SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 10800-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

RICHARD ADEGBOLA AKINWALE ADESAKIN — First Respondent

and

BABASOJI OLANTUNJI DOHERTY — Second Respondent

Before:

Mr K.W. Duncan (in the chair)
Mr R. Prigg
Mrs L. Barnett

Date of Hearing: 25th April 2012

Appearances

James Moreton, Solicitor of Field Fisher Waterhouse LLP, 35 Vine Street, London EC3N 2AA for the Applicant.

Mr Paul Onifade, Solicitor of Crowther Solicitors, 14 Greville Street, London EC1N 8SB for the First Respondent.

The Second Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondents, Richard Adegbola Akinwale Adesakin and Babasoji Olantunji Doherty were as follows:-

In respect of the First Respondent alone:-

1.1 That he provided inaccurate and misleading information to the Legal Complaints Service, contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code").

In respect of the First and Second Respondents:-

2.1 That they acted in transactions bearing characteristics of money laundering and/or fraud without exercising proper caution and without having due regard to professional guidance, contrary to Rules 1.02, 1.03 and 1.06 of the Code;

2.2 That they failed to act in clients' best interests or to provide a good standard of service to their clients, contrary to Rules 1.04 and 1.05 of the Code;

2.3 That they failed in their duty to co-operate with the Solicitors Regulation Authority, contrary to Rule 20.05 of the Code;

2.4 That they failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Accounts Rules 1998 ("the 1998 Rules");

2.5 That they withdrew money from client account other than in accordance with Rule 22 of the 1998 Rules;

2.6 That they permitted their firm's client bank account to be utilised for receipts and payments by clients and/or a third party in circumstances unconnected with underlying legal transactions in breach of Rule 15 of the 1998 Rules.

Documents

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

Applicant:

- Application dated 12 August 2011;
- Rule 5 Statement and exhibit JCM1 dated 12 August 2011;
- Bundle of authorities;
- Schedule of costs dated 25 April 2012.

First Respondent:

- Statement dated 19 April 2012;
- Bundle of references and testimonials.

Second Respondent:

None.

Preliminary Matters

4. Mr Moreton made an application under Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") for his application to proceed in the absence of the Second Respondent. He explained that there had been difficulties in serving notice of the proceedings on the Second Respondent and enquiries had been carried out by agents who had found an alternative address. Mr Moreton told the Tribunal that he had arranged for personal service of the proceedings on the Second Respondent at that address. He referred the Tribunal to the Memorandum of the hearing on 16 November 2011 at which the Tribunal had directed that it was satisfied that the application and Rule 5 Statement together with supporting documentation had been served on the Second Respondent in accordance with Rule 10 of the SDPR.

5. Mr Moreton confirmed that he had subsequently written to the Second Respondent at the address identified by the enquiry agents but there had been no response. He asked for the Tribunal to proceed in the Second Respondent's absence. The Tribunal was satisfied that notice of the hearing had been served on the Respondent and determined that the application should proceed notwithstanding that the Second Respondent had failed to attend in person and was not represented at the hearing.

Factual Background

6. The First Respondent was born on 2 February 1967 and admitted as a solicitor on 1 September 2000. His name remained on the Roll of Solicitors. The Second Respondent was born on 24 September 1971 and was first registered as a Registered Foreign Lawyer on 11 September 2002.

7. At all material times, the First and Second Respondents carried on practice in partnership under the style of Vincent Doherty and Co, 1 Park Road, London NW1 6XN ("the firm"). The practice was subject to an intervention by the Solicitors Regulation Authority ("SRA") on 21 July 2010 and the First Respondent's practising certificate was suspended following the intervention.

8. On 2 February 2010, an Investigation Officer ("IO") of the SRA attended at the firm in order to commence an inspection of the firm's books of account and other documents. The investigations resulted in the preparation of a Forensic Investigation Report dated 9 July 2010 ("the Report").

9. The Second Respondent was in attendance at the firm's offices on 2 February 2010 but the First Respondent was not. The Second Respondent informed the IO that:-

- the accounting records and bank statements were not available for inspection;
- he did not have access to the firm's accounting system;
- he did not know whether the books were up to date.

10. The IO returned to the firm's premises on 3 and 4 February 2010. The Second Respondent was in attendance at the office on both occasions but the First Respondent was not. On 3 February 2010, the IO was told that it was not possible for him to review any of the firm's accounting records, including client balances and client ledgers.

11. On 4 February 2010, the Second Respondent advised the IO that he had been unable to obtain the accounting records. He told the IO that he had an important meeting to attend and was unable to remain in the office. He said that he could not go to the firm's bank to obtain client bank account statements as requested.

12. The IO advised the Second Respondent of his intention to return to the firm on 16 February 2010 and asked the Second Respondent to have available specified accounting records, bank account statements, client ledgers, client matter files and other information. The Second Respondent was asked to ensure that the First Respondent also attended the 16 February 2010 appointment.

13. On 16 February 2010, the IO received e-mail messages from the Second Respondent advising that ongoing matters in Cardiff Crown Court prevented him from attending at the office that day. The Second Respondent asked for the appointment to be rescheduled.

14. The IO visited the firm's premises as arranged and, after a short delay, succeeded in contacting and then meeting the First Respondent at the office. The First Respondent informed the IO that he was not aware of the investigation and did not have the required documentation. The First Respondent thought that the firm's accounting records were in the office but he was unable to find the records and was unable to access the firm's computerised accounts.

15. The IO made further attendances at the firm's offices by arrangement on 17 and 18 February and 16 March 2010. Some documentation was provided to the IO on 16 March 2010. The Respondents did not provide most of the documentation that had been requested.

16. During a meeting with both Respondents on 18 March 2010, it was agreed that they would send the required documentation directly to the IO at the SRA.

17. The required documentation had not been received by 31 March 2010 and the IO advised the Respondents by e-mail of his intention to return to the firm for a meeting on 20 April 2010. The Respondents were asked to provide documentation in advance of the meeting. The Respondents had not provided the required documentation by 16 April 2010. The IO wrote to the Respondents by e-mail on that date to confirm the appointment for 20 April 2010.

18. In an e-mail dated 19 April 2010, the Second Respondent informed the IO that he was abroad and had difficulties returning to the country due to flight cancellations. The First Respondent was said to be in a similar situation and the IO was asked to re-schedule the meeting. The IO and Second Respondent engaged in further e-mail correspondence on that date.

19. In an e-mail message dated 20 April 2010, the Second Respondent advised the IO that the required information was being assembled and that he would provide such information upon his return. The Second Respondent indicated that he would "contact the airline to confirm the current position" that morning. Further e-mails were exchanged between the IO and the Second Respondent during the morning of 20 April 2010.

20. The IO attended the firm at 12 noon on 20 April 2010 which was one and a quarter hours after the Second Respondent's last e-mail message. He found the Second Respondent present on the premises. The First Respondent was not in attendance. The Second Respondent denied having deceived the IO of his whereabouts and stated that he had been in Calais and was "on his way" when he had sent the e-mails to the IO.

21. The Second Respondent did not provide the IO with the required documentation. The IO asked the Second Respondent to sign an authority to allow information to be provided directly to the IO by the firm's bank, Lloyds TSB. The Second Respondent refused to sign the authority. In due course the information was obtained directly from the bank under the provisions of the 1998 Rules.

22. The IO returned to the firm's premises on 21 April 2010. The First Respondent was not in attendance. The Second Respondent did not provide the required documentation. The Second Respondent informed the IO that the firm's computer system was not operational and that handwritten ledgers were being kept on the client matter files.

23. The IO reviewed six recently completed files which were selected by the Second Respondent. None of the files contained handwritten client ledgers and there was no evidence of any ongoing calculations on the files.

24. The IO was unable to calculate whether the firm was holding sufficient client funds to satisfy its liabilities to clients as at 31 December 2009. The IO identified a minimum cash shortage of £223,022.87. The cash shortage was found to have arisen in respect of two client matters:

<u>(1) Purchase of property by Mr MOS</u>

25. The firm acted for Mr MOS in the purchase of 48 Frome House. The Second Respondent stated that Mr MOS was purchasing the property from his mother. The Second Respondent advised the IO that both he and the First Respondent and a former employee had dealt with the matter. It was noted that the initials "SD" were recorded as the partner reference on the client ledger.

26. The client matter file was not available for review by the IO. The Second Respondent advised that the file had been sent to the SRA in response to a Section 44 Order on 29 January 2010. The Second Respondent informed the IO that he had not taken a copy of the file and that he could find no correspondence relating to the matter on the firm's computer. The IO established that the file had not been received by the SRA.

27. The IO noted that the client ledger recorded receipt of the mortgage advance from Birmingham Midshires of £154,465 on 13 November 2008.

28. The client ledger also recorded receipt of £300 on 13 January 2009 which was shown as being on account of costs and a debit of £2,000 on 20 January 2009 which was shown as having been made on client's instructions.

29. The IO noted the following entries on the client ledger account:

- the sum of £1,296.05 being utilised towards costs and disbursement on 7 July 2009;

- the sum of £150,000 being used as "completion monies" on 18 August 2009;

- that the sum of £3,168.95 remained as a client ledger balance.

30. The IO found that the ledger balance was not reliable. None of the funds held on client account at the investigation date were attributable to the purchase by Mr MOS and those funds that had been utilised could not be accounted for.

31. The IO obtained official copies of the Land Register in relation to 48 Frome House dated 23 March 2010 which showed no change of ownership of the property since 20 March 2003.

32. The IO found that the firm's bank statements recorded a transfer of £150,000 on 18 August 2009 which was noted as being a "foreign payment". The Respondents were unable to say to whom the monies were transferred but informed the IO that they would obtain a copy of the transfer form from the bank. The Respondents did not provide the document.

33. In due course the IO obtained the transfer document from the firm's bank. The document contained both the reference and what appeared to be the signature of the Second Respondent and requested the transfer of £150,000 to a Credit Suisse bank account held at a Swiss branch of the bank in the name of a Mr OT ("Mr T").

34. A complaint was received by the SRA from RP Solicitors who represented Birmingham Midshires. RP complained that their client had not received the return of the £154,465 mortgage advance from the Respondents' firm in relation to 48 Frome House. In January 2010, Bank of Scotland (Birmingham Midshires division) obtained judgment (in default) against the Respondents' firm in the amount of £156,735.

<u>(2) Remortgage of Property – Mr and Mrs M</u>

35. The firm acted for Mr and Mrs M in the remortgage of 12 Aberfoyle Road. Both Respondents acted in the matter.

36. The matter completed on 24 August 2005 at which time the firm transferred the sum of £116,650 to Mr and Mrs M. The original mortgage lenders were IGroup and the remortgage lenders were Southern Pacific Mortgage Limited.

37. It was discovered that the original mortgage lenders, IGroup, had apparently miscalculated the amount owing and had provided the firm with an inaccurate redemption statement. As a consequence, Mr and Mrs M received an overpayment of £90,915.97.

38. On 22 September 2005, IGroup returned redemption monies amounting to £38,422, back to the firm as it was the incorrect amount.

39. On 7 March 2006, Mr and Mrs M repaid £30,000 (part of the overpayment) to the firm. The amount was credited to the client ledger account.

40. The IO noted from the client ledger that as at 15 August 2007, the firm held a total of £68,557.87. The IO observed that such funds were due to either IGroup, as part of the redemption of the mortgage, or to Southern Pacific Mortgage Limited as return of part of the remortgage advance.

41. Between 31 October and 19 December 2007, the money held was disbursed in four tranches save for £31.47 which was transferred to office account as profit costs on 9 April 2008.

42. The IO found no evidence on the client matter file relating to these payments. The Respondents were asked to provide information in relation to these transactions but did not do so.

43. The IO subsequently obtained information directly from the firm's bank and found that:

- the sum of £35,000 was paid by cheque to PWM Solicitors;
- a payment of £14,000 to a foreign bank account;
- a payment of £10,376.40 by direct debit to DJ;
- a payment by cheque of £9,150 to the Inland Revenue.

44. Southern Pacific Mortgage Limited commenced civil proceedings against Mr and Mrs M for recovery of the loan amount and obtained a Consent Order which required the Respondents' firm to pay the sum of £68,422 (plus interest). The said amount was the sum of £38,422 returned to the firm by IGroup and the £30,000 repaid to the firm by Mr and Mrs M.

Peninsula Apartments

45. During the course of the investigation, the IO found that the firm had acted for Mr T in the purchase of 802 Peninsula Apartments. The Respondents did not provide the IO with a client ledger for this matter.

46. The Respondents did not provide the client matter file when asked to do so. The Second Respondent told the IO that the file had been sent to the SRA on 29 January 2010 in response to a Section 44 Order. The IO confirmed that although the file had been requested by the SRA it had never been received. The Second Respondent informed the IO that he had not taken a copy of the file prior to sending it to the SRA

and that the only correspondence in the firm's possession relating to the matter amounted to three letters.

47. The IO noted from the office bank account statement that the amount of £465,994 had been received on 24 April 2009 from a Mr OK.

48. An inspection of the client bank statement showed that on 16 June 2009, the sum of £26,700 had been paid to SC Solicitors who were acting for the vendor.

Complaint to Legal Complaints Service (LCS)

49. In August 2009, the matter became the subject of a complaint by R Solicitors on behalf of Mr KT ("Mr T"). It was said that Mr T had, on 24 April 2009, transferred some £466,000 to the Respondents in connection with the purchase of property in London. The matter did not progress and neither the subject property, nor any other property was purchased on Mr T's behalf.

50. R Solicitors complained that although Mr T had requested the return of monies held by the firm, only £149,000 had been returned and the Respondents' firm had failed to account to him for the balance owed which amounted to £317,000.

51. In an e-mail to the Second Respondent dated 5 July 2009, Mr T requested that if completion had not taken place by Friday, or if the Second Respondent was not completely sure that completion would take place within a few days, that the Second Respondent should transfer money to an account at Credit Suisse in Switzerland.

52. E-mail correspondence provided to the LCS by R Solicitors showed that on 17 July 2009, Mr T requested the Second Respondent to "...return the fund with you to my account in Credit Suisse previously mailed to you. The deposit (10%) may take a little more time, but please send 90% of the sum by monday. Please send the swift transfer and refernece [sic] number once you have sent it".

53. On 22nd July 2009, Mr T wrote to the Second Respondent in the following terms:

> "The funds are yet to be credited to my account. Please transfer them WITHOUT FAIL today and send the swift number"

The Second Respondent replied on 22 July 2009 stating that he was out of the office but that funds had left his account the previous day.

54. In an e-mail dated 17 August 2009, the Second Respondent provided Mr T with a payment request slip for a transfer that day, stating amongst other things "I am working on other payments to be sorted/received this week". The Second Respondent attached a Lloyds TSB International Moneymover application form to the e-mail in respect of a transfer of £150,000. The form had a bank stamp dated 17 August 2009, the Second Respondent's name as a point of contact and what appeared to be his signature.

55. The LCS was provided with a Credit Suisse statement of account in the name of Mr OKT by R Solicitors. The statement showed the sum of £149,979 as having been received from the firm and credited to the account on 18 August 2009.

56. In a letter to the LCS dated 11 November 2009, the First Respondent confirmed that the firm had received £466,000 from Mr [C] T in respect of the purchase of a property which had not proceeded.

57. A further letter from the First Respondent to the LCS dated 23 November 2009, advised that Mr T's funds had been paid to SC Solicitors in relation to the purchase of a property at Peninsula Apartments. The letter stated that SC's client(s) (the vendor) were not the rightful owners of the property. The First Respondent stated that efforts were being made to recover Mr T's money and confirmed as follows:-

> "...on our own and in the light of our commitment to Mr T we can confirm that part of the funds have since been refunded to Mr T from funds privately raised by the partners in this Firm."

58. In a letter dated 16 December 2009, the SRA wrote to the Second Respondent requesting his response in relation to matters concerning Mr T. The Second Respondent did not reply.

59. The SRA wrote to the First Respondent in a letter dated 5 January 2010 providing copies of correspondence addressed to the Second Respondent. The First Respondent did not reply.

60. During the course of the investigation, the Second Respondent informed the IO that the property transaction had aborted. He believed the funds were initially held whilst the client was looking for alternative properties but had then been returned to the client when requested. The Respondents failed to provide the IO with evidence that all the funds had been returned to the client.

61. When the IO asked about this matter again on 21 April 2010, the Second Respondent informed him that the matter aborted after payment of £26,700 to SC Solicitors. He advised that the balance of £466,000 paid to the firm was distributed to third parties in accordance with the client's instructions. No evidence was provided to confirm these comments.

62. The IO noted that the payment of £150,000 which had been paid to Mr T on 18 August 2009 had originated from the client matter of Mr MOS.

63. The IO found no evidence that Mr T had received the balance of funds due to him which amounted to £315,994. As a consequence, the IO considered that there was a potential further client account shortage of £315,994 as at 31 December 2009.

<u>Other matters</u>

64. The firm acted for A.R.C Ltd ("C") in the purchase and sale of 17 Bishops Avenue.

65. The Second Respondent provided the IO with the client matter file but was not able to provide a client ledger account.

66. The Second Respondent informed the IO that C were purchasing the Bishops Avenue property from H Ltd at a discount and selling it on to Mr IJ immediately.

67. The Second Respondent stated that the firm had received funds from K & Co on behalf of Mr IJ, part of which were paid to SC Solicitors who acted for the vendor. The transaction had aborted.

68. The IO inspected the client bank statements and found that the firm had received a total of £12 million from K & Co in two transactions.

69. The IO found that the firm had not returned the money to K & Co. The client bank statements recorded a payment of a total of £12 million to Mr IJ in four separate transactions.

70. The Second Respondent informed the IO that the firm had received a telephone request from K & Co to return the money directly to Mr IJ. The Respondents stated that an attendance note would have been made but that it must have been misfiled. The Respondents did not provide the IO with a copy of any such document.

71. The Second Respondent did not agree that there was no underlying legal transaction nor did he agree that the firm had allowed its client account to be used as a bank in relation to this matter. The Second Respondent informed the IO that there had been no concerns about money laundering because Mr IJ had been a previous client of the firm.

72. The IO exemplified the following further matters:-

- Receipt into the firm's bank account on 10 March 2010 of £65,401.51 and £450,000 which was said by the Second Respondent to relate to a remortgage in which the firm had not acted. The Second Respondent informed the IO that the funds had been received from another solicitor and then distributed in accordance with his client's instructions. The Second Respondent said that the firm was not acting as a bank but was distributing funds under a loan agreement. The Second Respondent was not able to produce the client matter file or client ledger accounts;

- Receipt into the firm's bank account of £446,224.46 on 17 March 2010 which was said by the Second Respondent to relate to remortgage funds. The Second Respondent informed the IO that the firm was not acting in the remortgage and that the funds had been received from another solicitor and distributed in accordance with his client's instructions under a loan agreement. The Second Respondent stated that the firm was not acting as a bank. The Second Respondent was unable to produce the client matter file or client ledger accounts.

- The Second Respondent was unable to produce the client matter file or client ledger accounts relating to two accounting slips both dated 2 March 2010, one in an amount of £50,000 and the other in the sum of £49,000.

73. The matters which were the subject of the Report were considered by an Adjudication Committee of the SRA on 19 July 2010 when a resolution was made to intervene into the Respondents' practice and to refer their conduct to the Solicitors Disciplinary Tribunal.

Witnesses

74. Dr David Rowson, the SRA's Investigation Officer gave evidence and was cross examined by Mr Onifade. He confirmed that the contents of the Report were true to the best of his knowledge and belief. He told the Tribunal that he had worked as a Forensic Investigation Officer with the SRA since 1996 and he was a qualified chartered accountant. He also held a doctorate in fraud investigation.

75. Dr Rowson confirmed the dates upon which he had visited the firm. He told the Tribunal that following an exchange of e-mail correspondence between himself and the Second Respondent on 20 April 2010, he had understood that the Second Respondent would not be available on that day as he would be abroad. However when he had arrived at the firm's offices one and a quarter hours later, he had found that the Second Respondent was there.

76. The Tribunal was told that the Respondents had not been given prior notification of the visit. Dr Rowson explained that at the start of the visit he provided each partner with the notification letter setting out the authority for the visit and specifying the information and documentation required. He had given the Second Respondent a copy of the notification letter when he had met with him on 2 February and the First Respondent had been provided with his copy of the letter on 16 February. Dr Rowson told the Tribunal that in addition to the notification letter, the Respondents had been given a list of specific further information or documentation that was required at the end of each day of the visit. He stated that although some information had been forthcoming during the visit, most of it had not been produced. He told the Tribunal that he had not received copies of the bank mandates and explained that it was the Second Respondent who had told him that only the First Respondent could operate the firm's accounts. He acknowledged that he did not have any independent evidence to confirm what he had been told by the Second Respondent in relation to the operation of the firm's bank accounts.

77. In cross examination by Mr Onifade, Dr Rowson told the Tribunal that he did not know whether the assertion that only the First Respondent could operate the firm's bank accounts was correct. He acknowledged that a bank transfer application form appeared to refer to the firm's Lloyds TSB client account and contained the Second Respondent's name. He agreed that the document appeared to have been signed by the Second Respondent but told the Tribunal that he did not know what the Second Respondent's signature looked like. He did not know whether the Second Respondent had lied to him in relation to the operation of the firm's bank accounts.

78. In answer to a question from the panel, Dr Rowson stated that he had formed the impression that the firm was not running well. He told the Tribunal that no one appeared to be at the firm for most of the time and firm appeared to be "disorganised, not functioning and chaotic". In relation to the file of Mr and Mrs M, he had formed the impression that both Respondents had dealt with the file at some stage. He acknowledged that there had been no documentary evidence to confirm this but told the Tribunal that he had not been able to review many files and the files that he had seen had not contained much information. He could not recall having seen a Certificate of Title which had been signed by the First Respondent in relation to any of the transactions.

79. The First Respondent gave oral evidence. He was examined in chief by Mr Onifade and cross examined by Mr Moreton. His evidence is referred to below.

Findings of Fact and Law

80. The Tribunal determined all the allegations to its usual standard of proof, that is beyond reasonable doubt.

81. **<u>In respect of the First Respondent alone:-</u>**

Allegation 1.1. That he provided inaccurate and misleading information to the Legal Complaints Service, contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 ("the Code").

<u>In respect of the First and Second Respondents:-</u>

Allegation 2.1. That they acted in transactions bearing characteristics of money laundering and/or fraud without exercising proper caution and without having due regard to professional guidance, contrary to Rules 1.02, 1.03 and 1.06 of the Code;

Allegation 2.2. That they failed to act in clients' best interests or to provide a good standard of service to their clients, contrary to Rules 1.04 and 1.05 of the Code;

Allegation 2.3. That they failed in their duty to co-operate with the Solicitors Regulation Authority, contrary to Rule 20.05 of the Code;

Allegation 2.4. That they failed to keep accounts properly written up for the purposes of Rule 32 of the Solicitors Account Rules 1998 ("the 1998 Rules");

Allegation 2.5. That they withdrew money from client account other than in accordance with Rule 22 of the 1998 Rules;

Allegation 2.6. That they permitted their firm's client bank account to be utilised for receipts and payments by clients and/or a third party in circumstances unconnected with underlying legal transactions in breach of Rule 15 of the 1998 rules.

81.1 Mr Moreton told the Tribunal that both Respondents had failed to co-operate with the IO and had not provided the information that had been requested. He reminded the Tribunal that the IO had been told that it was not possible for him to review any of the firm's accounting records. The Second Respondent had claimed that the accounting records and bank statements were not available and had stated that he had no access to the firm's accounting system and did not know whether the books were up to date. The information had not been provided to the IO when he had returned to the firm on 16 February and the Second Respondent had claimed that he was unable to go the firm's bank to obtain the statements that had been requested as he had an important meeting. The Tribunal was reminded that only the First Respondent had been present at the firm's offices on 16 February. He had told the IO that he had not been aware of the investigation and was unable to find the firm's accounting records or access the firm's computerised accounts system.

81.2 The Tribunal was told that some documentation had been provided to the IO by 16 March 2010 but the Respondents had failed to supply most of what had been requested. Mr Moreton reminded the Tribunal that the Respondents had subsequently agreed to send the required documentation directly to the IO at the SRA but had failed to do so. The Tribunal was then referred to the exchange of e-mail correspondence between the IO and the Second Respondent in which the Second Respondent had claimed that he was having trouble returning to the country due to flight difficulties. The IO had attended at the firm's offices one and a quarter hours after receiving the last e-mail from the Second Respondent and had had found that the Second Respondent was on the premises. Mr Moreton told the Tribunal that the Second Respondent had denied deceiving the IO as to his whereabouts. He had subsequently refused to sign an authority to enable the IO to obtain information direct from the firm's bank and it had been necessary for the IO to obtain the information himself. On the final day of the visit, the IO had been told that the firm's computer system was not operational and that handwritten ledgers were kept on the client files. The IO had managed to review six files which had been selected by the Second Respondent and found that none of these contained ledgers.

81.3 The Tribunal was told that the inspection had revealed a number of accounts breaches which included a failure to keep the books of accounts properly written up. Mr Moreton confirmed that the IO had established a minimum cash shortage as at 31 December 2009 which had resulted from improper payments in relation to the matters of Mr MOS and Mr and Mrs M. In addition the IO had identified a further potential client account shortage as at the same date in relation to the matter of Mr T.

<u>Purchase of property by Mr MOS</u>

81.4 Mr Moreton told the Tribunal that it appeared to the IO that the transaction related to a purchase from the client's mother but there was a lack of information and the client matter file was not available for inspection. The Second Respondent had claimed that the file had been sent to the SRA but it had never been received and there was no correspondence relating to the matter on the firm's computer. Mr Moreton stated that the IO had found that the client ledger balance was not reliable and when the IO had obtained official copies of the land register he had noted that there had been no change of ownership of the property since March 2003. Mr Moreton asked the

Tribunal to note that the First Respondent had now admitted to having signed the Certificate of Title.

81.5 The Tribunal was told that the IO had noted that the firm's bank statement had recorded a transfer of £150,000 on 18 August 2009 as being a "foreign payment". The transfer document obtained by the IO had shown the reference and what appeared to be the signature of the Second Respondent. The transfer had been made to a Credit Suisse account in the name of Mr T. Mr Moreton stated that the money which had been received from Birmingham Midshires as a mortgage advance had been intended for the purchase of a property and should not have been distributed to a third party. This had resulted in a withdrawal from client account that was not in accordance with the 1998 Rules. Mr Moreton claimed that the Respondents had failed to act in their lender client's best interests or provide a good standard of service.

Remortgage of property- Mr and Mrs M

81.6 The Tribunal was told that the money which was due to either IGroup as part of the redemption of the mortgage or to Southern Pacific Mortgage Ltd as return of part of the remortgage advance had been disbursed in four tranches with the remaining £31.47 being transferred to office account as profit costs. Mr Moreton explained that the IO had obtained some information relating to these transactions direct from the firm's bank. The IO had found no evidence on the client file to suggest that PWM Solicitors were involved in the matter or that any amount had been due to the Inland Revenue. The IO had not obtained any further information from the bank in relation to the payment to the foreign bank account or the direct debit payment to DJ.

81.7 Mr Moreton stated that the withdrawals from client account were not in accordance with the 1998 Rules. He claimed that the Respondents had acted in transactions which had the characteristics of money laundering and fraud and they had failed to exercise proper caution in this matter and disregarded professional guidance. Mr Moreton told the Tribunal that it was implicit that the Respondents had been instructed by the mortgage lender as the advance had been received by the firm and he submitted that the Respondents had not acted in their lender client's best interests and had failed to provide a good standard of service to Mr and Mrs M in relation to the money that had been disbursed

Peninsula Apartments

81.8 Mr Moreton told the Tribunal that the Respondents had not provided the client ledger or file in relation to this matter. The Second Respondent had claimed that the file had been sent to the SRA but the IO had established that the file had never been received. The matter had become the subject of a complaint and the Tribunal was referred to e-mail correspondence between Mr T and the Second Respondent in which the client had requested the return of his money. The Tribunal were reminded that the Second Respondent had subsequently claimed that the money had left his account. The LCS was later provided with a Credit Suisse statement in the name of Mr T which showed the credit of £149,979 as having been received from the firm. Mr Moreton claimed that the money that had been transferred had come from the unrelated client matter of Mr MOS and had originated from Birmingham Midshires. Mr Moreton stated that it had never been intended that the money was to be used for this transfer.

81.9 The Tribunal was then referred to correspondence passing between the LCS and the Respondents in relation to the complaint. In particular, Mr Moreton asked the Tribunal to note the contents of the letter sent by the First Respondent to the LCS on 23 November 2009 in which he had claimed that part of the funds due to Mr T had been raised privately by the partners. Mr Moreton told the Tribunal that this was an inaccurate and misleading statement as the money had not been provided by the Respondents but had come from Birmingham Midshires and related to another transaction. The Tribunal was told that the Respondents had then failed to reply to correspondence sent by the SRA and had not provided the IO with evidence to confirm that all of the funds had been returned to the client. The Tribunal was reminded that there was no evidence to support the Second Respondent's assertion that the balance of the funds had been distributed to third parties in accordance with the client's instructions. Mr Moreton told the Tribunal that the withdrawals from client account were not in accordance with the 1998 Rules. In addition, he submitted that the Respondents had failed to act in the best interests of Mr T and had not provided a good standard of service.

Other matters

81.10 The Tribunal was reminded that the firm had failed to return the funds received from K & Co and had instead paid it to IJ in four separate transactions. Mr Moreton pointed out that the IO had not been provided with a copy of the attendance note which had allegedly been made and which apparently confirmed that the money should be returned direct to Mr IJ. Mr Moreton claimed that the Respondents had acted in a transaction which had the characteristics of money laundering and mortgage fraud. He told the Tribunal that the Respondents had also allowed withdrawals from client account that were not in accordance with the 1998 Rules and had permitted their client account to be used in circumstances unconnected with any underlying legal transaction. The Tribunal was also referred to further matters set out in the Report which Mr Moreton stated showed that the Respondents had failed to provide the IO with the information that had been requested and in so doing demonstrated their failure to co-operate with the SRA.

81.11 Mr Moreton claimed that the Second Respondent had acted dishonestly in making an improper withdrawal of £150,000 from the client account of Mr MOS and transferring this sum to the Credit Suisse account of Mr T. He stated that the firm had been holding monies received from Birmingham Midshires in relation to a property purchase which had not completed. Mr Moreton told the Tribunal that the Second Respondent had known that the mortgage advance could not be used for any other purpose and that it should have been returned to the lender in a timely manner or in accordance with the lender's instructions. Instead, the Second Respondent had transferred the money into the foreign account in an unconnected client matter.

81.12 Mr Moreton asked the Tribunal to consider the principles governing a solicitor's conduct as set out in Bolton v The Law Society (1994) 1WLR and approved in Salsbury v The Law Society (2008) EWCA Civ 1285. He also reminded the Tribunal of a solicitor's duty to comply with the 1998 Rules and referred the Tribunal to the cases of Weston v The Law Society (1998), Levy v Solicitors Regulation Authority (2011) EWHC 740 (Admin) and Adeeko v Solicitors Regulation Authority

(unreported). He asked the Tribunal to note that the Respondents had allowed a cash shortage to arise on client account and had improperly transferred money. He reminded the Tribunal that client account was sacrosanct and stated that a shortage should never arise. He claimed that solicitors were under a duty to comply with their professional obligations at all times as this was in the public interest and was vital for both the reputation of the profession and the maintenance of public trust in the profession.

Evidence of the First Respondent

81.13 The First Respondent gave oral evidence. He confirmed that the contents of his statement were true. He told the Tribunal that the source of the information contained in his 23 November letter to the LCS had been provided by the Second Respondent and from the file and ledger "such as they were". He confirmed that he had seen a letter from SC Solicitors which contained an undertaking that the remaining funds would be returned to Mr T. He assumed that the letter had been on the file which had apparently been sent to the SRA by the Second Respondent.

The First Respondent told the Tribunal that he had not received the letters from the LCS dated December 2009 and January 2010 and which had been addressed to him. He stated that he had not seen the letters sent to the Second Respondent either. He confirmed that he had not acted in the C matter and told the Tribunal that he had not been directly involved in the transaction relating to Mr and Mrs M. He had supervised the file and signed the Certificate of Title. He recalled that there had been difficulties in obtaining a redemption statement from the lender and he remembered that the mortgage company had made a mistake in the amount of the redemption monies. He had contacted the bank in 2008 and knew that the firm had to retain the money until the matter had been resolved.

81.14 In evidence, the First Respondent told the Tribunal that he had not been aware that the Second Respondent had been receiving commission for work done for Mr T. He had understood that the Second Respondent intended to obtain funds from his father and uncle in order to repay Mr T the money that was due to him and he explained that this was the reason for informing the LCS that funds had been raised privately by the partners. He stated that the firm had been trying to resolve the matter internally. He did not know how much money the Second Respondent had paid to Mr T and he did not know if any private payment had actually been made by the Second Respondent.

81.15 In relation to the Mr MOS matter, the First Respondent told the Tribunal that he had signed the Certificate of Title. He recalled that this was a straightforward transaction involving a sale from mother to son. He told the Tribunal that when he had seen the file, there had been one or two matters outstanding and he had told the firm's clerk to resolve these issues before he was prepared to sign the Certificate of Title. He confirmed that he had gone on to sign the Certificate of Title and told the Tribunal that there had been other matters where Certificates had been signed. He stated that he had not realised that Section 44 orders had been made in relation to certain files and told the Tribunal that there were many things which he had not been aware of until later.

81.16 In cross examination by Mr Moreton, the First Respondent stated that he understood that the Second Respondent had been arranging for funds to be paid to the firm in order to refund Mr T. He told the Tribunal that Mr T and the Second Respondent had been close friends and he believed that they had come to some sort of arrangement regarding Mr T's complaint. He stated that money had been paid into office account rather than client account in relation to this matter which was not usual and when he had asked the Second Respondent about the money, he had been told that it had been transferred directly to SC Solicitors.

81.17 The First Respondent told the Tribunal that he had seen a completed blue slip showing that the money had been paid to SC Solicitors. He had only seen the blue slips in relation to this matter and not the ledger. He explained that the books had probably not been written up. He told the Tribunal that by this stage, transactions were few and far between as business had dropped off and so the bookkeeper had not been coming to the office as much as he had previously. He acknowledged that the LCS complaint had been serious. He told the Tribunal that he could not be sure of what exactly had occurred in relation to this matter and he could not explain why the ledger card had not subsequently been provided to the LCS as requested.

81.18 The First Respondent confirmed that he had been "caught unawares" when he had met with the IO on 16 February. He told the Tribunal that he had done the best that he could to provide the information that had been requested and had been perturbed to discover that the Second Respondent had not told him about the inspection. He had contacted the bookkeeper for assistance but he was away and there had also been problems with the firm's computer system and so he had not been able to print out any information. He had managed to find one file which he had given to the IO.

81.19 In continuing cross examination, the First Respondent acknowledged that he had not provided the required information to the SRA following the visit although he had put pressure on the Second Respondent to supply it. He had noticed discrepancies after speaking to the bookkeeper and had realised that SC Solicitors had not paid the money that was due to Mr T. His world had "caved in" when the scale of the problem had become apparent. He had realised that the Second Respondent had been "playing fast and loose" with the accounts since the middle of March 2010 and he had not known what to do. He had been in a panic and was afraid that his career was ruined. He did not know who to turn to and thought that he would be able to resolve matters "in house".

81.20 The First Respondent told the Tribunal that there had been a previous inspection at the firm which had proceeded without any difficulty. The firm had been doing well and the bookkeeper had been coming into the office on a regular basis to write up the books and carry out the reconciliations. The First Respondent explained that following the slump in the housing market business at the firm had slowed down and by the time that the inspection had commenced he had been thinking of merging with another firm or closing down altogether. He believed that the IO had gained the impression that the firm was not being run properly but stated that the firm had been going through a difficult time. The First Respondent was questioned about whether he still believed that the firm had been run well. He told the Tribunal that he had not expected the Second Respondent to have behaved in the way that he had. He said that

the Second Respondent had refused to participate in these proceedings or to give any explanation for his actions.

81.21 In relation to the matter of Mr and Mrs M, the First Respondent explained that the only outstanding matter had been the repayment of the money to the lender as the transaction had completed. He told the Tribunal that he had no reason to believe that anyone would "dip into" the client account and take the money. With the benefit of hindsight, he acknowledged that he should have ensured that the situation had been monitored but he stated that there had been a lot going on and he had no reason to believe that the money would not be there.

81.22 Mr Onifade told the Tribunal that the First Respondent had been "kept in the dark" by the Second Respondent. It was the Second Respondent who had dealt with enquiries from the SRA and the First Respondent had not had the day to day conduct of any of the files in question. Mr Onifade stated that although the First Respondent had failed to supervise and investigate, there was no evidence linking the First Respondent to any of the transactions. He told the Tribunal that the Second Respondent had lied to the IO when he had claimed that it was the First Respondent alone who could operate the firm's accounts and he reminded the Tribunal that the Second Respondent had signed the transfer form authorising the payment into Mr T's Credit Suisse account.

81.23 Mr Onifade claimed that this was a "very messy" matter. He told the Tribunal that the allegation that the First Respondent had provided misleading and inaccurate information could not be substantiated. He stated that the First Respondent had relied on the "scanty" information that he could obtain from files and on the Second Respondent and the firm's book-keeper. He had been unable to provide all of the information that had been requested because files had been missing. Mr Onifade stated that although the First Respondent could not disagree with the facts of the case, he had not been part of it and he had no inkling that was anything untoward. He had not benefited in any way from the transactions. He claimed that by the time that the First Respondent had realised what was going on the "damage had been done". Mr Onifade hoped that the Tribunal would see the First Respondent's role as a failure to adequately supervise a dishonest and recalcitrant partner.

81.24 The Tribunal was told that the First Respondent had suffered immensely as a result of what had occurred and he had become depressed. He wished to apologise profusely to the Tribunal and regretted the dishonour that he had brought to the profession. Mr Onifade told the Tribunal that the First Respondent's career had been "put on hold" and there had been serious implications for his family life. He stated that the First Respondent also wanted to apologise to the clients involved and he accepted that, by default, he had not served their best interests. He told the Tribunal that the First Respondent acknowledged that these were serious matters but he claimed that the First Respondent had been the victim of a fraudulent partner who had abused his trust. He asked the Tribunal to consider that the First Respondent's role had been limited to inadequate supervision of his partner.

81.25 It was a matter of fact that the First Respondent had provided inaccurate and misleading information to the LCS in his letter dated 23 November 2009. In view of this, the Tribunal found allegation 1.1 substantiated against the First Respondent.

81.26 In considering allegation 2.1, the Tribunal noted the fact that the First Respondent signed the Certificate of Title in the Mr MOS matter. However, the Tribunal further noted that the Applicant's case did not rely on this transaction in relation to the allegation. In evidence, the First Respondent had confirmed that he had signed the Certificate of Title in the matter of Mr and Mrs M. The Tribunal noted that the disbursement of the monies held on client account in relation to that matter had been made after the completion of the transaction. In all the circumstances, the Tribunal was not satisfied to the required standard of proof that allegation 2.1 was substantiated against the First Respondent. The Tribunal found allegation 2.1 substantiated against the Second Respondent on the facts and documents before it.

81.27 On the evidence, it appeared that the First Respondent had no personal involvement in the transactions referred to in relation to allegation 2.2 over and above the fact that he had signed Certificates of Title in the case of Mr MOS and in relation to Mr and Mrs M. The Tribunal noted that the First Respondent had admitted that he had failed to adequately supervise the Second Respondent but inadequate supervision had not been alleged against the First Respondent. In all the circumstances, the Tribunal was not satisfied to the required standard of proof that allegation 2.2 could be substantiated against the First Respondent. The Tribunal found allegation 2.2 substantiated against the Second Respondent on the facts and documents before it.

81.28 Whilst the Tribunal accepted the First Respondent's evidence that he had been kept "in the dark" by the Second Respondent before receiving the notification letter on 16 February 2010, he had failed to provide the required information after that date and he had not been present during the IO's final attendance at the firm in April 2010. In view of this, the Tribunal found allegation 2.3 substantiated against the First Respondent on the facts and documents and having heard evidence from the First Respondent. The Tribunal also found allegation 2.3 substantiated against the Second Respondent on the facts and documents before it.

81.29 The Tribunal found allegation 2.4 substantiated against both Respondents on the facts and documents before it and having heard the evidence given by the First Respondent.

81.30 The Tribunal found allegation 2.5 substantiated against both Respondents on the facts and documents before it and having heard the evidence of the First Respondent. The Tribunal had been asked to make a finding of dishonesty against the Second Respondent in relation to the withdrawal of the sum of £150,000 from the client account of Mr MOS. The Tribunal considered the "combined test" for dishonesty set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 which stated that:

> "before there can be a finding of dishonesty it must be established that the defendants conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest".

The Tribunal was satisfied that the Second Respondent had been dishonest in relation to the withdrawal and transfer of the £150,000.

81.31 The Tribunal found allegation 2.6 substantiated against both Respondents on the facts and documents before it and having heard evidence from the First Respondent.

Previous Disciplinary Matters

82. There had been previous findings against both Respondents in case number 9136/2004 which had been heard on 12 April 2005. Both admitted conduct unbefitting a solicitor including failure to keep proper accounting records, and failure to report that a conveyancing transaction contained the hallmarks of a mortgage fraud. Both Respondents had been ordered to pay a fine of £1,000 each.

Mitigation

First Respondent

83. Mr Onifade asked the Tribunal to consider the entire circumstances of this case. He claimed that there had been an active effort on the part of the Second Respondent to hide things from the First Respondent which had included lying to the IO. He told the Tribunal that the First Respondent had apologised for his actions and he had learned lessons that he was unlikely to ever forget. He had seen the full implications of not providing adequate supervision.

84. Mr Onifade told the Tribunal that the First Respondent's practising certificate had been suspended for two years. He referred the Tribunal to the character references that had been supplied on behalf of the First Respondent. In addition, the Tribunal heard oral testimony from a friend of the First Respondent who asked the Tribunal to "temper justice with compassion" and who claimed that no one had "a bad word to say" about the First Respondent. The Tribunal was asked to take all of these matters into consideration when making a decision as to sanction in this case.

Second Respondent

85. None.

Sanction

86. The evidence showed that the Respondents had run their practice in a truly lamentable way. It was clear that they had not kept proper or timely financial records. The Tribunal had found proven extremely serious breaches of the Solicitors Accounts Rules including the firm's client account being used in circumstances unconnected with underlying legal transactions and improper withdrawals from client account which had resulted in substantial losses to clients. The Tribunal appreciated and accepted that the First Respondent had been deceived by the Second Respondent who had kept him "in the dark" but this did not absolve him of his own responsibilities; the First Respondent should not have allowed this to happen, in particular because both he and the Second Respondent had already been before the Tribunal on an earlier occasion after which it might have been hoped that the First Respondent would have learned his lesson but unfortunately he had not. In addition to the Solicitors Accounts Rules breaches which were, by any standards, extremely serious the Tribunal had found that the First Respondent had provided inaccurate and misleading information to the LCS. Furthermore, after becoming aware of the investigation and after learning

of the Second Respondent's misconduct he had also failed to co-operate with the SRA over a sustained period and despite ample opportunity and numerous requests.

87. The Tribunal had carefully considered the submissions made on behalf of the First Respondent and had taken into account the written and oral testimonials provided. It was essential that the public had trust in the profession and that the reputation of the profession was maintained. The Tribunal had regard to Bolton v The Law Society where it had been stated that "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". The Tribunal also had regard to Weston v The Law Society which dealt with the heavy obligation on solicitors to ensure observance of the Solicitors' Accounts Rules, and where the conclusion was reached that where therefore a solicitor against whom no dishonesty was alleged was guilty of breaches of the rules through his partners activities of which he was unaware, his conduct was unbefitting that of a solicitor and he might be struck off the Roll of Solicitors. Having taken into account the need to protect the public and the reputation of the profession and having considered the range of available sanctions, the Tribunal decided that the First Respondent should be struck off the Roll of Solicitors.

88. Further allegations had been found proven against the Second Respondent. The Tribunal had also found that the Second Respondent had acted dishonestly. In view of the Tribunal's findings, the only appropriate sanction was that the Second Respondent should be struck off the Register of Foreign Lawyers. .

Costs

89. The Applicant's claim for costs was £31,056.63 which included the investigation costs. Mr Moreton asked for a fixed order for costs in this sum and told the Tribunal that he did not have any information as to the Respondents' means.

90. Mr Onifade told the Tribunal that the bulk of the misconduct in this matter was the responsibility of the Second Respondent and any costs order should reflect this. He suggested that the Second Respondent should be responsible for at least 70% of the Applicant's costs. He told the Tribunal that the First Respondent had been discharged from bankruptcy in March 2012. He had been unemployed following the intervention at the firm. He had no financial means and relied on his wife to maintain the family.

91. In the light of its findings, the Tribunal decided that it was appropriate that the First Respondent should be responsible for 40% of the costs and the Second Respondent should be responsible for 60%. The Tribunal assessed the Applicant's costs at £30,000 and ordered that the First Respondent should pay costs fixed in the sum of £12,000 and the Second Respondent should pay costs fixed in the sum of £18,000. The Tribunal noted that it did not have details of any property owned by the Respondents or any information in relation to the circumstances of the Respondents' bankruptcy. It would be open to the SRA to investigate the Respondents' means and apply to charge any available property if appropriate to do so. In the circumstances, the Tribunal directed that the costs orders made against both Respondents were not to be enforced (save by an application to the Court for a charging order) without permission of the Tribunal.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, Richard Adegbola Akinwale Adesakin 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 £12,000.00, the costs are not to be enforced (save by an application to the Court for a Charging Order) without permission of the Tribunal.

93. The Tribunal Ordered that the Respondent, Babasoji Olantunji Doherty, registered foreign lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00, the costs are not to be enforced (save by an application to the Court for a Charging Order) without permission of the Tribunal.

Dated this 30th day of May 2012
On behalf of the Tribunal

K.W. Duncan
Chairman