to 31 May 2007 ("the 2007 Report"), and 1 June 2007 to 31 May 2008 ("the 2008 Report"), were delivered late. They were submitted after disciplinary measures were taken by the SRA. The 2007 report was delivered on 1 April 2008. The 2008 report was filed by the Respondent's former partner, Mr S, on 9 July 2009. The Accountants' Report for the period 1 June 2008 to 31 May 2009 ("the 2009 Report") should have been delivered by 30 November 2009. The Respondent had failed to deliver this report and it remained outstanding.

Allegations 1.2 and 1.3

16. On 6 July 2009, a SRA Adjudicator made a Decision relating to the professional conduct of the Respondent in relation to a matter he dealt with whilst at the first firm. In a Supplementary Decision of the same date, the Adjudicator directed that the Respondent pay costs of £1,800 in respect of the SRA investigation. Notification of both Decisions and the Directions in the Supplementary Decision were served on the Respondent on 15 July 2009. The letter accompanying the decisions informed the Respondent that he would "hear from our Finance Department about any cost directions made at first instance".

17. On 10 August 2009 the SRA Finance Department sent the Respondent an invoice for £1,800 in respect of the direction for costs. The invoice was sent to the Respondent's home address. However, no payment was made and no contact was received from the Respondent. A further invoice was sent to the Respondent on 9 December 2009 and again he failed to pay the invoice.

18. On 30 March 2011 the SRA wrote to the Respondent requiring explanation for his failure to pay the costs. The Respondent failed to reply. A further letter was sent to the Respondent on 21 April 2011 and again he failed to reply. The Applicant sought an order under Section 48(3) of the Solicitors Act 1974 that the SRA Adjudicator's costs direction dated 6 July 2009 be treated for the purposes of enforcement as if it had been made by the High Court.

Allegation 1.4

19. For the practice year 2010/2011 the Respondent's practising certificate was subject to the following conditions:

- The Respondent may act as a solicitor only in employment, the arrangements for which have first been approved by the SRA;
- The Respondent may not be a sole practitioner or manager or owner of a recognised body; and
- The Respondent fully informs any actual or prospective employer of the above conditions and the reason for their imposition.

20. The Respondent was notified of these conditions on 18 May 2011 and on 2 August 2012 the SRA granted the Respondent's practising certificate for the year 2011/2012 which was also subject to the same conditions.

21. On 23 May 2012 the SRA received a report from a member of the public which suggested the Respondent may have been practising otherwise than in accordance with the conditions on his practising certificate. This was as a result of a case concerning a landlord and tenant dispute in which the landlord had entered a leased property, removed the tenant's belongings and changed the locks. The Respondent had acted for the tenant, BR.

22. The SRA commenced an investigation and obtained a number of documents. In a letter dated 23 April 2012 the Respondent had written to the landlord setting out his client's case. The letter stated:

> "I act on behalf of [BR] and have his instructions and authority to communicate with you."

Within the letter the Respondent referred to "my client" and "our client" nine times. The letter was signed by the Respondent as "Abiodun O. Odunlami Solicitor of England & Wales".

23. The Claim Form signed by BR included a claim for solicitors' costs of £750. It also specified the Claimant's address for service as being "C/o Abiodun Odunlami (Solicitor) …" and gave the Respondent's former practising address. The witness statement of BR prepared in connection with his claim for damages and costs stated:

> "….. I then contacted my Solicitor – Mr Odunlami…..
> …. I then instructed Mr Odunlami to write to the defendant on my behalf …."

24. In addition to the claim for damages, an application for an injunction was made against the landlord dated 8 May 2012. The application contained a reference for the Claimant of "AO/Lit/[R]" and was signed by the Respondent again stating that the address for service was c/o the Respondent at his former practising address.

25. The SRA was also provided with two sealed Injunction Orders the first of which was undated but appeared to grant an interim injunction in favour of BR with a further hearing on 23 May 2012. The first Order recorded that it was granted by District Judge Zimmels at Lambeth County Court "Upon hearing the solicitor for the claimant …" and appeared to grant an injunction which would remain in force until trial or further order. The first Order recorded the application was listed for a further hearing for reconsideration on 23 May 2012. The second Order recorded that the injunction was granted by District Judge Zimmels at Lambeth County Court on 23 May 2012 "Upon hearing the solicitor for the claimant ….".

26. At the time that the Claim Form and application were filed with the court, the Respondent's practising certificate was still subject to conditions. The SRA had no record of the Respondent, or of any firm, having submitted a successful application for him to be employed in approved employment with a solicitor's firm. Nor was any such approval granted.

Allegations 1.5, 1.6 and 1.7

27. In May 2012 the SRA received confidential information from the Serious Organised Crime Agency ("SOCA") concerning an investigation into a number of transactions conducted by the Respondent and his firm. In August 2012 the SRA received an analysis of the transactions from the Respondent's Professional Indemnity Insurer providing a brief synopsis of a number of conveyancing transactions where claims had been made against the insurer. Claims were also made against the Assigned Risks Pool. The transactions were categorised into two groups, Group A where the Respondent acted for the seller, and Group B where the Respondent acted for the purchaser.

Group A Transactions

28. Each of the transactions in this group shared the same pattern. The Respondent or fee earners working on his behalf and under his supervision acted for the seller in residential conveyancing transactions. A few days prior to completion, the client would make a substantial mortgage payment by cheque directly to the mortgagee. The Respondent would request a redemption statement from the mortgagee which, taking into account the recently received client's cheque, would show a greatly reduced figure as outstanding in respect of the outstanding mortgage on the seller's property. Undertakings to discharge the mortgage on completion were given by the Respondent to the solicitors acting for the purchasers.

29. When the sale completed, and the funds from the buyers' solicitors were received, the Respondent paid the reduced redemption figure which had appeared on the redemption statement. Then on the clients' instructions, the Respondent transferred the balance of the proceeds of sale to the client and/or various third parties. However, it subsequently transpired that in each transaction, the large payment made by cheque by the client to the mortgagee just days before completion was subsequently dishonoured with the effect that the mortgage was not discharged in full. Despite undertakings to discharge the mortgagee's Charge on completion given by the Respondent to the purchasers' solicitors, he failed to do so. Accordingly the loans of the sellers lenders remained outstanding and the sellers' mortgage lenders maintained

their first Legal Charge over the properties and refused to provide DS1/END1 Forms indicating the mortgages had been discharged. This then prevented the purchasers from registering their legal title and prevented the purchasers' lenders from obtaining first Legal Charges over the properties for the money they had loaned to the purchasers. A number of examples of such transactions were provided.

Sale of 30 F Court

30. On or about 25 November 2008, the Respondent's second firm, Anthony Taylors Solicitors, was instructed to act for DA, the seller of a property at 30 F Court. The sale price was £160,000 and the purchaser was represented by P Solicitors. Office copy entries showed the property had a Legal Charge over it dated 13 October 2004 registered in favour of a lender, Bank of Scotland (Halifax Division). On 15 and 17 December 2008 the firm wrote to the lender requesting a redemption statement and informing the lender that DA intended to redeem the mortgage on 19 December 2008.

31. On 18 December 2008 an un-admitted fee earner at the firm, SI, spoke to an employee of the lender and was informed that a payment of £200,000 had been received by the lender from the client on 17 December 2008. However the employee could not confirm whether the payment was made by cheque or telegraphic transfer.

32. On 18 December 2008 the second firm wrote to P Solicitors and gave an undertaking to redeem the Charge of the Bank of Scotland dated 13 October 2004 on completion. On 19 December 2008 the lender provided a redemption statement indicating the outstanding sum on the mortgage was £8,669.22. However, the redemption statement stated the following:

> "**IMPORTANT – PLEASE NOTE**
>
> Our records show that the following payment(s) have recently been made to the mortgage account:
>
> £200,000 on 17/12/2008
>
> If these payment(s) were made by cheque and they do not clear by the date of redemption the mortgage will not be discharged until the balance is received as cleared funds. This may mean that further interest will become payable."

33. On 22 December 2008 the firm gave a further undertaking to a Mr ATW to forward to him the sum of £31,936.56 from the proceeds of sale on completion in this matter. There was no record of any explanation as to why some of the proceeds of sale were being forwarded to a third party.

34. Simultaneous exchange and completion took place on 23 December 2008. £31,936.56 was sent to Miss W and the balance was sent to another third party on instructions from DA. There was no explanation for these payments.

35. On 7 January 2009, SI contacted the lender's mortgage department and was informed there was a shortfall on the mortgage as at 4 January 2009 in the sum of £200,515.95. The firm responded by saying the sum of £8,669.22 had been repaid in accordance with the redemption statement of 19 December 2008. On 12 January 2009 and on

9 February 2009 the firm wrote to the lender requesting an executed Form DS1 to confirm the mortgage had been discharged.

36. On 16 January 2009 P Solicitors wrote to the firm enclosing requisitions from the Land Registry stating the purchaser's application to register their interest could not be completed until the Land Registry received evidence that the mortgage of 13 October 2004 had been discharged. The letter from the Land Registry stated that if evidence of the discharge of the mortgage was not provided by 16 February 2009, the purchaser's application would be cancelled.

37. On 11 February 2009 the lender wrote to the firm confirming receipt of the sum of £8,669.22 but stating that the customer's cheque for £200,000 had been returned unpaid by their bank. This was reiterated in a telephone call between the lender and the Respondent on 25 February 2009.

38. On the same day, 25 February 2009, the Respondent contacted his client, DA, informing him that the dishonoured payment of £200,000 had to be paid immediately so that a Form DS1 could be provided. On 13 March 2009 the firm, having been informed that DA had sent a further payment to the lender on 10 March 2009, wrote to the lender requesting an executed Form DS1. However, on 17 March 2009 the lender wrote to the firm to inform them that the further cheques paid by DA had not cleared either. On 16 March 2009 the application made by P Solicitors to register the purchaser's interest in the property was cancelled.

39. On 23 March 2009 the Respondent's firm wrote to the lender again requesting a discharge form and stating that the undertaking had been given to the purchaser's solicitors in reliance on the redemption statement issued by the lender. The letter stated the firm had been shocked to receive the lender's letter dated 11 February 2009 informing them that the account was still open and stated that at no time was the firm informed of the un-cleared cheque for £200,000. On the same day, 23 March 2009, the Respondent wrote to DA requesting DA take immediate steps to make payment of £200,000 to the lender within ten working days. In his letter to DA, the Respondent acknowledged that failure to satisfy the outstanding mortgage would place his firm in breach of the undertaking given which had been relied upon by the purchaser's solicitors.

40. On the same day, 23 March 2009, the purchaser's solicitors requested an update. The Respondent's firm replied on 24 March 2009 stating they had acted in accordance with their undertaking but had subsequently been informed that a cheque paid by their client had been returned unpaid. The firm then explained what steps had been taken to contact the lender and the client in order to resolve the matter. On the same day, P Solicitors wrote back to the firm stating that their clients were not happy that their security and title respectively were unregistered and that the matter would be taken further if evidence of discharge of the mortgage was not received by 30 March 2009. This was followed by a letter dated 21 April 2009 from P Solicitors indicating court action would be taken if they did not hear from the Respondent's firm by 27 April 2009.

41. On 29 April 2009, the Respondent wrote to DA chasing payment and also wrote to P Solicitors stating his firm was chasing up the lender for a discharge form. On the

same day, 29 April 2009, the lender wrote to the Respondent's firm requesting a copy of the redemption statement upon which the firm relied and asking whether any contact had been made with DA and what his version of events were.

42. On 12 May 2009 the firm replied to the lender stating DA had been contacted and that he believed his payment of £200,000 had been made by telegraphic transfer and not by cheque and so could not have been dishonoured. Office copy entries dated 4 June 2009 indicated the Charge in favour of the Bank of Scotland (Halifax Division) dated 13 October 2004 still remained the first Legal Charge.

Sale of 21 Y Court

43. On or about 19 January 2009, the Respondent's second firm, Anthony Taylors Solicitors, was instructed to act for LB, the seller of 21 Y Court, on the sale of his property for the sum of £200,000. The purchaser was represented by I Solicitors. Office copy entries for the property showed a Legal Charge dated 18 August 2005 was registered against the property in favour of the Bank of Scotland (Halifax Division). The mortgage statement on the file showed that LB was in considerable arrears having not made a mortgage payment for eleven months between 29 August 2007 and 29 July 2008. During this time the mortgage statement recorded payment holidays, fees incurred for arrears letters and calls, sundries and debt counselling.

44. On 18 February 2009 and 19 February 2009 the firm wrote to the lender requesting a redemption statement for the property. The request stated LB intended to redeem the mortgage on 20 February 2009. On 23 February 2009, the firm wrote to I Solicitors providing an undertaking to redeem on completion the Charge in favour of the Bank of Scotland dated 18 August 2005.

45. On 24 February 2009, the lender sent a mortgage redemption statement showing the outstanding amount on the account was £5,716.95. The redemption statement also stated the following:

> "Please note there is an eviction date set for 03/03/2009 if you wish to repay the account you must contact our legal department as soon as possible …. to discuss ……
>
> **IMPORTANT – PLEASE NOTE**
>
> Our records show that the following payment(s) have recently been made to the mortgage account:
>
> £205,000 on 19/02/2009
>
> If these payment(s) were made by cheque and they do not clear by the date of redemption the mortgage will not be discharged until the balance is received as cleared funds. This may mean that further interest will become payable."

46. On the same day, 24 February 2009, the Respondent's firm received instructions from LB that the proceeds of sale were to be divided with unrelated third parties. There was no explanation recorded on the file as to why the proceeds of sale were to be sent

to third parties. Contracts were exchanged on 24 February 2009 and a completion date was agreed for 25 February 2009. The executed contract recorded a reduction in the purchase price to £160,000 but there was no explanation why.

47. On 20 March 2009, I Solicitors received a requisition from the Land Registry stating their application for registration of their client's interest could not be completed without evidence that the Charge to the Bank of Scotland dated 18 August 2005 had been discharged by way of either Form DS1 or END 1. The letter stated that the application would be cancelled if the requisition was not satisfied by 22 April 2009. A copy of this letter was sent to the Respondent.

48. On 29 April 2009 the Respondent wrote to the lender stating the sum of £5,718 was paid to them on 26 February 2009 to discharge the outstanding balance on the mortgage and requested an executed DS1 Form to confirm the mortgage had been discharged.

49. On 1 May 2009 I Solicitors wrote to the Respondent stating they could not complete registration of the property as the existing mortgage had not been redeemed and on 30 April 2009, the Bank of Scotland had attempted to repossess the property due to the non-redemption. The Respondent's firm was reminded of its undertaking to redeem the mortgage on completion.

50. The Respondent's firm wrote to I Solicitors on 8 May 2009 stating the undertaking had been satisfied and the mortgage had been redeemed according to the redemption statement provided by the lender. The letter also stated the mortgage remained open, as a payment made by the client had been returned unpaid, and therefore that sum, plus interest, remained outstanding. The firm stated they had contacted the lender and the client in order to resolve the matter and provided I Solicitors with a further undertaking to forward the Form END1 on receipt.

Group B Transactions

51. In this group of transactions the Respondent acted for the purchasers of properties. The seller was represented by L Solicitors. In each matter considered by the SRA, the Respondent's clients obtained a mortgage which was paid by the Respondent to L Solicitors on completion. L Solicitors gave undertakings to redeem the existing mortgage from the purchase monies but in each transaction failed to do so. Accordingly, the parties were left in a position where the existing mortgage could not be discharged, a discharge form could not be produced, the purchaser could not be registered as the new owner and the purchaser's lender could not obtain a first Legal Charge over the property. A number of examples of such transactions were provided.

Purchase of 9 S Drive

52. On or about 2 November 2007, the Respondent acted for F Properties Ltd ("F") taking instructions from a director and shareholder, D, on the purchase of 9 S Drive for £400,000. F was incorporated on 23 October 2007. D was a 50% shareholder and the other 50% shareholder was TO, D's sister-in-law. F was subsequently dissolved on 8 February 2011. The Respondent's firm also acted for the lender, CHL Mortgages

("CHL") who were providing finance to F to assist with the purchase. CHL required D to be named as a guarantor on the mortgage.

53. Mortgage monies were received by the firm on 29 November 2007 and the balance of the funds were received on 3 December 2007. On 3 December 2007 L Solicitors gave an undertaking to the Respondent to discharge a Charge dated 15 February 2006 on the property in favour of the Bank of Scotland on completion. The contract for simultaneous exchange and completion was dated 3 December 2007 and the client ledger recorded a transfer by the Respondent of the purchase price to the seller's solicitors on the same day.

54. On 10 January 2008 the Respondent wrote to L Solicitors requesting an executed transfer form as a matter of urgency so that his client's position could be registered at the Land Registry. On 14 January 2008 an application was prepared for submission to the Land Registry which indicated the mortgage discharge form was attached to the application, even though this had not been provided by L Solicitors.

55. On 12 February 2008 CHL contacted the Respondent requesting the title deeds be returned to them within seven days. They sent a further chase up letter on 26 February 2008 to the Respondent and requested an explanation for the delay as they had not received any reply to their first letter. On 8 March 2008 the Respondent wrote to the Land Registry enclosing his application for registration which stated it included the mortgage discharge form even though this had still not yet been provided by L Solicitors.

56. On 11 March 2008 CHL wrote to the Respondent expressing extreme concern that there was no pending application to register their Charge over the property. On 14 March 2008 the Respondent replied to CHL's letter of 26 February 2008 stating it had only been received on 12 March 2008. The Respondent explained he was in the process of registering their interest with the Land Registry and that some requisitions had been raised which the conveyancing team were dealing with. There was no evidence of requisitions from the Land Registry on the file having been received at this time.

57. However, four days later, the Land Registry wrote to the Respondent on 18 March 2008 requesting a Form DS1 or END1 as evidence that the Charge of 15 February 2006 in favour of the Bank of Scotland had been discharged. The Land Registry stated the application would be cancelled if the requisition was not satisfied by 18 April 2008.

58. On 25 March 2008 the Respondent wrote to L Solicitors stating he was still awaiting a Form DS1/END1 from them to confirm the Charge of 15 February 2006 had been redeemed. On 18 April 2008 the Respondent's application to the Land Registry was cancelled.

59. On 25 April 2008 the Respondent wrote again to L Solicitors noting he was still awaiting responses to his letters of 10 January 2008, 25 March 2008 and 2 April 2008. The Respondent stated that if the mortgage discharge Form DS1/END1 was not provided by 28 April 2008, a report would be made to The Law Society. The

Respondent failed to make such a report despite being chased up by CHL on 7 May 2008, 12 June 2008, 16 June 2008, 16 July 2008 and 23 July 2008.

60. On 18 May 2008 the Respondent again wrote to L Solicitors and stated that as a result of their failure to provide the mortgage discharge form, his firm was unable to register its client's interests and as a result was being put in breach of the firm's undertaking and obligations to their clients. On 29 July 2008 the Respondent wrote again to L Solicitors chasing an explanation and referring to numerous telephone calls between the firms. On the same day the firm wrote to CHL acknowledging their various correspondence and confirming that delay in registration had been caused due to the non-receipt of the mortgage discharge form from the seller's solicitors. A further 21 days was requested to complete registration and a conditional undertaking given to provide the title documentation on receipt. This was agreed by CHL.

61. On 31 July 2008 a letter was sent by CHL's solicitors to the Respondent's firm requiring an explanation for the delay in registration and confirmation of the date when it was anticipated registration would be complete. The Respondent's firm replied to CHL's solicitors on 7 August 2008 stating the delays were due to the lack of the mortgage discharge form from the seller's solicitors. CHL's solicitors agreed to allow the Respondent until 27 August 2008 to resolve the issue. CHL's solicitors chased the matter up on 29 August 2008 and CHL chased the matter up on 2 September 2008.

62. On 10 September 2008 the Respondent's firm wrote to L Solicitors and on 15 September 2008 the Respondent filed a unilateral notice and a Form OS1R containing a priority period in favour of CHL which expired on 24 October 2008. On 18 September 2008 the Respondent contacted The Law Society and reported L Solicitors.

63. CHL's solicitors continued to chase the Respondent for progress in the matter and the Respondent's firm continued to blame L Solicitors for failing to provide a mortgage discharge form. The Respondent did not write again to L Solicitors between 18 September 2008 and 19 January 2009, during which time L Solicitors were intervened.

Purchase of Apartment, R Street

64. On or about 4 April 2008 the Respondent was instructed to act for JN in the purchase of an apartment in the sum of £130,000. The seller was the same seller who was involved in the purchase of 9 S Drive, and again the solicitors were L Solicitors. On 18 April 2008 the Respondent's firm received an undertaking from L Solicitors to discharge a Charge dated 20 June 2007 from the proceeds of sale of the property. This undertaking was given on the same day that the Respondent's application to register 9 S Drive was cancelled by the Land Registry due to L Solicitors failing to honour their undertaking on that transaction.

65. On 18 April 2008 the Respondent's firm received £97,750 as a mortgage advance from Mortgage Express ("ME"). Five days later the Respondent's firm received a further deposit on account of £35,000. On 22 April 2008 the full purchase price of

£130,000 was transferred to L Solicitors. This was at a time when the issues with L Solicitors relating to 9 S Drive were ongoing.

66. On 4 June 2008 the Respondent wrote to L Solicitors requesting a mortgage discharge form as a matter of urgency to enable his firm to register his clients' title to the property within the priority period granted by the Land Registry. On 13 July 2008 ME wrote to the Respondent requesting confirmation that their Charge had been registered and requesting copies of the title information documents within seven days.

67. On 31 July 2008 the Respondent replied to ME stating that the delay in registration had been caused by L Solicitors' failure to provide the firm with a mortgage discharge form. The Respondent did not inform ME that he was aware of difficulties on other transactions in which the L Solicitors were involved. He requested a further 28 days to complete registration and provided a conditional undertaking to forward the title documentation on receipt. On the same day the Respondent wrote to L Solicitors stating that they were in breach of their undertaking, acknowledging their failure to provide his firm with a mortgage discharge form and stating this was placing his own firm in breach of its professional obligations towards its clients.

68. ME continued to chase the Respondent for the title documents and threatened to involve other solicitors to remedy the position with the expectation that the Respondent would be responsible for any associated costs. On 16 December 2008 the Respondent wrote to the Land Registry enclosing an application form for registration purporting to enclose a mortgage discharge form. An almost identical letter was sent by the Respondent's firm again to the Land Registry on 5 January 2009.

69. On 7 January 2009, solicitors acting on behalf of ME, wrote to the Respondent's firm stating that the firm had failed to register their client's interest and was in breach of the terms of its retainer. On 9 January 2009 the Respondent replied stating that the delay had been caused by the failure of the seller's solicitors to provide a mortgage discharge form. The Respondent also stated that the application for registration was pending at the Coventry Land Registry. On 2 February 2009 the Respondent wrote to ME's solicitors stating that he was yet to receive the mortgage discharge form from the seller's solicitors. By this time L Solicitors had been intervened.

Witnesses

70. The following witnesses gave evidence:

- Diane Linda Mitchell
- Abiodun Oludare Odunlami (the Respondent)

Findings of Fact and Law

71. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

72. Allegation 1.1: The Respondent failed to deliver an Accountant's Report for the period ending 31 May 2009 promptly or at all, contrary to Rule 35 Solicitors' Accounts Rules 1998 ("SAR").

72.1 The Applicant's case was that the Accountant's Report for period 1 June 2008 to 31 May 2009 in relation to the Respondent's first firm, Maxwell Jones Solicitors, had not been delivered and remained outstanding. Mr Steel, on behalf of the Applicant, submitted the Respondent, as a partner of the practice, had responsibility to file the report. Mr Steel had referred the Tribunal to a witness statement from the Respondent dated 18 May 2012. In this statement the Respondent said he had requested an extension of time from the SRA within which to submit the Accountant's Report, that he had instructed and engaged the services of an accountant to prepare the accounts but that the accountant had been unable to produce an accurate account as he had found it impossible to accurately reconcile the firm's accounts with the bank accounts which were closed.

72.2 In his evidence the Respondent had accepted that every firm was required to submit an Accountant's Report while holding client money. However, the Respondent had submitted that his former partner had dealt with all of the accounts and that he had been away when the first firm, Maxwell Jones Solicitors, had closed at the end of the indemnity period. He stated his former partner had the books of account. The Respondent stated that, for over a year, he had not received any reminders from the SRA to file the Accountant's Report, and it was only when he wrote to the SRA in August 2010 to apply for a practising certificate that, within two weeks of his application being sent, he received a letter requiring him to produce the accounts for the period ending 31 May 2009. He said this was the first letter he had received in relation to the outstanding Accountant's Report. The Respondent submitted the SRA wrote to solicitors six months in advance of the date such reports were due and sent reminder letters if any such report was not delivered within the time required. The Respondent stated that he had not been given these opportunities and had simply been referred straight to the Tribunal. The Respondent submitted that there had been a procedural irregularity and that the regulator could not punish him for something that had not been demanded from him.

72.3 The Respondent further stated that he had previously been suspended and at the time of his suspension he was told that he could not carry out any duties as a solicitor. He asserted that submitting an Accountant's Report would have been in breach of his suspension as these were duties of a solicitor. He stated that he had not breached Rule 35 of the Solicitors Accounts Rules because he had been suspended at the time the report was due and he had been expressly told that he could not carry out any duties of a solicitor. He had not wanted to breach his suspension.

72.4 The Respondent accepted he had requested an extension of time to file his Accountant's Report which the SRA had refused. He had then instructed accountants to prepare the report but his former partner had refused to disclose any books to the accountant and without the books of account, the accountant had been unable to finalise the report. The Respondent submitted his former partner should also have been required to provide the said Accountant's Report and that the Respondent should not have been be solely responsible. The Respondent was of the view that his former partner had not resigned on 7 September 2007 and maintained his former partner was

jointly responsible for the filing of the report. The Respondent submitted this allegation could not be proved as the principles of natural law had not been followed.

72.5 Rule 35 of the Solicitors Accounts Rules 1998 placed a clear obligation on all solicitors who held client money or operated a client account to deliver an Accountant's Report for that accounting period within six months of the end of the accounting period. The Respondent had been a partner in Maxwell Jones Solicitors from 15 July 2003 until 7 September 2007, and then had been the sole principal until 30 September 2007 when the firm ceased trading. However the firm had continued to hold client funds after that date and the decision to intervene Maxwell Jones Solicitors had been applied retrospectively for the purposes of freezing the client account. Although the Tribunal noted there was some dispute about whether the Respondent's former partner had resigned on 7 September 2007, that issue did not remove the Respondent's own responsibility to file the Accountant's Report for the period 1 June 2008 to 31 May 2009, when he had held client money.

72.6 Furthermore, the Tribunal found the Respondent's submission that he could not file such a report while he was suspended, otherwise he would be carrying out the duties of a solicitor when he was not entitled to do so, to be quite ludicrous. The submission of an Accountant's Report was directly related to the Respondent's obligations while he had been practising as a solicitor and the suspension did not preclude him from meeting those obligations. As an experienced solicitor, the Respondent was well aware of his duty to file an Accountant's Report and the Tribunal rejected his argument that if he had filed an Accountants Report during the period of his suspension, he would have been carrying out the duty of a solicitor. Furthermore, the Tribunal rejected the Respondent's assertion that he should have received notification and reminders from the SRA in relation to the Accountant's Report. Rule 35 of The Solicitors Accounts Rules placed the responsibility to file an Accountant's Report on the solicitor and there was no obligation on the Authority to remind the solicitor of his duty. The Tribunal found allegation 1.1 proved.

73. Allegation 1.2: The Respondent failed to comply with a direction of a Solicitors Regulation Authority ("SRA") Adjudicator and in so doing acted in a manner likely to diminish the public confidence in the profession, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007 ("SCC").

Allegation 1.3: The Respondent failed to deal with the SRA in an open, prompt and cooperative manner, contrary to Rule 20.05 of the SCC.

73.1 The Applicant relied on a direction of an SRA Adjudicator dated 6 July 2009 which required the Respondent to pay costs of £1,800 in relation to an SRA investigation. It was submitted that this remained outstanding and the Applicant requested the Tribunal to exercise its jurisdiction under section 48(4) of the Solicitors Act 1974 and make an order that the direction be treated for the purpose of enforcement as if it had been made by the High Court. The Applicant further relied on the various letters which had been sent to the Respondent by the SRA to which he had not replied.

73.2 The Respondent's evidence was that the SRA had employed solicitors to recover monies owed by the Respondent to the SRA and those solicitors had applied for a bankruptcy order in relation to monies which included these costs. The Respondent

informed the Tribunal that the bankruptcy petition had been withdrawn on condition that the Respondent made payments and that the costs referred to in the Adjudicator's direction of 6 July 2009 had been paid between September 2009 and January 2010. The Respondent also stated the SRA had obtained 3 Charges over a property he owned in Essex and that all outstanding balances were secured under those Charges. The Respondent produced Office Copies of the Register relating to that property dated 4 March 2014 which confirmed there were 3 Charges registered in favour of The Law Society dated 17 August 2010, 21 September 2010 and 11 February 2011.

73.3 On the second day of the hearing, 4 March 2014, Mr Steel had produced a number of documents which included the SRA file in relation to the Adjudicator's costs direction dated 6 July 2009. An internal SRA email dated 6 November 2013 from Lorraine Trench to Rachel Gennard had also been produced together with a Costs Liability Schedule. The documents listed numerous payments that had been made by the Respondent during the period 2008 to 2010 and made reference to the Charging Orders.

73.4 In addition to these documents, Mr Steel also produced a handwritten note of details of a telephone discussion between him and Rachel Gennard which had taken place that morning on 4 March 2014. Mr Steel had explained to the Tribunal the various payments made by the Respondent and the dates on which those payments had been made and had submitted that the sum of £1,800 referred to in the direction of 6 July 2009 was not included in any of those payments and therefore remained outstanding. Mr Steel had not been able to obtain a copy of the Charging Orders and could not provide the Tribunal with any further information relating to these.

73.5 The Tribunal was extremely concerned that although an Adjudicator had made a direction on 6 July 2009 requiring the Respondent to pay costs of £1,800, and although it appeared from the SRA's internal accounts records that this amount had not been paid, there were clearly issues relating to a bankruptcy petition which post-dated the Adjudicator's direction. The details of these were not before the Tribunal even though they were relevant. Furthermore, the Tribunal had not heard any evidence from the SRA officer involved, Rachel Gennard, and had only received a number of documents disclosed that morning which did not make any reference to the terms of agreement that had led to the bankruptcy petition being withdrawn.

73.6 The Tribunal was of the view that it would be expected the Adjudicator's direction in relation to the costs of £1,800 would have fallen into the bankruptcy petition which post-dated the direction. Therefore the costs may have been part of any agreement reached when that petition was withdrawn. The Respondent had clearly made a number of payments and there had been negotiations between the parties. Without further information or evidence in relation to the terms of the agreement to withdraw the bankruptcy petition, the Tribunal was not satisfied beyond reasonable doubt that the Respondent had failed to comply with the Adjudicator's direction. Accordingly the Tribunal found allegation 1.2 not proved and declined to make any further Order in relation to enforcement of the Adjudicator's direction.

73.7 The Applicant's case concerning allegation 1.3 and the Respondent's failure to deal with the SRA in an open, prompt and cooperative manner had been presented in relation to the Respondent's conduct in failing to honour a direction of the

Adjudicator. The Rule 5 Statement specifically stated that this allegation relied on paragraphs 35 to 42 of the Rule 5 Statement which all related to the Respondent's alleged failure to comply with a direction of an SRA Adjudicator.

73.8 The Tribunal had heard evidence from the Respondent that some monies had been paid and the rest had been included in Charges on a property. The Respondent had submitted he had cooperated fully with the SRA and did respond to their correspondence. He said that he had sent emails to the SRA which had been on his old laptop, but he had been unable to produce them as the laptop had been stolen in a burglary.

73.9 The Tribunal had not found allegation 1.2 proved having satisfied itself that the Respondent had made a number of payments to the SRA as a result of discussions and negotiations between the parties regarding the withdrawal of the bankruptcy petition. There had clearly been some degree of cooperation by the Respondent. Accordingly, the Tribunal found allegation 1.3 was not proved in relation to paragraphs 35 to 42 of the Rule 5 Statement.

74. Allegation 1.4: The Respondent breached Practising Certificate Conditions, contrary to Principles 6 and 7 of the SRA Principles 2011.

74.1 Mr Steel referred the Tribunal to the conditions which had been in force at the time the Respondent had acted for BR. These were as follows:

- He may act as a solicitor only in employment which has first been approved by the Solicitors Regulation Authority;
- He is not a sole practitioner or sole director, or a manager or owner of a recognised body, licensed body or legal services body;
- In this condition "manager" and "owner" are as defined in Chapter 14 of the SRA Code of Conduct 2011;
- Mr Odunlami shall immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

74.2 Mr Steel submitted the Respondent had accepted he acted for BR and had been holding himself out to be a solicitor without the approval of the SRA. This was in clear breach of the conditions.

74.3 The Respondent denied he had breached the conditions and submitted that he had simply been defending an injustice on behalf of someone before the courts. He stated he had rights of audience before the court and therefore did not breach any conditions by appearing on behalf of his client. The Respondent stated that when he had applied for a practising certificate the conditions placed upon him had been so onerous that they rendered him a non-solicitor. He had therefore appealed the decision and on appeal the conditions had been reduced. The Respondent stated that whilst he had written to the landlord on behalf of BR, he had not held himself out as a firm and indeed, the letters had been written under his own name. He stated that he had a practising certificate at the time and could therefore hold himself out as a solicitor.

On cross examination, the Respondent stated he had been told by the SRA that he could no longer act for BR. Accordingly, he had not recovered the £750 costs referred to in the Claim Form as he stated he then stopped acting for BR. The Respondent went on to say that he would not act on a pro bono basis. The Respondent accepted he had appeared before Lambeth County Court as a solicitor on behalf of BR while the conditions were in place. He maintained he was entitled to do so as he had rights of audience and was indeed qualified as a solicitor.

74.4 Principle 6 of the SRA Principles 2011 required solicitors to behave in a way that maintained the trust the public placed in them and in the provision of legal services. Principle 7 required solicitors to comply with their regulatory obligations and deal with the regulator in an open, timely and co-operative manner.

74.5 The Tribunal had considered carefully the various documents it had been referred to. There was a letter from the Respondent to the landlord in which he had described himself, under his name at the end of the letter, as a "Solicitor of England & Wales". The address used on that letter was the Respondent's former practising address. There was also a Claim Form which claimed solicitor's costs of £750 and referred to the address for service on BR as "C/o Abiodun Odunlami (Solicitor) ….." and gave the Respondent's former practising address. Furthermore, the Tribunal considered various other documents including a witness statement from BR in which BR referred to the Respondent as a "solicitor", and two Injunction Orders from Lambeth County Court on the same matter which both stated "Upon hearing the solicitor for the Claimant …..".

74.6 The Tribunal was satisfied the Respondent had held himself out to be a solicitor and had appeared twice before the Lambeth County Court at a time when his ability to practise as a solicitor had been subject to conditions requiring approval from the SRA which had not been granted. The Tribunal found implausible the Respondent's explanation that he was entitled to practise as a solicitor simply because he had rights of audience. The Respondent's explanation made a mockery of conditions being placed on a practising certificate which, he said, allowed him to appear before a court by virtue of him simply being qualified as a solicitor. The mere fact that the Respondent was qualified as a solicitor did not allow him to exercise rights of audience when there was a clear restriction on his practising certificate setting out the circumstances in which he could so act.

74.7 The Tribunal was satisfied that the Respondent was fully aware of the nature and restriction of the conditions and that he had deliberately ignored them by holding himself out as a solicitor without the approval of the SRA. In so doing he had failed to behave in a way that maintained the trust of the public in him and in the provision of legal services. The public were entitled to expect that any solicitor acting for them was entitled to do so. The Respondent had also failed to comply with his regulatory obligations as he had ignored the conditions imposed by the SRA which he was subject to. The Tribunal was satisfied allegation 1.4 was proved.

75. **Allegation 1.5: The Respondent failed to fulfil undertakings, contrary to Rule 10.05 of the SCC.**

75.1 The Tribunal had been provided with documents relating to a number of transactions, the "Group A" transactions, where the Respondent had given undertakings to redeem mortgages on completion. The Respondent had obtained redemption statements a day or so before completion which indicated the client had made a large payment by cheque direct to the lender to repay part of the mortgage, usually a day or two before the redemption statement was provided. As a result of this, the actual redemption figure given on the statement was much lower than it would have been had it not been for the very recent payment made by the client. The Respondent then proceeded to completion and, having paid the (lower) redemption figure showing on the statement, he disbursed the remaining proceeds of sale, some to various third parties, on the instructions of the client. It subsequently transpired that the cheques used by the clients to make part payments to lenders were dishonoured and the mortgages had not in fact been redeemed in full.

75.2 The Respondent in his evidence stated he had done everything that he could and that these matters had already been investigated by the SRA on previous occasions. He believed the SRA were persecuting him, not regulating him, and that this was the third time he had been required to deal with these particular matters. He submitted that there was no way of him knowing that the client cheques would have been dishonoured and after the firm closed he was unable to take any further action to make sure the undertakings were complied with. The Respondent submitted he had done everything in his power to discharge the undertakings.

75.3 On cross-examination, the Respondent said he had redeemed the mortgages based on the redemption statements provided and that he had not been in breach of his undertakings on the day of completion.

75.4 The Tribunal noted that the undertakings given by the Respondent in the various transactions all confirmed that he undertook to redeem the existing Charge on completion. The Tribunal further noted that the redemption statements provided by the lenders contained a warning to advise the Respondent that payments had been made by the client days before the date of the redemption statement, and that if those payments had been made by cheque and did not clear by the date of redemption, the mortgage would not be discharged until the balance was received as cleared funds. Accordingly, the Respondent was clearly on notice that he should ensure the cheques had cleared before dispersing the proceeds of sale, which he would otherwise require to enable him to redeem the mortgage. The Respondent had failed to do this and this had resulted in a substantial loss to third parties.

75.5 In particular, concerning the sale of 21 Y Court, the Tribunal noted the redemption statement was sent by the lender on 24 February 2009. This was two weeks after the Respondent had been informed, on 11 February 2009, in relation to the sale of 30 F Court, that his client's cheque to the lender on that transaction had been dishonoured. The Respondent had failed to undertake any form of investigation on the sale of 21 Y Court as to how his client, LB, who was clearly in considerable arrears with his mortgage and facing eviction, suddenly had the means to pay £205,000 towards his mortgage.

75.6 The Tribunal did not accept the Respondent's explanation that his undertakings had been discharged by paying the amounts that he did to the lender on the day of completion in accordance with the redemption statements. The Tribunal found the Respondent's explanation implausible particularly as this situation had occurred a number of times on four different transactions, which were all a few weeks apart, in relation to properties some of which were in negative equity. If the Respondent had been aware that the problem had arisen on one case, he should have been far more alert to the position on the other subsequent cases. The Respondent should not have allowed the proceeds of sale to be disbursed until he was satisfied that he had honoured his undertakings to discharge the Charges in full. In reliance upon the Respondent's undertaking, the purchasers' solicitors had sent completion monies to the Respondent's firm with the expectation that outstanding mortgages would be redeemed using those funds. The Respondent's failure to discharge the mortgages in full was a breach of his undertaking to the various purchasers' solicitors. The Tribunal was satisfied that allegation 1.5 was proved.

76. Allegation 1.6: The Respondent failed to disclose potentially material information to lender clients in conveyancing transactions, contrary to Rule 1.04 of the SCC.

76.1 Mr Steel, on behalf of the Applicant, relied on the "Group B" transactions in support of this allegation. These were the transactions involving L Solicitors where undertakings had been given by L Solicitors to redeem the existing mortgages from purchase monies but then subsequently those mortgages were not redeemed. The Respondent acted for both the purchasers and the lenders, and as a result of L Solicitors failing to discharge the existing mortgage, the Respondent's clients' interests could not be registered. L Solicitors was subsequently intervened, in or around November 2008.

76.2 Mr Steel's case was based on three issues. Firstly that there was no evidence on the files to suggest the lender on the purchase of 9 S Drive, CHL, was informed of the relationship between the buyer and seller. The buyer was F, a company with two directors who were Mrs D and Mrs TO, who were also sisters in law. The seller was Mr O who was the brother of Mrs D and the husband of Mrs TO. Mr Steel submitted CHL did not give consent in those circumstances to completion of the transaction.

76.3 Secondly, Mr Steel alleged that the Respondent had failed to inform his lender client, CHL, in relation to the matter of 9 S Drive, that the purchaser, F, was not providing the deposit from its own resources and that this was potentially material information which should have been disclosed to the lender.

76.4 Finally, Mr Steel relied on the undertakings given by L Solicitors which were not honoured. The Respondent had accepted further undertakings from L Solicitors in respect of two transactions, K Road and S Drive, at a time when it should have been apparent to him that the previous undertakings given by L Solicitors had not been met. Mr Steel submitted the Respondent should have informed lenders of the failure of L Solicitors to comply with previous undertakings given and he had failed to do so.

76.5 The Tribunal heard evidence from Diane Mitchell who was an employee of CHL. She confirmed that, having obtained the Respondent's files after completion, CHL

only then became aware that in the transaction concerning 9 S Drive, the client had not supplied any deposit. CHL had not been informed of this by the Respondent or his firm. She also confirmed CHL were not advised by the Respondent of any connection between the purchaser and the seller in this transaction. She stated that had CHL been informed of this connection, they would certainly have carried out further investigation and had they been aware that F was not providing the deposit from its own resources, CHL would have declined to lend on this transaction.

76.6 On cross-examination Ms Mitchell stated CHL mainly provided loans on buy to let properties. As well as directors providing evidence of their own income, CHL needed to be satisfied that the property would be able to generate an income in order to cover any loan advanced. Ms Mitchell was unable to confirm whether CHL was aware F had been registered as a company a day before CHL approved a loan to them. She stated that CHL would carry out directorship and company searches but no other due diligence checks. As Mrs D had provided a personal guarantee on the loan and had an excellent credit score, this had satisfied CHL's lending criteria. Ms Mitchell confirmed CHL relied on the rental income from the property to repay the mortgage together with the director's income. She also stated that CHL relied on solicitors to advise them if there were issues concerning payment of a deposit. She accepted CHL was aware that a private seller was involved in this transaction.

76.7 Having been provided with further documents consisting of the complete CHL file of papers, Ms Mitchell confirmed that at the time of the transaction, she had been the Manager of the Lending Department and had not dealt with this particular case herself. She confirmed she was only able to give evidence in relation to the documents within the file, and these did not disclose a record of a telephone call from the Respondent to the lender on 29 November 2007. The Tribunal had been referred to a letter from the Respondent to CHL dated 29 November 2007, in which he referred to "our telephone conversation a few minutes ago". Ms Mitchell accepted this telephone conversation did not appear to have been recorded on CHL's file.

76.8 The Respondent's position was that he had informed CHL of the relationship between the parties and that the lender was aware they were related. Indeed, because of this, he submitted CHL had required a Deed of Guarantee to be signed by D before CHL would release the funds. He submitted CHL had been willing to lend on this transaction as they were confident of the profits they would make on the loan and therefore had no issues. The Respondent submitted the file provided by CHL did not show the true position and there were records missing, particularly in relation to his telephone conversation with them on 29 November 2007. The Respondent confirmed he had in fact acted on behalf of the seller, Mr O, previously on the purchase of the property in 2005 and therefore he knew these clients well and had no reason for any suspicion. The Respondent submitted he had been made a scapegoat by the lender who had been reckless in loaning money to a company which had been set up the day before the mortgage offer was made.

76.9 The Respondent further stated that there had been no indication to him that L Solicitors would not comply with their undertakings and that he had reported their conduct to the SRA in a letter dated 18 September 2008. The SRA took some months to reply by which time L Solicitors had been intervened. The Respondent stated he had no cause to doubt L Solicitors who had reassured his firm they were chasing up

the documents. The Respondent reminded the Tribunal that at that time it was unusual and unexpected that solicitors might disappear with client funds. He had done everything expected of him. The Respondent further stated that there was often a delay in receiving mortgage discharge forms and he did not consider it was an aberration for the provision of these to take a few months.

76.10 In relation to the issue of the deposits not being provided by his client, the Respondent referred the Tribunal to an entry on his firm's client account bank statement dated 3 December 2007. This entry stated "Advice Confirms ….. [LM]" and showed a payment of £162,332.75. The Respondent submitted that he could see the funds came in relation to the seller's company but there was no way he would have been aware that the money was being paid from a third party. The Respondent stated that he regularly received statements from his bank which stated "Advice Confirms" but not the name of the sender so that he would not know who had made the payment. So far as he was aware, monies had been paid by his client, F.

76.11 On cross examination the Respondent stated that there were a number of other documents missing from the CHL file of papers which included some of his letters to SOCA and to CHL.

76.12 The Tribunal considered the chronology of events and in particular noted L Solicitors had given the Respondent two undertakings to redeem mortgages on 3 December 2007 in relation to two transactions (one of which was client F on the purchase of 9 S Drive) and, then some 4 months later on 18 April 2008, L Solicitors gave further undertakings to redeem mortgages on two more transactions (one of which was in relation to the purchase of an apartment on R Street). The Tribunal was of the view that the Respondent should have been alert to the fact that L Solicitors had failed to comply with the first two undertakings by the time the second two undertakings were given. This was a potentially material fact which should have been reported to the lender.

76.13 The Tribunal found the Respondent's explanation in relation to delays in honouring undertakings being common in conveyancing, and therefore not a cause for concern, to be implausible. Nor did the Tribunal accept the Respondent's assertion that a lender should conduct and rely upon its own due diligence checks. Regardless of whatever checks a lender conducted, this did not abrogate a solicitor's responsibility to the lender to inform them of material information of which the solicitor was aware. In this case the Respondent had failed to inform CHL that L Solicitors had failed to honour previous undertakings and in doing so, the Respondent had not acted in CHL's best interests contrary to Rule 1.04 of the Solicitors Code of Conduct 2007. The Tribunal was satisfied that allegation 1.6 was proved in relation to the Respondent failing to disclose to his lender client the fact that L Solicitors had not honoured earlier undertakings given to the Respondent.

76.14 In relation to the issue of whether the Respondent had disclosed the relationship between the purchasers and the seller on the matter of 9 S Drive to CHL, his lender client, the Tribunal was mindful that Ms Mitchell did not deal with this transaction herself and could only give evidence on the practice and procedure at CHL in general. She accepted the file of papers from CHL did not contain copies of some letters or emails from the Respondent. The Respondent's letter to CHL dated 27 November

2007 clearly made reference to a telephone conversation that had taken place on the same day but of which there was no record in CHL's file. The Respondent had given evidence that he did inform the lenders of the relationship. The Tribunal accepted this evidence in the absence of any evidence to the contrary and therefore found allegation 1.6 was not proved in relation to the issue of whether the Respondent had disclosed the relationship between the purchasers and the seller on this transaction to CHL.

76.15 Concerning the issue of whether the Respondent had disclosed to CHL that the deposit on 9 S Drive had been paid by a third party, the Tribunal was particularly mindful that the Rule 7 Supplementary Statement did not make any specific reference to the lack of disclosure of third party deposits being material information that the Respondent should have disclosed to his lender client. Paragraph 129 of the Supplementary Statement stated "the balance of completion funds were received on 3 December 2007" but nothing specifically was mentioned in relation to the deposit. In paragraph 168 of the Supplementary Statement, there was reference to the payment of a deposit on account of £35,000 but that was in relation to the purchase of an apartment on R Street, and there was no reference to the source of the payment.

76.16 Although Mr Steel had briefly referred, at paragraph 38(c) of his Skeleton Argument dated 25 February 2014, to evidence from Ms Mitchell indicating that CHL was not aware that the purchaser was not providing the deposit from its own resources, at no point had this been pleaded in the Supplementary Statement itself. The Tribunal took into account the case of Thaker v The Solicitors Regulation Authority [2011] EWHC 660 (Admin) in which LJ Jackson stated:

> "The reader should not have to burrow through hundreds of pages of annexes in an attempt to piece together what acts are being alleged. It is the duty of the draftsman (not the reader) of a pleading or a r 4 statement to analyse the supporting evidence and to distil the relevant facts, discarding all irrelevancies."

76.17 As the Applicant had failed to specifically mention in his Supplementary Statement that it was alleged the Respondent had failed to inform his lender client, CHL, in relation to the matter of 9 S Drive, that the purchaser, F, was not providing the deposit from its own resources and that this was potentially material information which should have been disclosed to the lender, the Tribunal did not consider it would be fair or reasonable for it to make any finding in relation to this particular issue.

77. Allegation 1.7: The Respondent acted in a conflict of interests, contrary to Rules 3.01 and 3.16(2) of the SCC.

77.1 Again, the Applicant relied on the "Group B" transactions and submitted the Respondent's failure to inform CHL of potentially material information affected CHL's decision to continue to lend to F, and the Respondent, by continuing to act, had a conflict of interests. The Applicant's case was that the Respondent had preferred his borrower client's interests over those of his lender client.

77.2 The Tribunal had already found that the only material information the Respondent had failed to disclose to CHL was that L Solicitors had failed to honour earlier undertakings given to the Respondent's firm. However, this information potentially

affected both of the Respondent's lender and the borrower clients who found themselves in the same position in that neither of their interests in the property purchased could be registered.

77.3 Although it was possible that CHL may not have provided a mortgage to F on the matter of 9 S Drive if CHL had known about the issues with L Solicitors failing to honour earlier undertakings, the Tribunal did not receive or hear any evidence from Ms Mitchell on this point and nor was she asked about it. Accordingly, on the basis that there was no conflict of interest between the Respondent's borrower and lender clients based on the lack of disclosure of L Solicitors failing to honour earlier undertakings, the Tribunal found this allegation not proved.

Previous Disciplinary Matters

78. The Respondent had appeared before the Tribunal on two previous occasions firstly on 12 June 2007 and then subsequently on 14 July 2009 and 14 August 2009.

Mitigation

79. The Respondent asked the Tribunal to deal with him leniently. Whilst he accepted responsibility for his firm, he stated the allegations proved were due to the actions of his staff and had all taken place six years ago. The Respondent believed he had already been punished considerably and pointed out that he had been out of work in this country for the last five years. The events complained of had been a disaster for him and he had been the victim of the unlawful actions of others.

80. The Respondent confirmed he had been unemployed during 2009 to 2010. He was granted a practising certificate in late 2011. He had completed a Masters degree in International Law and since late last year had been working in Nigeria on a much lower rate of pay. The Respondent provided the Tribunal with details of two properties but indicated one of these was in negative equity with Charges on it, and was owned by his parents. The other was his home, owned by his wife and had been repossessed recently. The Respondent wished to continue practising in the UK and submitted he had been forced out of the country as he had no other option.

Sanction

81. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

82. The Tribunal had considered the Respondent's previous appearances before the Tribunal. In June 2007 the Respondent had admitted a number of allegations which predominantly related to various breaches of the Solicitors Accounts Rules as well as failing to disclose material information to a client, acting for seller, buyer and lender where there was a conflict or potential conflict of interest, and failing to inform a lender client that he was acting for all three parties in the same transaction. On that occasion the Tribunal had stated it considered the Respondent's shortcomings to be

"at the serious end of the scale" and had stated it had given "serious consideration to an interference with [the Respondent's] ability to practise". That division of the Tribunal had imposed a fine on the Respondent of £11,500 "in order to underline the seriousness with which the Tribunal views the [Respondent's] shortcomings…".

83. On the Respondent's second appearance in 2009, the Respondent had admitted failing/delaying to comply with an undertaking, failing to cooperate with the SRA, making representations to the SRA and to other solicitors which were misleading and/or inaccurate and failing/delaying in the filing of an Accountant's Report. In addition to these allegations, the Tribunal in 2009 found a number of further allegations proved which included utilising client account in an improper way and/or as a banking facility for a client, making representations to the SRA in his application for a practising certificate which were untrue/misleading and failing to reply to correspondence from the SRA. That division of the Tribunal had stated the Respondent "…appeared to have learned nothing, however, from his earlier appearance before the Tribunal". On that occasion the Tribunal had suspended the Respondent from practise for one year.

84. The Tribunal now dealing with these current complaints was extremely concerned that the Respondent was appearing before the Tribunal for the third time. This indicated he had not learnt his lesson at all. The Respondent had continued to breach the Solicitors Accounts Rules, the Code of Conduct and the SRA Principles 2011 despite all the comments made by the previous divisions of the Tribunal and the very serious sanctions that had been imposed upon him on those occasions. The Respondent had again failed to file an Accountant's Report, which was a repetition of conduct previously dealt with, he had totally disregarded the conditions following his suspension and had thereby shown a serious disrespect for his regulator, he had failed to fulfil undertakings which again was a repetition of conduct previously dealt with, and he had failed to disclose potentially material information to lender clients. These were all extremely serious matters and notwithstanding the fact that the Respondent had already been subjected to a substantial fine and a period of suspension in the past, he was appearing yet again before the Tribunal.

85. Clients had suffered substantial losses as a result of the Respondent's conduct and it was quite clear to the Tribunal that the Respondent was a risk to the public and the reputation of the profession. It was not acceptable for a solicitor to appear before the Tribunal on three occasions and it was particularly notable that the Respondent had shown no insight and had failed to accept any responsibility for his conduct. Indeed he sought to blame his staff instead.

86. The failure to fulfil undertakings had taken place over a period of time and after the first incident, the Respondent should have been aware that he should not disburse the proceeds of sale without ensuring payments, made by clients by cheque in an attempt to redeem the mortgage very shortly prior to completion, had actually cleared. Undertakings were the bedrock of the procedure used by solicitors in conveyancing transactions and formed the basis upon which solicitors did business daily. It was absolutely fundamental that a third party must be able to rely on a solicitor's word. There was no excuse for the Respondent's conduct in failing to fulfil the undertakings he had given, particularly in light of his regulatory history.

87. The Tribunal took into account the case of Bolton v The Law Society [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well."

88. The Tribunal was satisfied that the Respondent's conduct had caused a great deal of harm to clients and to the reputation of the profession. The Tribunal considered whether a period of indefinite suspension would be the appropriate sanction in this case however, formed the view that there was an absence of truly compelling and exceptional personal mitigation which would justify an indefinite suspension. Further the Tribunal was of the view there was no realistic prospect that the Respondent would recover or respond to training so that he no longer represented a material risk of harm to the public or to the reputation of the profession.

89. Having regard to the overall facts of the misconduct and the Respondent's previous appearances, the Tribunal concluded that allowing the Respondent's name to remain on the Roll would have a detrimental effect upon the public's confidence in the reputation of the profession. The Respondent's conduct was a serious departure from the required standards of integrity, probity and trustworthiness. The Tribunal concluded that the appropriate sanction, which would mark the seriousness of the misconduct and protect the public and the reputation of the profession, was that the Respondent's name be struck off the Roll of Solicitors.

Costs

90. Mr Steel, on behalf of the Applicant, requested an Order for costs in the total sum of £81,218.10. He provided the Tribunal with a breakdown of those costs. Mr Steel confirmed that although two separate firms had been involved with this case, there was no duplication of costs. Mr Steel had reduced the size of the bundles after concerns expressed by the Tribunal at a previous Case Management Hearing. If any reduction were to be made to the costs, it should only be for a couple of hours in relation to the figure claimed for the hearing and preparation time.

91. Mr Steel stated that the withdrawal of allegation 1.8 could only have been considered after the Respondent filed his Response on 3 January 2014. The SRA had not been prepared to withdraw any allegations without receiving a Response from the Respondent and the delay had been caused by the Respondent's late engagement in the proceedings. This was the reason for the late application to withdraw allegation 1.8. On further questioning from the Tribunal, Mr Steel estimated that about 12½% of the total costs would be attributable to allegation 1.8.

92. Mr Steel reminded the Tribunal that the Respondent had disputed all the allegations even those which were clear breaches, such as the failure to file an Accountant's Report and breaching the conditions on his practising certificate. Mr Steel submitted the Respondent appeared to have an active practice in Nigeria and a property. Although there were Charges over the property, the amounts of those Charges were not known. He submitted it may be appropriate to make an order for the costs to be assessed.

93. The Respondent submitted the costs were outrageous. He stated that at his previous hearing the SRA had investigated two separate firms and the costs had not even amounted to £20,000. He reminded the Tribunal that his practice in Nigeria did not earn the same kind of income that he would receive in the UK due to the low exchange rate. He submitted there was far too much duplication of costs claimed as a result of the SRA changing their solicitors and that he should not be liable for their decision to change solicitors. Indeed, three different solicitors had had conduct of this case at various times. There were only four files involved in these proceedings and the Respondent submitted the costs were not proportionate to the work required.

94. The Tribunal considered very carefully the question of costs, and concluded the costs claimed were extremely high and disproportionate. Although a number of allegations/facts had been found not proved, the Tribunal was satisfied that those allegations had been properly brought. However, in relation to allegation 1.8 which had been a very serious allegation that was withdrawn at the outset of the hearing, the Tribunal did not accept the Applicant needed to receive a Response from the Respondent before deciding whether that allegation should be withdrawn or indeed pursued in the first place. The Applicant had a duty to check the position carefully prior to making such allegations of such a serious nature in a Rule 5 Statement, particularly in circumstances where it now transpired that the practice alleged was not unusual. The Applicant had failed to do so in this case.

95. Mr Steel had indicated approximately 12½% of the costs were attributable to allegation 1.8. This amounted to just over £8,400. The Tribunal was not prepared to allow any costs relating to allegation 1.8 as it was the Tribunal's view that this allegation should never have been brought. It was quite wrong and unacceptable for the regulator to make any allegation of dishonesty without proper investigation first. This was a case where it was quite clear that there had been no substance to such an allegation and accordingly, the Tribunal deducted the sum of £8,400 from the costs claimed.

96. The Tribunal further observed that the trial bundle had been considerably reduced from four large bundles to 2 large bundles and it appeared from the Schedule of Costs that some 345 hours had been spent by various fees earners dealing with documents alone, amounting to a claim for just over £52,000. The Tribunal considered this to be a quite staggering figure and made a substantial reduction to it.

97. A reduction was also made to the costs claimed for the hearing, which had taken only two days rather than the amount claimed. Having taken all these matters into account, the Tribunal assessed the Applicant's total costs in the sum of £45,000 and Ordered the Respondent to pay that amount.

98. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided an Office Copy of the Register relating to his property in Essex. This confirmed he was the owner of that property. There was no other Statement of Means from the Respondent.

99. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs. In this case, it was clear that the Respondent did have an asset and therefore it may be possible for the Applicant to obtain a further Charging Order over that asset. The Tribunal took into account the fact that the Respondent had been unemployed for the last five years, save for the recent period when he had worked in Nigeria at a low income. The Tribunal was satisfied that the Respondent did not have the means to satisfy the Order for costs save for any Charging Order which may be obtained over his assets. In the circumstances, the Tribunal Ordered that the Order for costs was not to be enforced without leave of the Tribunal, save that the Applicant may apply for a Charging Order over any property owned by the Respondent.

Statement of Full Order

100. The Tribunal Ordered that the Respondent, Abiodun Oludare Odunlami, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £45,000.00 such costs not to be enforced without leave of the Tribunal (save that the Applicant may apply for a Charging Order over any property owned by the Respondent).

DATED this 17th day of April 2014
On behalf of the Tribunal

K.W.Duncan
Chairman