SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10871-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NAWEED RIAZ First Respondent

and

FARHAT HUSSAIN Second Respondent

Before:

Mr D. Green (in the chair)
Ms A. Banks
Mr S. Hill

Date of Hearing: 5th July 2012

Appearances

Mr Geoffrey Williams QC of Geoffrey Williams & Christopher Green, The Mews, 38 Cathedral Road, Cardiff, CF11 9LL for the Applicant.

The Respondents did not appear and were not represented.

JUDGMENT

Allegations

1. The allegations against the Respondents were that they:

1.1 Improperly acted in conveyancing transactions which bore the hallmarks of fraud contrary to Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code");

1.2 Failed to account to their client, Mrs AG for monies held on her behalf and which had been paid into their client bank account contrary to Rule 1.04, 1.05 and 1.06 of the Code;

1.3 Unreasonably delayed in the process of costs assessment contrary to Rule 1.04 and 1.05 of the Code;

1.4 Failed to comply with directions of an Adjudicator of the SRA contrary to Rule 1.04 and 1.06 of the Code.

2. The allegations against the Second Respondent alone were that he:

2.1 Failed to deal with the SRA in an open, prompt and cooperative way contrary to Rule 20.03 of the Code;

2.2 Wrote a false and misleading letter.

Dishonesty was alleged as a characteristic of allegations 1.1 and 2.1 and 2.2.

The Applicant also applied for an Order against the First Respondent and the Second Respondent that the Directions of the Adjudicator that the First Respondent and the Second Respondent should pay Mrs AG the sum of £2,099.65 for compensation and a further sum of £23,703.42 with respect to monies held (a total of £25,803.07) be treated for the purpose of enforcement as if they were contained in an Order of the High Court.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 9 November 2011 together with exhibit "GW1"
- Application and Rule 7 Statement dated 4 May 2012 together with exhibit "GW2";
- Small subsidiary bundle consisting of 15 pages containing letters from the Tribunal to both Respondents in respect of the hearing itself and Notices from Mr Williams under the Civil Evidence Acts 1968 and 1995. The bundle also contained the statements of Christopher Hardy, a Process Server dated 15 February 2012 and 1 June 2012;

- Letters comprising Notices to Admit dated 29 June 2012 from Mr Williams to both Respondents enclosing a letter from the intervening solicitors dated 28 June 2012 and MV LLP dated 28 June 2012.
- Applicant's Schedule of Costs dated 28 June 2012.

Respondents:

- Letter from the First Respondent to the Solicitors Regulation Authority dated 25 April 2011 contained within exhibit "GW1" at pages 172A and 172B

Preliminary Matter

4. Neither of the Respondents appeared before the Tribunal today and Mr Williams told the Tribunal that he had heard nothing from either of them at any stage of his involvement with these proceedings.

5. Mr Williams said that the First Respondent had been correctly served under the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"). However the Second Respondent had been more difficult to trace and details of activities to trace him were contained within the small evidence bundle. The Process Server, Mr Christopher Hardy had made a statement on 15 February 2012 that he had handed the Rule 5 Statement, Rules and Listing Questionnaire to the Concierge at the flat where the Second Respondent was residing, that Concierge having confirmed that the Second Respondent and his wife were still at the address. The statement of the Process Server, Christopher Hardy dated 1 June 2012 also confirmed that he had handed the Rule 7 Statement and associated documentation to the Second Respondent's wife on that date. Mr Williams told the Tribunal that the SRA had done all it could to inform the Respondents of the hearing today. He therefore asked that the Tribunal exercise its discretion to deal with the matter in the absence of the Respondents who appeared to have absented themselves voluntarily.

6. In questioning from the Chairman concerning any health issues that may be affecting either of the Respondents Mr Williams responded that he was not aware of any health issues affecting the First Respondent and that the Second Respondent seemed to have had some issues but no evidence had been presented to the Tribunal. It appeared from the statement of the Process Server that the Second Respondent was going out to work and that his wife was well able to communicate on her husband's behalf if an adjournment was to be requested. It appeared that the Second Respondent had also been well enough to travel abroad. In Mr William's submission should matters not be as they appeared then either or both of the Respondents could apply for a rehearing under Rule 19 of the Rules.

<u>The Tribunal's Decision on the Preliminary Matter</u>

7. The Tribunal was satisfied that notice of the hearing had been served upon both of the Respondents in accordance with the Rules. In the case of the First Respondent he had been served with a notice of the hearing at his last known place of abode on 12 March 2012. That notice had not been returned and therefore the Tribunal was satisfied that service had been effected in accordance with Rule 10 of the Rules. In the case of the

Second Respondent the Tribunal was also satisfied from the witness statements of the Process Server, Mr Christopher Hardy, that he too had been served with notice of the hearing in accordance with the Rules. The Tribunal would therefore proceed to hear and determine the applications in the Respondents' absence under Rule 16(2) of the Rules.

Factual Background

8. The First Respondent was born in December 1965. He was admitted as a solicitor in November 1991 and his name remains on the Roll of Solicitors.

9. The Second Respondent was born May 1963. He was admitted as a solicitor on 17 December 1998 and his name remains on the Roll of Solicitors.

10. At all material times the First Respondent and the Second Respondent carried on practice as solicitors in partnership with each other under the style of Silvers ("the firm") in London. The Second Respondent left the firm on about 1 November 2010. The First Respondent ceased to practise on about 3 May 2011.

11. The SRA resolved to intervene into the firm on 27 April 2011.

12. On 22 July 2010 there commenced an inspection of the books of account and other documents of the firm by Mr Brumwell and Mr Esney of the Forensic Investigation Unit of the SRA. The inspection resulted in a Report dated 18 March 2011 ("the FI Report").

Allegations 1.1 and 2.1 and 2.2

13. Allegations 1.1 and 2.1 and 2.2 arose out of four conveyancing transactions in which the firm acted. The First Respondent and the Second Respondent asserted that the day to day conduct of the files was carried out by AM, an unqualified former employee. The whereabouts of AM are unknown.

14. There were certain characteristics common to all four transactions.

    (a) the firm acted for the purchasers of properties;

    (b) the firm also acted for the mortgagee in each case - Bank of Scotland plc t/a Halifax ("Halifax");

    (c) sums of money described as deposits had been paid direct rather than via the firm's client bank account;

    (d) the vendor's solicitors did not exist;

    (e) neither the First Respondent nor the Second Respondent ever met their purchaser clients; and

    (f) the First Respondent and the Second Respondent signed Certificates of Title which were submitted to Halifax.

15. The instructions from Halifax to the firm were governed by the terms of the Council of Mortgage Lenders Handbook ("CML Handbook"). Thus, in particular, the First Respondent and the Second Respondent were required to:

    (a) Follow the guidance in The Law Society Society's Green Card Warning on Mortgage Fraud;

    (b) Verify the existence of the vendor's solicitors;

    (c) Obtain identity evidence from clients.

Transaction 1

16. The First Respondent was instructed by DJC in his purchase of a property for £1,400,000 which was completed on 27 April 2010. Aside from being subject to the CML Handbook specific reference was made to Rule 3 of the Code.

17. Neither the First Respondent nor the Second Respondent ever met DJC. The First Respondent issued the client care letter.

18. The file revealed that DJC had purportedly paid £450,000 direct and there was also a 5% discount being allowed.

19. The SRA had no record of the vendor's solicitor's existence.

20. The First Respondent signed the Certificate of Title to Halifax on 19 April 2010.

21. By August the vendor of the property was still shown as the registered proprietor.

Transaction 2

22. The Second Respondent was instructed by Mr JPD in his purchase of a property for £1,500,000 which was completed on 3 August 2009.

23. The Second Respondent sent JPD a client care letter on 20 July 2009.

24. Neither the First Respondent nor the Second Respondent ever met JPD. Evidence of identification consisted of a copy passport and a utility bill certified by the First Respondent who stated that AM presented him with these documents which he certified in the absence of the client.

25. The file revealed that the vendor was holding the sum of £660,000 purportedly paid direct by JPD.

26. The Second Respondent signed the Certificate of Title to Halifax on 30 July 2009.

27. The SRA had no record of the existence of the vendor's solicitor.

Transaction 3

28. The Second Respondent was instructed by DJC in his purchase of a property for £2,700,000 which was completed on 26 October 2009.

29. The Second Respondent sent DJC a client care letter on 21 October 2009.

30. The evidence of identification of DJC on the file was not certified by either the First Respondent or the Second Respondents. Neither had ever met DJC.

31. A letter on the file purportedly from Halifax referred to a direct payment by DJC in the sum of £1,614,000.

32. The vendor's solicitors did not exist.

33. The Second Respondent signed the Certificate of Title to Halifax on 22 October 2009. This was the day after he had issued his client care letter.

34. As at 16 July 2010 the registered proprietor of the property was a Ms HJC not DJC.

Transaction 4

35. The First Respondent was instructed by JPD in his purchase of a property for £1,650,000 which was completed on 12 February 2010. The firm was also instructed by Halifax.

36. The First Respondent issued a client care letter on 27 January 2010.

37. A letter on the file purportedly from Halifax referred to a 20% discount having been allowed.

38. The Second Respondent signed the Certificate of Title to Halifax.

39. The SRA had no record of the existence of the vendor's solicitors.

40. ELLP took over the conduct of the transaction in January 2010. Subsequently the Second Respondent wrote to Halifax on 15 April 2010.

AM

41. The First Respondent stated that AM had left the firm by the end of May 2009. The three Certificates of Title which bore dates were signed after AM had apparently left the firm:

    (a) Transaction 1-19 April 2010;

    (b) Transaction 2-30 July 2009;

    (c) Transaction 3-22 October 2009;

(d) Transaction 4 - the Certificate of Title was undated but it was issued for completion on 12 February 2010. The retainer with the purchase client had been put in place at the end of January 2010.

The SRA Investigation

42. The SRA wrote to the Respondents seeking their explanations upon the contents of the FI Report on 24 March 2011. Further letters were written to the Respondents dated 13 April 2011. The Second Respondent did not reply to either letter.

43. Civil proceedings were issued against both Respondents, the firm, DJC, JPD and others by Halifax which had sustained losses on its lending. On 17 February 2011 the First and Second Respondents and the firm consented to Summary Judgment against them in the sum of £3,639,366.77 payable forthwith costs to be assessed.

Allegations 1.2 and 1.3

44. The firm acted for Mrs AG in matrimonial proceedings. Instructions were received on 14 March 2006.

45. An application for public funding was submitted on 22 March 2006.

46. On 23 March 2006 a client care letter was issued to Mrs AG indicating that the First Respondent was the supervising partner. Reference was made to the Statutory Charge whereby the legal Services Commission ("LSC") could recoup funds paid to the firm for costs out of funds recovered in the proceedings.

47. The costs limit under the Legal Aid Certificate was £7,500.

48. Mrs AG was a vulnerable client. She had made allegations of violence against her husband, RG. The parties had made progress in respect to financial matters. It was envisaged that the proceeds of sale of the former matrimonial home ("the home") should be divided equally.

49. On several occasions letters were sent by the firm to Mrs AG providing estimates of costs to be incurred. On each occasion the estimate was between £5,000 and £10,000.

50. On 22 February 2007 Mrs AG gave the First Respondent written instructions to effect a settlement. Pursuant to the settlement of the proceedings the home was sold on 30 or 31 March 2007.

51. On 3 April 2007 the firm wrote to Mrs AG making reference to the fact that Mrs AG's share of the proceeds of sale of the home could not be immediately released to her and further reference was made to the Statutory Charge.

52. On 17 May 2007 the firm made an application to the LSC to extend legal aid cover including with respect to the costs limit. This was refused by the LSC on 19 June 2007. The First Respondent submitted an appeal but the appeal was never allowed. The costs limit of £7,500 remained in place throughout.

53. Mrs AG was in difficult financial circumstances. She had borrowed £15,000 from a private individual at a high rate of interest.

54. The proceeds of sale of the home were being held by the Solicitors for RG. On 25 July 2007 the firm sent them a breakdown provided by Mrs AG. On 10 September 2007 the solicitors for RG provided their own breakdown. On 19 September 2007 Mrs AG accepted these figures.

55. On 26 October 2007 the firm wrote to the solicitors for RG requesting Mrs AG's share of the proceeds of sale of the home and stressing that Mrs AG urgently needed to repay substantial debts.

56. That letter met with the reply that payment would have to await a Consent Order which itself depended on the issue of divorce proceedings.

57. Steps were then taken towards agreeing a form of Consent Order

58. On 3 July 2008 Mrs AG enquired as to the status of her Legal Aid Certificate. On 15 August 2008 Mrs AG spoke to the First Respondent on the telephone. The First Respondent stated that:

    (a) As soon as he received the funds he would be able to send a substantial amount to Mrs AG;

    (b) The remainder would be held back due to the operation of the Statutory Charge;

    (c) He would draw up a bill for assessment.

    Mrs AG stated that she desperately needed the money.

59. As a result of her concerns as to the position Mrs AG enlisted the help of the NAWP. Contact was made with the First Respondent by NAWP.

60. On 26 February 2009 the firm wrote to Mrs AG stating that:

    (a) The funds held in client account could not be released until costs had been assessed by the Court; and

    (b) The file was with a Costs Draftsman and "we will be receiving the bill shortly."

61. A bank statement revealed that the firm had received £26,203.42 from the solicitors for RG on 21 August 2008. This sum was at that time to be held to the order of RG's solicitors pending a Court Order.

62. On 3 March 2009 the NAWP made a formal complaint on behalf of Mrs AG to the Legal Complaints Service ("LCS").

63. On 31 March 2009 the LCS wrote to the Second Respondent. On 3 April 2009 the NAWP confirmed that on 19 November 2008 the First Respondent had given Mrs AG the sum of £2,050.

64. The Second Respondent replied to LCS on 23 April 2009. He stated that:

(a) The file was currently with a Costs Draftsman;

(b) Whilst the file contained reference to legal aid costs cover being increased to £12,500 no amended certificate had been received;

(c) The funds received on 21 August 2008 were held to order pending a Decree Absolute;

(d) The file would be held by the Costs Draftsman until the legal aid situation had been resolved; and

(e) An offer of £500 compensation was put forward. Mrs AG was also asked to agree to costs being limited to £12,500 plus VAT whereupon the firm's claim for costs would be limited to this sum and the balance held in client account with interest would be released to Mrs AG.

65. Mrs AG accepted the offer of £500 to resolve her service complaints. However the First Respondent and the Second Respondent paid nothing and the file was reopened.

66. A further formal letter from LCS to both Respondents was sent on 24 August 2009. A further offer of £1,000 was made by the First Respondent in respect of the service complaints. This was accepted by Mrs AG.

67. On 21 October 2009 the NAWP asked LCS to reopen the file as Mrs AG had still not seen any copy bill of costs. The file was reopened by the LCS and the First Respondent was informed. A formal letter was written on 2 December 2009.

68. On 22 January 2010 the First Respondent sent an email to LCS stating that "having gone through the figures I think I can release a further £3,000".

69. By 24 February 2010 Mrs AG owed some £24,000 on the loan that she had taken out.

70. LCS prepared a report for an Adjudicator in the form of a letter sent to the First Respondent on 24 February 2010. An Adjudicator considered the papers and requested that further information be obtained.

71. The NAWP later confirmed that Mrs AG had actually received £2,500 from the firm on 19 November 2008 and not £2050 as stated previously.

72. On 4 June the First Respondent informed the LCS that:

(a) he had sent the complete file back to a Costs Draftsman to have the bill redrawn on the basis of legal aid cover for £7,500; and

(b) the only matter preventing the release of the funds to Mrs AG was the operation of the Statutory Charge.

73. The Adjudicator made a decision dated 21 June 2010 in which findings of Inadequate Professional Services were made against the firm and it was calculated that interest was due to Mrs AG in the sum of £1,099.65. The Adjudicator directed the firm to pay to Mrs AG the sum of £2,099.65 by way of compensation and £23,703.42, the amount due to Mrs AG arising from the sale of the home. The firm was directed to waive any claim for costs. The due payments were to be made within seven days of the letter enclosing the decision.

74. The LCS wrote to the First Respondent at the firm enclosing the decision on 21 June 2010 and the First Respondent replied on 28 June 2010, contesting the Adjudicator's decision.

75. On 5 July 2010 the firm wrote to Mrs AG, care of NAWP, enclosing a cheque payable to Mrs AG as ordered by the Adjudicator in the sum of £25,803.07. The cheque was drawn on office account and was dishonoured.

76. The matter was then referred to the SRA which wrote formally to the Second Respondent on 16 September 2010. The First Respondent replied on 6 October 2010 indicating that they could have their bill assessed and paid and then pay Mrs AG by instalments.

77. Mrs AG instructed other solicitors to act on her behalf. They wrote a letter before action to the firm on 16 March 2011. It was stressed that the required payment to Mrs AG had not been made and a formal demand was issued.

Witnesses

78. Oral evidence was given under Oath by Mr J Brumwell, an Investigation Officer with the SRA.

Findings of Fact and Law

79. **Allegation 1.1: Improperly acted in conveyancing transactions which bore the hallmarks of fraud contrary to Rule 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code").**

79.1 Mr Williams told the Tribunal that as the relevant notices to admit the evidence had been served in this case the documents contained within his exhibits "GW1" and "GW2" were proved with the exception of those contained within the exhibits which had been received from the Respondents. Allegation 1.1 was put on the basis that both of the Respondents had been dishonest, although that was not an essential element of the allegation and it could be found to have been proved without a finding of dishonesty.

79.2 The Tribunal was reminded that the test be applied in cases of dishonesty was that set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, which involved a two stage test. The Tribunal had to consider whether the Respondents' conduct was

dishonest by the ordinary standards of reasonable and honest people and if it was then go on to consider whether the Respondents themselves realised that by those standards their conduct was dishonest. The standard of proof being applied in this case was beyond reasonable doubt and the burden of proof was upon the Applicant.

79.3 Mr Williams also referred the Tribunal to the case of Weston v The Law Society, 29 June 1998, CO/225/1998 where it had been held that the Solicitors Accounts Rules existed both to afford the public maximum protection against the improper and unauthorised use of their money and to assure them of that protection. Solicitors were accordingly under an obligation, quite distinct from their duty to act honestly, to ensure observance of the Rules.

79.4 In Mr Williams' submission, the four conveyancing transactions detailed in the Forensic Investigation Report of the SRA had glaring indicators of fraud. It was not accepted by the SRA that "AM" was the person responsible for these transactions and in any event partners were responsible for the conduct of their unadmitted staff.

79.5 In his evidence, Mr Brumwell had confirmed that he had carried out the Forensic Investigation and that the contents of the Report were true and accurate. In that Report, the features complained of relating to the four transactions were highlighted.

79.6 The first transaction was the purchase of a flat in Beaconsfield, Buckinghamshire for £1,400,000 which was completed on 27 April 2010. The property was purchased using a mortgage advance of £750,245 obtained from the Halifax. The basis of the instructions on this matter, as upon each of the transactions, was adherence to the CML Handbook. The CML Handbook required the Respondents, amongst other things, to follow the guidance in The Law Society's Green Card on Mortgage Fraud, verify that the seller's solicitor appeared in a legal directory or that they were currently on record with the Solicitors Regulation Authority and obtain identity evidence from clients. The Green Card Warning on property fraud listed a non-exhaustive set of signs for solicitors to watch out for in considering whether they were assisting in a property fraud. Some of those features were fictitious solicitors and deposits or any part of the purchase price paid direct. Solicitors were advised to minimise the risk of fraud by verifying the identity and bona fides of their clients and solicitors' firms they did not know, question unusual instructions, discuss with their clients any aspects of the transactions which worried them.

79.7 The vendor's solicitors in this case were said to be DC Associates LLP of Northampton and the First Respondent had sent a client care letter to the purchaser, DC, some eight days before completion indicating that he would deal with the matter personally. In Mr Williams submission it was clear that the First Respondent was acting in this matter and in any event by that date AM had left the firm. The firm's own terms and conditions, which were enclosed with the client care, letter said at paragraph 17 that identity checks would be carried out on new clients. However both of the Respondents had admitted during the course of a meeting held with the Investigation Officer on 17 February 2011 that they had never met the clients.

79.8 On the same day that the client care letter was issued the First Respondent had signed the Certificate of Title in the matter. That Certificate of Title included the words:

> "We, the conveyancers named above give the Certificate of Title set out in the annex to Rule 3 of the Solicitors' Code of Conduct as if the same was set out in full, subject to the limitations set out in it."

Within Rule 3 conveyancers certify that they have checked the identity of the borrower and undertake, prior to the use of the mortgage advance, to obtain the execution of a mortgage and a guarantee as appropriate by the persons whose identities had been checked. The Rule 3 Certificate also states that the conveyancers will notify the mortgagee in writing if any matter comes to their attention before completion which would render the Certificate given untrue or inaccurate.

79.9 It could be seen from the bundle of evidence that a direct payment of £450,000 had been made in this case and that the First Respondent was also aware of a 5% discount given on the property. The Halifax had not been told of any of these features of the transaction at any stage. No trace of DC Associates LLP could be found in the records of the SRA and the address given on their notepaper was untraceable at the Land Registry. In addition, a search of the Land Registry had shown that the registered proprietor of the property on 12 August 2010 was still the vendor, some months after 'completion'.

79.10 In Mr Williams submission the First Respondent had been dishonest in supplying the Certificate of Title. He had not informed the Halifax of the direct payment or the discount and had certified the identity of a client he had not met. If dishonesty was not proved then Mr Williams invited the Tribunal to make a finding of gross negligence but in his submission the Tribunal could infer from the documents that the First Respondent had been dishonest.

79.11 The Second transaction involved the purchase of a property in Twickenham for £1,500,000 with the assistance of a mortgage advance of £904,745 which completed on 3 August 2009. In this case the Second Respondent acted for the purchaser, a Mr JPD, and the solicitors acting for the vendors were said to be Foreign & Workers LLP of Northampton. The client care letter, which was dated 20 July 2009, enclosed the firm's standard terms and conditions which indicated that proof of identity would be required from the purchasers. There were photocopies on file which had been certified by the First Respondent as being true copies of an original passport and a utility bill. However at the meeting of 17 February 2011 with the Investigation Officer the First Respondent agreed that he had not seen the client although he had certified the passport.

79.12 The mortgage instructions made it clear that the transaction was subject to the CML Handbook and the Green Card Warning. In this case there was a direct deposit for £660,000 being made by Mr JD and there was on file a letter from the Halifax dated 24 July 2009 saying that they were aware of the direct payment. However in the Applicant's submission this letter was not genuine and contained a number of features which led to that conclusion; it containing several different type faces and the Halifax logo was not the usual colour. A further letter from the Halifax with the same date found on the file showed a footer on the page which referred to St A's Insurance plc and had similar unusual features. Whilst the Applicant was not alleging that the Respondents had created either of the Halifax letters, somebody had done so and at

the very least it was an indication to the Respondents that something was wrong. It was a cause of concern which should have put them upon notice.

79.13 Following searches undertaken by the SRA no trace of Foreign & Workers LLP could be found in the records of the SRA, although the address, telephone and fax number used were those of a prominent firm of solicitors in Northampton.

79.14 The Second Respondent admitted that he had signed the Certificate of Title dated 30 July 2009 and in Mr Williams' submission in all the circumstances he had been dishonest in supplying that Certificate.

79.15 In the third transaction the Second Respondent had again acted for a Mr DC in the purchase of a flat in London, SW3 for £2,700,000 with a mortgage advance from the Halifax of £1,503,995. The transaction was again subject to the CML Handbook and the Green Card Warning. There were proofs of identification shown on the file which were uncertified by either partner as to whether they were true copies of the original documents. A Certificate of Title was signed by the Second Respondent on 22 October 2009, one day after the client care letter had been issued by him. The vendor's solicitors were again said to be Foreign & Workers LLP, and letters from the Halifax were again said by the Applicant not to be genuine due to the curious contents and the mixed fonts and the colour of the logo. In Mr Williams' submission the Respondents had clear notice of fraud in this case as a direct payment had been made in the sum of £1,614,000 and when added to the mortgage payment this came to more than the price of the property being purchased. In addition, one of the letters from the Halifax dated 12 October 2009 was dated nine days before the client care letter; there had been no way for the Halifax to know that the firm was acting at that stage. In Mr Williams' submission the Second Respondent had been dishonest in signing the Certificate of Title in this case.

79.16 Transaction 4 concerned the purchase of a flat in London, NW3 by Mr CD for £1,650,000 with the aid of a mortgage from the Halifax of £700,000. The CML Handbook and the Green Card again applied to the mortgage advance. There were again letters on the file from the Halifax which the Applicant said were not genuine and which should have given rise to concern by the Respondents. The fact that one of the letters indicated that the Halifax accepted a discount on the purchase price of 20% was of itself strange. Additionally the letter seemed to be composed using different fonts and had been written on 22 January 2010 when it had only been on 27 January 2010 that the firm wrote their initial client care letter. The vendor's solicitors were said to be EJF & Partners of Wellingborough but no records of the solicitors' existence could be found by the SRA.

79.17 The Second Respondent accepted in the meeting held with the Investigation Officer on 17 February 2011 that he had signed the Certificate of Title in this case and in Mr Williams' submission in all the circumstances he had been dishonest in supplying that Certificate.

79.18 On 17 February 2011 a Consent Order was issued in the High Court whereby the Respondents agreed to pay the Halifax £3,639,366.77 in relation to their loss concerning these four transactions. Whilst the Applicant did not say that this was

evidence of the Respondents' dishonesty, it did say that it was good evidence of the loss to the Halifax.

79.19 The Tribunal had considered very carefully all of the documentation regarding this allegation and had listened to what Mr Williams had had to say concerning the matter. The Tribunal noted that both the Respondents admitted that they had failed to confirm the identity of the clients in the four transactions. In particular, whilst it had not been alleged that the Respondents had created any of the documents that Mr Williams alleged were forgeries, the Tribunal was satisfied that they were and that they were obviously false letters given their style and content. The Respondents had at all junctures failed to notice the hallmarks of fraud, had not checked the identity of any of the solicitors' firms involved and in one case the mortgage advance and the deposit said to have been paid direct clearly exceeded the total price of the property. It beggared belief that in a conveyancing transaction they had not known that the solicitors were fictitious as any degree of diligence would have revealed a web of deceit.

79.20 The Tribunal found this allegation proved against both of the Respondents on the facts and documents before it.

Dishonesty

79.21 In deciding whether the Respondents had been dishonest the Tribunal had applied the higher standard of proof and the two stage test of dishonesty contained within the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The Tribunal was satisfied so that it was sure that in acting as they did the Respondents were dishonest by the standards of reasonable and honest people and that they knew their conduct was dishonest by those same standards. The Respondents must have known at the time they signed the Certificates of Title that signing them in all of the circumstances was dishonest and a considerable amount of evidence had been placed before the Tribunal that all of the circumstances surrounding the four transactions were highly suspicious. In particular, the Respondents had known when they gave the Certificates of Title to the Halifax that they had not met the clients.

79.22 In the Tribunal's view, each of the Respondents had had a reckless disregard to the facts, so that any belief that either of them had that he was acting honestly could not be sustained. [Bultitude v The Law Society [2004] EWCA Civ 1853].

80. **Allegation 1.2: Failed to account to their client, AG for monies held on her behalf and which had been paid into their client bank account contrary to Rule 1.04, 1.05 and 1.06 of the Code;**

Allegation 1.3: Unreasonably delayed in the process of costs assessment contrary to Rule 1.04 and 1.05 of the Code;

Allegation 1.4: Failed to comply with directions of an Adjudicator of the SRA contrary to Rule 1.04 and 1.06 of the Code.

80.1 Mr Williams told the Tribunal that whilst there was no allegation of dishonesty concerning these three allegations they were at the top end of the scale of professional

misconduct. In this matter he also sought an Enforcement Order in respect of the monies owed to Mrs AG, a total of £25,803.07. Mrs AG was a vulnerable client who had approached the Respondents' firm in March 2006 in order to obtain a divorce from her husband. The Legal Services Commission ("the LSC") had used a Legal Aid Certificate with a cost limit of £7,500. This meant that the firm could receive no more than £7,500 and up to £7.500 plus VAT could be deducted from Mrs AG's eventual settlement but no more. It could be seen from the evidence that in all dealings with Mrs AG the firm had told her the same thing; that was that the costs would be in the region of £5,000 to £10,000. On 3 April 2007 the firm did inform her that the current value of her certificate was £7,500. On 17 May 2007 the firm applied to increase the cover under the Legal Aid Certificate but this was refused by the Legal Services Commission and whilst there was an application to appeal the decision of the LSC dated 26 June 2007 on the file in the event such an extension was never granted.

80.2 In a letter before the Tribunal dated 28 June 2012 addressed to Mr Williams from the solicitors now acting for Mrs AG, MV LLP, Mr Williams was informed that the Consent Order had been made by the Romford County Court on 6 August 2008 and that the Decree Absolute was pronounced on 18 August 2008. In a letter from the intervening solicitors it was confirmed to Mr Williams that none of the monies due to Mrs AG in 2008 was available on intervention. In Mr Williams' submission the Respondents knew that Mrs AG was a vulnerable person and that she was in debt and in considerable need of the funds due to her. It was clear from the evidence produced today that the costs had never been taxed and that the Respondents had used taxation as an excuse. Mrs AG made contact with the NAWP on 26 November 2008 by which time it had been over two years since the sale of the home and four months since the matter had been settled. The bill still had not been completed. In a letter dated 23 April 2009 the Second Respondent wrote to the LCS on behalf of the firm saying that the money was being held in their client account and they would account for any interest which may have accumulated but the file was still with the Cost Draftsman and they would hold on to the file until the issue of amending the Legal Aid Certificate had been dealt with. In that letter the Second Respondent indicated that if the matter was contested it could take 12 months or more to settle the assessment. He also said that if the client was happy for the cost to be limited to £12,500 excluding VAT they would be more than happy to advise the Cost Draftsman to limit all the costs to that figure and would release to Mrs AG the money in the client account together with interest. Adjudications had not been satisfied and the matter had culminated in a dishonoured cheque. In Mr Williams' submission the final offer to pay the client by instalments was a clear indication that by that date the money was not in the client account.

80.3 In Mr Williams' submission what had occurred in this case painted a very bleak picture and the client had suffered severe damage. The firm had never had the costs assessed and Mrs AG's money had been withheld from her. This was truly appalling misconduct at the top end of the scale which did enormous reputational damage to the profession. In fact it was difficult to envisage a worse scenario.

80.4 The Tribunal found these matters proved beyond a reasonable doubt on the facts and documents before it. It had given very careful consideration to all of the documentation before it and to what Mr Williams had said on behalf of the Applicant. There was evidence to suggest that Mrs AG had been a vulnerable client and despite

numerous requests and regulatory action, monies properly due to her had been withheld without justifiable authority. In the circumstances it found that both of the Respondents had shown total disregard of rules governing their conduct as solicitors and of the regulatory bodies. They had failed to address any of the issues involved and the matter had culminated in their sending a cheque which had been dishonoured by the bank. This was at the upper end of the scale of offending and had been a deliberate course of action whose impact had been devastating upon Mrs AG. There was no evidence to suggest that the costs had ever been assessed and the Respondents must have known that the consequences of that would be that they would be unable to pay out the monies. It was clear from the evidence that they had failed to comply with the directions of the Adjudicator of the SRA and they had had ample time to rectify their mistakes. In the Tribunal's view the Respondents had shown a callous disregard for the client's welfare.

80.5 With regard to the order requested by the Applicant in this matter the Tribunal had given very careful consideration as to whether such an order could be made. It had been mindful of the fact that section 37 of the Solicitors' Act 1974, under which such an order was available, had been repealed with effect from 6 October 2010 along with paragraph 5 of Schedule 1A of that Act. Transitional provisions had been made by SI No. 2010/2089. The Tribunal therefore asked Mr Williams to address them upon whether such an order could be made in the current proceedings. In addition, the Tribunal asked Mr Williams to address them on how an order could be made against the Respondents individually when the original direction had been against the firm.

80.6 Mr Williams told the Tribunal that at the time the firm existed the two Respondents were the only two partners. In his submission the naming difficulties were not fatal to the making of an order as the Tribunal could make an order "as they may think fit". He asked that this matter be construed in favour of a client who had suffered and that it was a reasonable and lawful use of the Tribunal's powers. He accepted that on 6 October 2010 the Legal Services Act 2007 had deprived the Tribunal of its enforcement powers but in Mr Williams' submission this had been a slip. In any event, the trigger for the amendment to the legislation meant that it applied to directions made after 6 October 2010 and this one had been made on 21 June 2010. Mr Williams reminded the Tribunal that they did have powers to make such orders as they thought fit and given the facts of this case an order would be seen as enforcing the dishonoured cheque. Whilst Mr Williams could see the difficulties the Tribunal might have in making such an order he did seek to persuade them that in all the circumstances this was the correct course of action.

80.7 The Tribunal expressed every sympathy with Mrs AG. However, having heard the submissions of Mr Williams they were not persuaded that they could make an enforcement order in this case. A specific power had been given by Parliament under section 37A and paragraph 5 of Schedule 1A of the Solicitors Act 1974 for the Tribunal to make enforcement orders which had been repealed when the relevant sections of the Legal Services Act 2007 had been brought into force on 6 October 2010. Whilst there were transitional provisions in the Commencement Order (SI 2010/2089) which specified that there was an exception in relation to "proceedings which immediately before 6 October 2010 have not been determined under any provision relating to redress made by an approved regulator", the Tribunal was of the view that they did not apply in this case as the matter had been determined

before 6 October 2010 and these proceedings had not commenced until 4 May 2012 with the issue of the Rule 7 statement. In those circumstances the Tribunal did not need to consider the point concerning the discrepancy between the names on the order sought and the determination of the Adjudicator of the SRA.

81. **Allegation 2.1: Failed to deal with the SRA in an open, prompt and cooperative way contrary to Rule 20.03 of the Code.**

81.1 This allegation was made against the Second Respondent alone in that he had failed to respond to a letter dated 24 March 2011 from the SRA asking him to comment on the matters in the Report of the Investigation Officer. He had also failed to respond to a letter dated 13 April 2011 asking him for representations to be made to an Adjudication Panel.

81.2 In considering this matter the Tribunal was mindful of what it had heard at the commencement of the proceedings concerning initial difficulties in serving the Second Respondent with the papers. In particular, it was not satisfied that at the times he was contacted by the SRA he was still residing at the address given. The Tribunal therefore found this matter not proved against the Second Respondent.

82. **Allegation 2.2: Wrote a false and misleading letter.**

82.1 Mr Williams directed the Tribunal to the evidence, in particular letters from E LLP which showed that they had taken over the registration formalities concerning property belonging to Mr and Mrs JD and a letter from the firm marked "Our ref FXH" to the Halifax. The letter from the firm indicated that the firm was still dealing with the registration formalities, despite the fact that E LLP had taken over the matter some months previously. In Mr Williams' submission the letter was written by the Second Respondent who knew the facts contained in it were untrue at the time of writing.

82.2 In evidence the FIO told the Tribunal that the matter of the reference on the letter had not been dealt with in the meeting with the Respondents and that the Second Respondent had not been asked whether he had written it.

82.3 The Tribunal had examined the letters which formed the basis of the evidence in this matter but, given what they had been told by the Investigation Officer, they were not satisfied beyond reasonable doubt that the Second Respondent had written the letter. The Tribunal therefore found this allegation not proved.

Previous Disciplinary Matters

83. None.

Mitigation

84. The only mitigation before the Tribunal was that contained in the First Respondent's letter of 25th April 2011 to the SRA. In that letter he described the effect that all of the related proceedings had had on both of the Respondents' wellbeing and health.

85. Mr Williams asked the Tribunal to give the letter such weight as they thought fit given that it was not subject to a Civil Evidence Act Notice and that there was no medical evidence before the Tribunal in respect of either of the Respondents. He also asked the Tribunal to be aware that both of the Respondents had cooperated with the Investigation Officer of the SRA.

Sanction

86. The Tribunal had found four of the six allegations proved and these were the four allegations that were directed to both of the Respondents.

87. The Tribunal had fully considered any mitigating factors put forward in correspondence from the First Respondent. Allegations 1.2-1.4 were at the upper end of the scale of offending and the Tribunal had found that dishonesty had been involved in allegation 1.1. The Tribunal had very carefully considered all of the documentation in this case and had concluded that the matters found proved were extremely serious. In such circumstances the only appropriate and proportionate order to be made was that of strike off in order to protect the public and the reputation of the profession.

Costs

88. Mr Williams had applied for costs in the sum of £45,611.32 and had presented a costs schedule to the Tribunal. The Tribunal had carefully examined that schedule of costs and had made a summary assessment that they should be allowed in full. In reaching that decision they had taken into account that not all of the allegations before the Tribunal today had been proven but had decided that they had been properly brought. It was therefore right and proper to award costs in the amount sought.

Statement of Full Order

89. The Tribunal Ordered that the Respondent, Naweed Riaz, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he be jointly and severally liable with the second Respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £45,611.32

90. The Tribunal Ordered that the Respondent, Farhat Hussain, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he be jointly and severally liable with the first Respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £45,611.32

Dated this 13th day of August 2012
On behalf of the Tribunal

D. Green
Chairman