

The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 8 November 2012 in respect of findings and sanction. The appeal was heard by Mr Justice Mitting on 25 March 2014, when it was dismissed. The Respondent was ordered to pay the SRA's costs of the appeal summarily assessed at £9,598. Subramanian v Solicitors Regulation Authority [2014] EWHC 1069 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10889-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

BHASKAR SUBRAMANIAM

Respondent

Before:

Mr R. B. Bamford (in the chair)

Mr R. Prigg

Mr R. Slack

Date of Hearing: 1st October 2012

Appearances

Katrina Elizabeth Wingfield, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London, EC2V 8AR for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Bhaskar Subramaniam after amendment to 1.1 and 1.2 sought by the Applicant and approved by the Tribunal at the commencement of the hearing were that:
 - 1.1 He acted in breach of Rules 1(a), 1(c) and 1(d) of the Solicitors' Practice Rules ("SPR") and/or Rules 1.02, 1.03, 1.04, and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007") in that he acted in conveyancing transactions, which bore the hallmark of mortgage fraud;
 - 1.2 He acted in breach of Rules 1(c), 1(d), 1(e), and 6(3)(c) of the SPR and/or Rules 1.04, 1.06, 1.05 and 3.19 of the SCC 2007 in that he failed to inform his lender client of material facts;
 - 1.3 He acted in breach of the Solicitors' Accounts Rules ("SAR"), in particular, Rules 22 (5) and (7) in that he allowed a cash shortage to exist on the firm's client account and failed to rectify it upon discovery;
 - 1.4 He had acted in breach of Rule 20.05 of the SCC 2007 in that he had failed to respond to correspondence from the SRA;
 - 1.5 He had acted in breach of Rule 18 of the Solicitors' Indemnity Insurance Rules 2009 in that he had failed to provide details of his insurance to a lender client;
 - 1.6 He had acted in breach of the Solicitors Indemnity Rules in that he failed to pay premiums due.

In relation to allegations 1.1, 1.2 and 1.3 it was alleged that the Respondent had acted dishonestly.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 25 November 2011 together with Exhibits KEW1 – KEW5;
- Statement of Bob Sage, Senior Investigation Officer of the SRA dated 4 September 2012;
- Affidavit of Service of Zainal Bin Raja Alsa of Messrs Lee Hishammuddin Allen and Gledhill, Level 16, Menara Tokio Marine Life, 189 Jalan Tun Razak, 50400, Kuala Lumpur dated 9 May 2012 together with Exhibit ZR-1;
- Copies of Law Society Warning Card on Property Fraud 2 and Green Card Warning on Property Fraud;

- Schedule of Properties prepared by Reynolds Porter and Chamberlain LLP, who acted on behalf of the Assigned Risks Pool;
- Applicant's Schedule of Costs dated 19 September 2012.

Respondent:

- None.

Tribunal:

- Memorandum of Application for Substituted Service dated 23 March 2012.

Preliminary Matter [1]

3. Ms Wingfield told the Tribunal that all of the documents relating to this matter had been served on the Respondent in Kuala Lumpur by Zainal Bin Raja Alsa on 25 April 2012 and the Respondent had accepted the documents and acknowledged receipt of them by signing for them. The Tribunal had an affidavit of service to that effect before it. The Respondent had emailed Ms Wingfield on 7 July 2012 indicating that he had been ill which had led to a delay in his response to her letter of 18 April 2012 which had accompanied the documents. In that letter, amongst other things, Ms Wingfield had informed the Respondent that the matter had been listed for a substantive hearing on 1 and 2 October 2012. In his response the Respondent had indicate that he would be unable to attend the hearing. Ms Wingfield had asked him by email if he sought an adjournment but had received no response. In her submission the principles laid down in the cases of R v Jones [2002] UKHL 5 and Tait v the Royal College of Veterinary Surgeons [2003] UKPC 34 were met and the Tribunal was able to proceed in the Respondent's absence. The Respondent was clearly aware of the hearing and had chosen not to attend.

The Tribunal's Decision on Preliminary Matter [1]

4. The Tribunal would proceed to hear the matter in the absence of the Respondent. It was satisfied that he was aware of the substantive hearing date and had voluntarily absented himself. The Tribunal had applied the principles set out in R v Jones and Tait v the Royal College of Veterinary Surgeons and had been mindful of its discretion to proceed with the hearing, balancing fairness to the Respondent with the public interest in proceeding with cases as expeditiously as possible. In all of the surrounding circumstances, the Tribunal did not believe that any adjournment would result in the Respondent's attendance and had concluded that it was right on balance that the matter should proceed today.

Preliminary Matter [2]

5. Ms Wingfield made application to amend allegations 1.1 and 1.2 so that they covered the entire period the subject of those allegations by reference to the SCC 2007, which had replaced the SPR from 1 July 2007. She had emailed both the Tribunal and the Respondent on 24 August 2012 to indicate that she would be making this application. There had been no response from the Respondent.

The Tribunal's Decision on Preliminary Matter [2]

6. The Tribunal determined that there would be no prejudice to the Respondent in permitting the amendments as he was already aware of all of the surrounding facts and evidence. The Tribunal would therefore permit allegations 1.1 and 1.2 to be amended using its powers under Rule 11(4)(c) of the Solicitors (Disciplinary Proceedings) Rules 2007.

Factual Background

7. The Respondent was born on 22 April 1965 and was admitted as a Solicitor on 15 March 2000. His name remained on the Roll of Solicitors. His Practising Certificate was terminated on 5 January 2011.
8. At all material times the Respondent was practising in partnership with "Mr B" under the style of Stafford Solicitors ("the firm") from offices at 275-285 High Street, Stratford, London, E15 2TF. According to SRA records the firm closed on 30 September 2010.
9. On 31 August 2010 an inspection of the books of account and other documents of the firm was commenced by Mr Sage, a Senior Investigation Officer of the SRA. The Respondent informed Mr Sage that he had been a partner in the firm since it was established in 2006; Mr B had been a partner since February 2010, and as the partners had been unable to arrange professional indemnity insurance for the Year 2010/2011 the firm would close on 30 September 2010.
10. Mr Sage found that the books of account did not comply with the Solicitors Accounts Rules. A comparison of the total liabilities to clients with the cash held on client bank account showed a cash shortage of £34,199.26 as at 31 July 2010. This figure was agreed by the Respondent on 2 September 2010 and he informed Mr Sage, on 29 September 2010, that he had placed funds totalling £18,200 in client bank account which had come from family and friends and that he intended to replace the balance of £15,999.26 before the firm closed.
11. Mr Sage established that the cash shortage resulted from a number of overpayments, the largest of which related to the purchase by Mr "K" and Mr "L" of a property in West Byfleet, "Plot 2", in the sum of £33,976.69.

Plot 2

12. The firm had acted for Mr K and Mr L in their purchase of Plot 2, which completed on 5 June 2006. They also acted for lenders, Clydesdale Bank Plc who provided a mortgage of £272,000 based on a purchase price of £340,000. Mr K and Mr L bought three properties in the same development on the same day for the same price, with the same amount of mortgage advance, the same lender and the same vendor. The other two properties were plots 3 and 6.
13. In relation to Plots 3 and 6 the only monies passing through the client account to the vendors' solicitors was the mortgage advance of £272,000, whereas in relation to plot

2 the sum of £340,000 was paid. The Respondent explained that the firm had been advised that a deposit for £68,000 had been paid direct to the vendors in relation to each transaction and that the transfer of the full price on this plot was an error. Initially, the shortage on client account in June 2006 was £56,665.00, but this increased after payment of stamp duty, costs etc., to £67,884 by 22 December 2006. A transfer of £73,664 was shown on that ledger and this was used to fund costs and disbursements in relation to plots 3 and 6. £50,995 was returned to the clients on 16 June 2006.

14. The Respondent indicated that he became aware of the overpayment in August 2006 and requested the return of the monies from "AR", the vendors' solicitors. They indicated that the monies had been paid to "PF" the trading name of the "PB (UK) Ltd.", of which the directors were Mr K and Mr L. PB (UK) Ltd subsequently went into liquidation.
15. The firm had acted for the same clients on the other matters and recouped some further monies but a substantial shortage of £56,976.69 remained as at 1 April 2008. The Respondent indicated that he had introduced further funds reducing the shortage to £33,976.69 by 31 July 2010, some four years later.
16. Mr Sage examined eleven matters in total in which the firm had acted for Mr K and Mr L, which bore the hallmarks of mortgage fraud. These matters involved sub-sales and/or the alleged payment of deposits direct and this information had not been provided to the lender clients.

"Plot 3"

17. The firm acted for Mr K and Mr L in the purchase of plot 3 for £340,000. Only £272,000, the mortgage advance from Clydesdale Bank Plc, the lender client, was sent to the vendors' Solicitors. The Respondent had signed the Certificate of Title giving a purchase price of £340,000. A letter on file dated 21 June 2006, from the vendors' solicitors, AR, stated that they had received the deposit direct from the purchaser. A further letter from "P" Solicitors dated 5 April 2006, to AR Solicitors said that the property was being purchased by AR Solicitors' clients. The transaction was therefore a sub-sale.
18. Mr Sage noted some discrepancies in relation to the vendor. The contract showed the vendor as "MS Ltd" and "PH Residents Management Company Ltd", having been amended, in manuscript, from "S Homes". The price had also been altered in manuscript from £325,000 to £340,000. Stamp Duty Land Tax was paid on the figure of £340,000 whereas the property price was registered in the sum of £325,000, which was the premium shown in the lease.
19. According to the firm's Particulars of Claim in relation to the overpayment on plot 2 the vendor of all three plots was PB (UK) Ltd. In an amended defence AR Solicitors stated that the transaction formed part of a sub-sale and that at least one of the purchasers, Mr K, was a director of the vendor.

“Plot 11”

20. The firm again acted for Mr K and Mr L in their purchase of a property on a different development for £425,000, and also for Clydesdale Bank plc who provided a mortgage of £340,000 on another development. This sum was the only sum sent to the vendors’ solicitors according to the client ledger.
21. The Respondent signed the Certificate of Title on 8 June 2006 giving a purchase price of £425,000. A letter on file from AR Solicitors confirmed that the deposit was paid direct in relation to plot 11 and also plots 10 and 12 on the same development. There was no evidence on file to show that this information had been passed to the lender client.
22. The purchase price on the Certificate of Title was £425,000 and Stamp Duty Land Tax had been paid on that figure, however, a draft contract and the lease on file showed the figure of £550,000 and this was the price recorded at the Land Registry. The transaction was by way of a sub-sale and there was no evidence that the lender client had been informed.
23. In relation to Plot 10 of the development the purchase price on the Contract had been changed from £425,000 to £550,000, the purchaser had been changed from S Homes to Mr K and Mr L and according to the client ledger the only funds transferred to the vendors’ solicitors, on completion were the mortgage advance of £440,000.

“Flat 44”

24. The firm again acted for Mr K and Mr L in their purchase of the flat which was located in London for a stated purchase price of £775,000 with a mortgage advance of £620,000 from Clydesdale Bank, for whom the firm also acted. Completion was on 25 August 2006. AR Solicitors acted for the vendors PF and in a letter stated that the purchase price was £465,000. A letter from PF to the Respondent dated 12 September 2006, signed by Mr K and Mr L confirmed that the sum of £187,365 the balance of the purchase price, came from PF. PF was the vendor and Mr K and Mr L were directors of PB (UK) Ltd., trading as PF. They were also the purchasers.
25. The Certificate of Title was signed by the Respondent on 24 August 2006 and by doing so he confirmed that the vendor had owned the property for at least 6 months. There was however further documentation on file from which it was apparent that the transaction was by way of a sub-sale. The transfer was signed by Mr K and Mr L as directors of PB (UK) Ltd to themselves as purchasers. There was no evidence that these material facts had been provided to the lender client.
26. The Respondent informed Mr Sage that the transactions had been undertaken by a “Mr A” who would have placed the Certificates of Title in front of him, for him to sign and that he would not have examined the file.
27. Mr Sage wrote to the Respondent on 26 January 2011 enclosing a copy of his report and requesting an explanation. He wrote in similar terms to Mr B who replied on 11 February 2011 enclosing various letters and comments. No response was received from the Respondent. The SRA then wrote to the Respondent on 14 March 2011. A

similar letter was sent to Mr A on the same date to which he replied on 25 March 2011. Mr A indicated that he was employed by the Respondent as a salaried junior partner until 21 December 2006. He stated that he was not the solicitor with conduct of any of the transactions, but that the matters were dealt with by an unadmitted employee, a "Mr X" under the supervision of the Respondent. Mr A wrote further on 19 April 2011 to the SRA with further explanation.

28. The Respondent failed to reply to the letter of 14 March 2011. A further letter was sent on 30 March 2011 but no response was received.
29. On 2 June 2010 information was received from another firm of solicitors that the Respondent had failed to reply to requests for details of the firm's professional indemnity insurers. That firm were acting for Capital Home Loans Ltd who were seeking recovery of losses occasioned in relation to the property transactions involving PF which had proceeded by way of sub-sales. The properties had subsequently been repossessed.
30. The SRA wrote to the Respondent in connection with this matter on 15 July 2010. No reply was received. Further letters were sent by the SRA on 11 and 26 May 2011. Again, no reply was received.
31. On 9 May 2011 Capita Insurance Services, the manager of the Assigned Risk Pool, wrote to the Respondent regarding outstanding premiums due for the 2008-2009 and 2009-2010 indemnity years. The letter was copied to the SRA who wrote to the Respondent on 18 May 2011. As that letter was returned a further copy was sent on 21 June 2011. No response was received. Mr B the former partner of the Respondent wrote to the SRA on 6 July 2011 providing information regarding the Respondent.
32. On 31 March 2011 Reynolds Porter Chamberlain LLP reported concerns to the SRA. They acted for the Assigned Risks Pool which provided professional indemnity insurance for the firm for the insurance period commencing 1 October 2008. Eleven claims had been made against the firm by Bank of Scotland, Accord Mortgages, GMAC and Capital Home Loans.
33. The firm acted for a Mr SJ in the purchase of a flat in Victoria Way, Woking and for the lender, Accord Mortgages. The Respondent signed the Certificate of title on 20 June 2006, stating the "Price stated in Transfer/Remortgage Value" was £320,000. The Mortgage advance was stated as being £309,400. The Lease showed the premium as £320,000 less an allowance of £53,550. The firm failed to disclose this information to the lender.
34. The firm acted for Mr LJ in his purchase of another flat in Victoria Way, Woking and for the lender, the Bank of Scotland. The Respondent signed a Certificate of Title on 16 June 2006, which showed a purchase price of £320,000 with a Mortgage Advance of £304,000 and a completion date of 19 June 2006. A letter from the firm to the lender referred to the "allowance" in the Lease and confirmed that the agreed price was £320,000. The lease referred to the price of £320,000 less an allowance of £53,550.00. The Bank of Scotland denied receipt of the letter and stated that they were not made aware of the "allowance".

35. The firm acted for Mr MJ in the purchase of another flat in Victoria Way, Woking with a mortgage advance from Accord Mortgages, for whom the firm also acted. The Respondent signed the Certificate of Title on 24 July 2006 giving a completion date of 28 July 2006. The Certificate of Title gave £320,000 as the “price stated in transfer” with a Mortgage Advance of £309,440. The lease showed a premium of £315,000 and that £261,450 was paid by the tenant to the landlord with the balance of £53,550 being paid to PF. The information was not provided to the lender.
36. Copy ledgers provided by Capital Home Loans Ltd in relation to conveyancing transactions involving flats in Poole showed deposits being received from “PB,” “PB Ltd” or PF. These were provided to Capital Home Loans by the Respondent. In addition, some documents showed the vendor/lessor as PF and others as “NK” Ltd. In relation to Flat 5, a deposit of £55,041.13 was received from PB Ltd, and yet the firm wrote to the lender on 26 July 2007 confirming the client was not receiving any incentive or cash back. The Land Transaction Return Certificate gave the vendor as PF, but the lease indicated the lessor was NK Ltd. Flats 11 and 12 were dealt with in the same manner.
37. In a letter to Capital Home Loans Ltd dated 30 April 2009 the Respondent denied that these transactions involved sub-sales and suggested that the fact that there were references to PB (UK) Ltd paying the deposit did not mean the money came from that organisation.
38. Further copies of the files relating to these transactions were subsequently provided to Reynolds Porter Chamberlain LLP acting for the Assigned Risks Pool. The ledgers on these files were silent as to the source of the deposit funds.

Witnesses

39. Mr Bob Sage Senior Investigation Officer of the SRA gave sworn oral evidence. His evidence is contained within the detailed Findings.

Findings of Fact and Law

40. The Tribunal treated each of the allegations as having been denied by the Respondent. The burden was therefore on the Applicant to prove each allegation beyond reasonable doubt.
41. **The allegations against the Respondent, Bhaskar Subramaniam were that:**

Allegation 1.1: He acted in breach of Rules 1(a), 1(c) and 1(d) of the Solicitors’ Practice Rules (“SPR”) and/or Rules 1.02, 1.03, 1.04, and 1.06 of the Solicitors’ Code of Conduct 2007 (“SCC 2007”) in that he acted in conveyancing transactions, which bore the hallmark of mortgage fraud;

Allegation 1.2: He acted in breach of Rules 1(c), 1(d), 1(e), and/or 6(3)(c) of the SPR and Rules 1.04, 1.06, 1.05 and 3.19 of the SCC 2007 in that he failed to inform his lender client of material facts;

Allegation 1.3: He acted in breach of the Solicitors' Accounts Rules ("SAR"), in particular, Rules 22 (5) and (7) in that he allowed a cash shortage to exist on the firm's client account and failed to rectify it upon discovery;

Allegation 1.4: He had acted in breach of Rule 20.05 of the SCC 2007 and that he had failed to respond to correspondence from the SRA;

Allegation 1.5: He had acted in breach of Rule 18 of the Solicitors' Indemnity Insurance Rules 2009 in that he had failed to provide details of his insurance to a lender client;

Allegation 1.6: He had acted in breach of the Solicitors Indemnity Rules in that he failed to pay premiums due.

- 41.1 Ms Wingfield told the Tribunal that she would prove the case on the documents before the Tribunal which had all been served upon the Respondent. It was believed that he was now practising as a lawyer in Kuala Lumpur. These were serious allegations and dishonesty was alleged in relation to allegations 1.1, 1.2 and 1.3. Mr K and Mr L had featured in all of the transactions as either directors of PB (UK) Ltd or PF and in some cases they were the purchasers as well.
- 41.2 The cash shortage of £34,199.26 had arisen on Plot 2 due to an overpayment because the deposit had been paid direct. After 4 years there was still an outstanding balance on client account. Although allegation 1.3, which related solely to the cash shortage, was a discreet matter it did link in to the other allegations and was a part of the whole picture of what had occurred in these transactions.
- 41.3 The Tribunal confirmed that careful consideration had already been given to all of the documents before it in this matter. Ms Wingfield took the Tribunal through the key documents that had been exhibited to the Rule 5 Statement. In her submission the property transactions illustrated clear breaches insofar as the lenders were concerned and there were hallmarks of mortgage fraud displayed by these transactions as illustrated on the Law Society's Warning Card, in that deposits had been paid direct, there had been changes in the purchase price and these were unusual transactions using the same firm of solicitors. Ms Wingfield also told the Tribunal that it could be seen from the evidence before it that the deposits referred to in the Respondent's letter of 30 April 2009 to Capital Home Loans Ltd had come from PB (UK) Ltd, contrary to the Respondent's suggestion in that letter. The Respondent had amended the ledgers provided to Reynolds Porter Chamberlain LLP to remove any reference to PB (UK) Ltd.
- 41.4 In Ms Wingfield's further submission the documents clearly showed that the Respondent had failed to respond to correspondence from the SRA and provide details of his insurance to a lender client. The evidence before the Tribunal from Capita was that he had failed to pay the premiums due to them in relation to the Assigned Risks Pool.
- 41.5 In his evidence to the Tribunal, Mr Sage said that he was formerly of the SRA and had retired early following 18 years as an Investigation Officer and latterly a Senior Investigation Officer. He confirmed the contents of his Forensic Investigation Report

as true. He referred to Appendix 3 to his Report which was a table that contained details of the eleven conveyancing transactions, that he had examined in detail, six of which were dealt with in his Report. He said that in passing he may have looked at some of the other conveyancing files of the firm but that he had concentrated on these eleven files.

- 41.6 Mr Sage was asked for his view on the cash shortage, the subject of allegation 1.3. He said he had been alerted to it and had started to examine the file on the purchase of Plot 2. At that stage he had realised that the transaction was a fairly obvious case of mortgage fraud. It was to him strange that the firm had not sought to recover the overpaid monies earlier; the Respondent had said that he hadn't realised there was a shortage until August 2006 when he had written to AR Solicitors requesting the return of the funds, which they had refused. He had then continued to act for Mr K and Mr L and was apparently content to have a shortage on his client account.
- 41.7 Mr Sage could recall, with the assistance of his interview notes, that he had told the Respondent that this was mortgage fraud and the Respondent had said that it had happened because he was inexperienced and had been naïve, it being his first year of practice in the firm. In Mr Sage's opinion the Respondent had been fairly open with him and had appeared to cooperate; whilst he had said that it was Mr A who had day to day responsibility for the running of the transactions in question, he had accepted overall responsibility. Insofar as Mr Sage was aware, the Respondent was the only equity partner in the firm and he had accepted that no information had been given to lenders concerning the unusual aspects of the transactions. The Respondent could provide no real explanation for that lack of information. When the Respondent had been asked about the connection between Messrs K and L and PB (UK) Ltd he had been vague and said there may have been a connection but he was not clear if he knew at the time of the transactions that that was the case. However, in Mr Sage's opinion the documentation had shown that he had known of the connection.
- 41.8 In his evidence, Mr Sage explained the movement on the firm's ledger cards of monies relating to Plot 2. He said that the ledger card at Pages 17 and 18 of Exhibit Bundle KEW1 clearly showed that £73,665 had been transferred to File 3042 on 5 June 2006 and that after deduction of Stamp Duty the ledger card 3042 showed that £62,000 had been transferred to ledger card 3041 on 5 June 2006 following which costs of £10,000 were deducted. £50,995 was returned to the clients on 16 June 2006. The matter was somewhat confusing as the ledger card at pages 17 and 18 only showed that the deposit of £85,000 had been used to fund costs for all three matters and that ultimately £73,665 had been transferred elsewhere.
- 41.9 In questioning from the Tribunal as to why the Respondent had been chasing the vendor's solicitors for repayment of the overpaid monies, Mr Sage replied that the Respondent should have been chasing his own clients. AR Solicitors had told the Respondent that a deposit had been paid direct and Mr Sage would have thought that the Respondent would also contact his own clients as he was still dealing with them. In further questioning from the Tribunal as to why ledger card 3044 only referred to Mr K, Mr Sage said that ledger card 3042 also only referred to Mr K. It was only when the file was examined that one could see that Mr K and Mr L were both involved. This was the same for all three of those matters and most of the others too.

41.10 Ms Wingfield asked the Tribunal to find the allegations proved on the documents before it and the evidence that they had heard from Mr Sage. In regard to the additional allegation of dishonesty which accompanied allegations 1.1, 1.2 and 1.3, Ms Wingfield submitted in her Rule 5 statement that the Respondent had acted dishonestly for the following reasons:

- (i) The Respondent supervised the relevant transactions and was the signatory on the Certificates of Title;
- (ii) The Respondent signed Certificates of Title which were misleading and/or fake;
- (iii) The transactions bore the hallmarks of mortgage fraud as set out in the Law Society's Green Card Warning, in particular the alleged direct payment of the deposit, unusual instructions and the changes to the purchase price;
- (iv) The Respondent knew or ought to have known of the connection between his purchaser clients and the vendors;
- (v) The Respondent failed to notify his lender clients of material facts;
- (vi) The Respondent provided false documents to solicitors acting for the Assigned Risk Pool;
- (vii) The Respondent permitted a substantial shortage to remain on his client account for a period of four years, which shortage was never fully replaced.

41.11 Ms Wingfield reminded the Tribunal of the combined test for dishonesty that had been set out by Lord Hutton in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In her submission both limbs of the test were met in regard to allegations 1.1, 1.2 and 1.3

41.12 The Tribunal had had due regard to the wording of the relevant Rules in the SPR and the SCC 2007 and found allegations 1.1, 1.2, 1.3, 1.5 and 1.6 proved beyond a reasonable doubt on the facts and documents before it and the evidence of Mr Sage. The conveyancing files examined in Mr Sage's Report contained glaring examples of the hallmarks of mortgage fraud and it was clear that the Respondent had not informed the lenders of the unusual aspects of the transactions. Similarly the Tribunal had seen ample evidence that a cash shortage had existed on client account for a substantial period of time, despite the Respondent's efforts to reduce it. It was also clear that indemnity insurance premiums had not been paid to Capita Insurance Services, neither had the Respondent provided any details of his indemnity insurance to Capital Home Loans Ltd, despite being requested to do so. However, in regard to allegation 1.4, that of failing to respond to correspondence from the SRA, the documents had been sent to the Respondent at an address in England a few months after he had closed his practice and there was no evidence before the Tribunal that he was still there at that time. He had emailed Ms Wingfield as soon as he had been served with the papers in Kuala Lumpur. The Tribunal were therefore not satisfied beyond a reasonable doubt that this allegation had been proved and accordingly found the matter not proved.

41.13 The Tribunal had listened very carefully to what Ms Wingfield had to say concerning dishonesty. It had applied the combined test in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and was satisfied so that it was sure that in acting as he did the Respondent had been dishonest by the ordinary standards of reasonable and honest people and that he himself knew by those same standards his actions had been dishonest in regard to allegations 1.1 and 1.2. The transactions were so unusual and contained so many of the hallmarks of mortgage fraud that the Respondent could not possibly have thought that his actions were honest. Similarly he could not have had an honest belief that the lenders did not need to know about the material facts which he had concealed from them. The Tribunal had heard from Mr Sage that this was a fairly obvious case of mortgage fraud and rejected the Respondent's assertions that he had been naive and inexperienced. However, in regard to allegation 1.3 the Tribunal found that the Respondent appeared to have made an error, which he could have redeemed. He had brought the balance down over a period of time by borrowing from friends and family. The public would not regard such behaviour as dishonest and accordingly allegation 1.3 failed the objective part of the dual test in Twinsectra. It followed that dishonesty had been proven with regard to allegations 1.1 and 1.2 but not with regard to allegation 1.3.

Previous Findings of the Tribunal

42. None

Sanction

43. The Tribunal referred to its Guidance Note on Sanctions when considering sanction
44. The Tribunal had found five allegations proved against the Respondent and in the case of two of those allegations it had concluded that he had been dishonest. The Tribunal considered these allegations to be serious and they were at the high end of the scale of professional misconduct. The Respondent must have known that were he to inform the mortgagees of the facts surrounding the transactions in question they would have refused to lend. He had not so informed them and the consequence had been that they had suffered a substantial loss. In addition allegations had been proved concerning the Respondent's professional indemnity insurance and he had allowed a shortfall to remain on his Client Account for a substantial period of time. Even absent dishonesty this was a case where the Tribunal would have given serious consideration to a sanction of Strike Off. The Respondent had breached the trust of his lender clients and brought the profession into disrepute.
45. However, the Tribunal had found dishonesty in this case and there had been a substantial loss to the lender clients. The Tribunal had regard to the principle in SRA v Sharma [2010] EWHC2022 (Admin), that is where a solicitor had been found to be dishonest by the Tribunal the normal consequences would be for that solicitor to be struck off the Roll of Solicitors unless exceptional circumstances could be shown. It was the Tribunal's determination that there were no exceptional circumstances in this case. The Respondent should not be allowed to remain in practice. The only fair and proportionate sanction to protect the public and the reputation of the profession was that of Strike Off.

Costs

46. The application for costs by the Applicant was in the sum of £28,308.03. Ms Wingfield told the Tribunal that the Applicant's Cost Schedule had been sent by email to the Respondent on 19 September 2012 and that there had been no response. Whilst there was no indication that the email had been received it had not come back as an unidentified email address. In addition the Respondent had emailed Ms Wingfield from that same email address at the beginning of July 2012, which was just a few weeks earlier. Ms Wingfield therefore invited the Tribunal to award the Applicant its costs in full.

The Tribunal's Decision as to Costs

47. The Tribunal had no information before it concerning the Respondent's financial position. It would accordingly award the costs requested by the Applicant with a small reduction to reflect the fact that it had been a shorter hearing than was anticipated. Costs would therefore be summarily assessed in the sum of £27,000.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, Bhaskar Subramaniam, 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 £27,000.

Dated this 8th day of November 2012
On behalf of the Tribunal

R. B. Bamford
Chairman