SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10925-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANWAAR UL HAQ First Respondent

and

SRIDEVI VELDANDI Second Respondent

Before:

Mr A. G. Gibson (in the chair)
Mr K. W. Duncan
Mr S. Marquez

Date of Hearing: 3rd June 2013

Appearances

Mrs Margaret Bromley, Solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4Y 7RF for the Applicant

The First Respondent did not attend and was not represented

The Second Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations against the First and Second Respondents were that they:

1.1 failed to pay the premium due for indemnity insurance for the indemnity year 2010/2011 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the SRA) within the prescribed period for payment; and/or

1.2 failed to pay the run-off premium to Capita within the prescribed period for payment and were in breach of Rule 16.2 of the Solicitors' Indemnity Insurance Rules 2010;

and as a consequence acted contrary to Rule 16.2 of the Solicitors' Indemnity Insurance Rules 2010;

1.3 failed to respond to the SRA's enquiries in an open, prompt and co-operative way in breach of Rule 20.03 of the Solicitors' Code of Conduct 2007 ("the Code");

1.4 acted contrary to Rules 1.02, 1.04 and 1.06 of the Code in that they failed to act with integrity, failed to act in the best interests of their clients, and acted in a way that was likely to have diminished the trust the public placed in them or the legal profession, by permitting or allowing Faith & Co ("the Firm") to become involved in, or acquiescing in the Firm's involvement in conveyancing transactions that bore the hallmarks of mortgage fraud;

1.5 acted contrary to Rules 1.02, 1.06 and 10.05 of the Code in that they failed to comply with undertakings given by the Firm within a reasonable time including:

1.5.1 in Requisitions on Title and in a letter to Crowdy & Rose Solicitors both dated 7 February 2011 in the sale of 74 Church Lane;

1.5.2 in a letter to DC Law dated 13 January 2011 and in Requisitions on Title dated 4 February 2011 in the sale of Flat 9, The Great Hall, Victory Road;

1.5.3 in a letter to GH Cornish LLP dated 7 March 2011 and in Requisitions on Title dated 31 March 2011 in the sale of 1 Burnham Crescent;

1.5.4 in a letter to The Solomon Partnership dated 13 January 2011 and in Requisitions on Title dated 8 March 2011 in the sale of 15 Allhallows Road;

1.5.5 in Requisitions on Title dated 27 April 2011 in the sale of 83 Cherry Wood Lodge;

1.5.6 in a letter to Dixon Law dated 6 May 2011 and in Requisitions on Title dated 10 May 2011 in the sale of 17 Blackthorn Road; and

1.5.7 in a letter to Dixon Law dated 6 May 2011 and in Requisitions on Title dated 10 May 2011 in the sale of 46 Piper Way;

1.6 failed to deal appropriately with client money in breach of the Solicitors' Accounts Rules 1998 ("the SAR 1998") Rule 1 (and Rule 1 of the Code);

1.7 facilitated the withdrawal of money from client account other than in accordance with Rule 22 of the SAR;

1.8 failed to produce to a person appointed by the Solicitors Regulation Authority records, papers, client and trust matter files, financial accounts and other documents and any other information necessary to enable preparation of a report in compliance with the Rules in breach of Rule 34 of the SAR 1998 and in breach of Rule 20.08 of the Code and in breach of section 44B of the Solicitors Act 1974;

1.9 failed to act with integrity and behaved in a way that was likely to have diminished the trust the public placed in them and in the legal profession, in breach of Rule 1.02 of the Code in that they:

1.9.1 failed to reply to the SRA's investigation notice dated 24 March 2011;

1.9.2 failed to reply to significant queries raised by (i) Crowdy & Rose Solicitors in respect of 74 Church Lane; and (ii) Barwells Solicitors in respect of 83 Cherry Wood Lodge;

1.10 failed to make arrangements for the effective management of the Firm in breach of Rule 5.01 of the Code.

Allegations 1.4 and 1.5 were made on the basis that the First Respondent was dishonest or alternatively grossly reckless but it was not necessary to establish dishonesty or recklessness for the allegations to be made out.

Documents

2. The Tribunal reviewed the documents submitted on behalf of the Applicant. No documents had been submitted on behalf of the First and Second Respondents:

Applicant:

- Application dated 3 February 2012;
- Rule 5 Statement and exhibit "IGM1" dated 3 February 2012;
- Application dated 31 January 2013;
- Supplementary Rule 7 Statement and exhibit "IGM2" dated 31 January 2013;
- Copy Law Society Gazette advertisement;
- Compensation Fund Claims Report for Faith and Co Solicitors dated 21 May 2013;
- Statement of Costs dated 30 May 2013.

Preliminary Matter

3. Mrs Bromley informed the Tribunal that since neither of the Respondents had attended she should address the Tribunal regarding service and proceeding in the Respondents' absence.

4. Mrs Bromley said that at the previous Case Management Hearing on 19 December 2012 it had been directed that there should be substituted service upon both Respondents by advertisement in the Law Society Gazette and an advert had accordingly been placed in the 25 February 2013 edition. Mrs Bromley referred the Tribunal to a copy of the advert dated 18 February 2013.

5. Mrs Bromley told the Tribunal that enquiries had also been made of the Bar Council of India and of the Punjab, both of which had been areas where the Respondents had respectively lived and qualified but neither had been able to provide addresses for the Respondents.

6. Mrs Bromley said that nothing had been heard from either of the Respondents and the Tribunal office had also not heard from them. She said that the Tribunal had discretion to proceed in the absence of a Respondent/Respondents and referred the Tribunal to the case of R v Jones [2002] UKHL 5 wherein the Respondent had been afforded the opportunity to attend the hearing but had waived his right to do so. Mrs Bromley submitted that the Respondents had voluntarily absented themselves having left their offices and home addresses without providing any means of contact.

7. Mrs Bromley submitted that these were allegations of the utmost seriousness and the public interest demanded that they were heard without delay.

The Tribunal's Decision

8. The Tribunal had regard to the steps taken to effect service upon the Respondents and it was satisfied that by virtue of advertisement in the Law Society Gazette pursuant to a direction of the Tribunal for substituted service, proper service had been effected. The Respondents had failed to provide any future contact details, either to the Applicant or the Tribunal and had failed to engage at all with the proceedings.

9. The Tribunal noted that it also had discretion under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 to proceed in the absence of a Respondent and it was satisfied that the hearing proceed in the Respondents' absence, they having been given proper notice of the hearing.

Factual Background

10. The First Respondent was a registered foreign lawyer and his name remained on the Roll of Solicitors.

11. The Second Respondent was admitted as a solicitor on 2 July 2007 and her name remained on the Roll of Solicitors.

12. The Respondents were previously partners at Faith and Company Solicitors, London N17 0SP ("the Firm") from October 2010 until the Firm closed on 18 May 2011.

13. The Respondents failed to pay the 2010/2011 indemnity premium for cover within the ARP to Capita in the sum of £5,775, the first payment being due on 1 October 2010. Capita had received a payment of £2,887.50 in respect of the annual premium, leaving £2,877.50 still outstanding. In addition, the Respondents had failed to make a

payment to Capita in respect of the run-off premium of £5,775 which was due as a result of the Firm having closed. The first payment was due 30 days from the debit note dated 24 May 2011. No payments had been made in respect of the run-off premium.

14. The matter was raised with the Respondents by letters from the Applicant dated 13 September 2011. The case worker did not receive a response from the Second Respondent and a further letter was sent to her on 29 September 2011. No response was received from the Second Respondent.

15. The letter to the First Respondent had been incorrectly addressed and the letter returned by the Royal Mail marked "not known at this address". On 8 December 2011 the Applicant re-sent the letter from the case worker dated 13 September 2011 to the First Respondent. No response was received from the First Respondent.

16. On 27 October 2011 a case worker of the Applicant referred the matter to Mr P Milton, an Authorised Officer of the Applicant to consider whether it was appropriate to authorise disciplinary proceedings against the Respondents. On 15 November 2011 an Authorised Officer, Ms D Nadarajah, satisfied that the evidential and public interest tests had been met, decided to refer the Respondents' conduct to the Tribunal.

17. The Respondents had also failed to respond to the Applicant's correspondence requesting explanations in relation to their failure to pay the premium and the run-off premium.

18. On 24 March 2011 at 9.55am Mr P Wheatley, an officer of the SRA's Fraud & Confidential Intelligence Bureau ("the FCIB Officer") attended the premises of the Firm located within a serviced office block, to commence an investigation without prior notice. The FCIB Officer was told that the Firm was not there and that the parties had not left but did not come in very often.

19. The FCIB Officer returned to the Firm's premises at 2.55pm on 24 March 2011 with two letters addressed to the two Respondents respectively, giving notice of an investigation of the firm and enclosing notices pursuant to section 44B of the Solicitors Act 1974 ("SA 1974"). The copy notice addressed to the Second Respondent was placed in the Firm's allocated pigeon hole in the central reception area of the serviced office building while the copy addressed to the First Respondent was posted under the door of Unit 22, the firm's individual office. The FCIB Officer noted that no one was present at Unit 22.

20. During his visit the FCIB Officer telephoned the manager of the offices, Maureen Small who told him that she had not seen anyone from the Firm for 1-2 weeks. She stated that the First Respondent was the tenant although she had formerly dealt with a lady called "Sree" [the Second Respondent]. "Sree" had travelled to India at Christmas 2010 and had fallen ill while there and had not returned.

21. On 25 March 2011 the First Respondent had sent an email to the Operations Department of the Applicant and informed them that he and the Second Respondent intended to cease trading from 28 March 2011 due to "the current economic crisis".

22. The FCIB Officer returned to the Firm's premises again on 28 March 2011 at 9.50am. There was no one present from the Firm. The FCIB Officer checked the Firm's pigeon hole and noted that it was empty; he was told that a young boy had collected the post earlier at about 8.10am that morning, and that this person regularly collected the post, every three to four days. The FCIB Officer attempted to telephone the Firm and heard a message saying that it was not possible to connect the call. He then telephoned Ms Small who confirmed that she had been into the Firm's office on Friday 25 March 2011 and that the letter which had been posted under the door on 24 March 2011 was still there. No one had been in since.

23. A Forensic Investigation Report ("FI Report") dated 31 March 2011 was produced. The Applicant resolved to intervene into the Firm on 17 May 2011 and Mr G Osborne of Osbornes Solicitors was appointed as Intervention Agent.

24. A number of allegations arose from various reports from mortgage lenders and other solicitors about apparent irregularities in numerous conveyancing transactions in which the Firm had been involved in addition to breaches of the SAR 1998 and breaches of the Solicitors' Code of Conduct 2007 ("the Code").

Witnesses

25. None

Findings of Fact and Law

26. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' right to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

27. **Allegation 1: The allegations against the First and Second Respondents were that they:**

Allegation 1.1: failed to pay the premium due for indemnity insurance for the indemnity year 2010/2011 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the SRA) within the prescribed period for payment; and/or

Allegation 1.2: failed to pay the run-off premium to Capita within the prescribed period for payment and were in breach of Rule 16.2 of the Solicitors' Indemnity Insurance Rules 2010;

and as a consequence acted contrary to Rule 16.2 of the Solicitors' Indemnity Insurance Rules 2010;

Allegation 1.3: failed to respond to the SRA's enquiries in an open, prompt and co-operative way in breach of Rule 20.03 of the Solicitors' Code of Conduct 2007 ("the Code");

Allegation 1.4: acted contrary to Rules 1.02, 1.04 and 1.06 of the Code in that they failed to act with integrity, failed to act in the best interests of their clients,

and acted in a way that was likely to have diminished the trust the public placed in them or the legal profession, by permitting or allowing Faith & Co ("the Firm") to become involved in, or acquiescing in the Firm's involvement in conveyancing transactions that bore the hallmarks of mortgage fraud;

Allegation 1.5: acted contrary to Rules 1.02, 1.06 and 10.05 of the Code in that they failed to comply with undertakings given by the Firm within a reasonable time including:

1.5.1 in Requisitions on Title and in a letter to Crowdy & Rose Solicitors both dated 7 February 2011 in the sale of 74 Church Lane;

1.5.2 in a letter to DC Law dated 13 January 2011 and in Requisitions on Title dated 4 February 2011 in the sale of Flat 9, The Great Hall, Victory Road;

1.5.3 in a letter to GH Cornish LLP dated 7 March 2011 and in Requisitions on Title dated 31 March 2011 in the sale of 1 Burnham Crescent;

1.5.4 in a letter to The Solomon Partnership dated 13 January 2011 and in Requisitions on Title dated 8 March 2011 in the sale of 15 Allhallows Road;

1.5.5 in Requisitions on Title dated 27 April 2011 in the sale of 83 Cherry Wood Lodge;

1.5.6 in a letter to Dixon Law dated 6 May 2011 and in Requisitions on Title dated 10 May 2011 in the sale of 17 Blackthorn Road; and

1.5.7 in a letter to Dixon Law dated 6 May 2011 and in Requisitions on Title dated 10 May 2011 in the sale of 46 Piper Way;

Allegation 1.6: failed to deal appropriately with client money in breach of the Solicitors' Accounts Rules 1998 ("the SAR 1998") Rule 1 (and Rule 1 of the Code);

Allegation 1.7: facilitated the withdrawal of money from client account other than in accordance with Rule 22 of the SAR;

Allegation 1.8: failed to produce to a person appointed by the Solicitors Regulation Authority records, papers, client and trust matter files, financial accounts and other documents and any other information necessary to enable preparation of a report in compliance with the Rules in breach of Rule 34 of the SAR 1998 and in breach of Rule 20.08 of the Code and in breach of section 44B of the Solicitors Act 1974;

Allegation 1.9: failed to act with integrity and behaved in a way that was likely to have diminished the trust the public placed in them and in the legal profession, in breach of Rule 1.02 of the Code in that they:

1.9.1 failed to reply to the SRA's investigation notice dated 24 March 2011;

1.9.2 failed to reply to significant queries raised by (i) Crowdy & Rose Solicitors in respect of 74 Church Lane; and (ii) Barwells Solicitors in respect of 83 Cherry Wood Lodge;

Allegation 1.10: failed to make arrangements for the effective management of the Firm in breach of Rule 5.01 of the Code.

Submissions on behalf of the Applicant

Allegations 1.1, 1.2 and 1.3

27.1 Mrs Bromley referred the Tribunal to the Rule 5 Statement in relation to allegations 1.1, 1.2 and 1.3. She said that these related to non-payment by the Respondents of their indemnity insurance premium for the indemnity year 2010/2011 within the ARP and that they had failed to pay the run-off premium in breach of the Solicitors' Indemnity Insurance Rules 2010 ("SIIR 2010"). She said that the Respondents had also failed to respond to correspondence and enquiries from the Applicant in an open, prompt and co-operative way in breach of Rule 20.03 of the Code.

27.2 Mrs Bromley referred the Tribunal to the factual background and that a total of £8,662.50 remained due and owing by the Respondents to Capita for both the outstanding premium and run-off premium. She said that the Firm had closed on 18 May 2011 having been intervened.

27.3 Mrs Bromley referred the Tribunal to various letters which had been sent to the Respondents on behalf of the Applicant in relation to the outstanding premiums and that no responses had been received from either of the Respondents.

27.4 Mrs Bromley referred the Tribunal to the requirements of the SIIR 2010 which placed an obligation upon solicitors to maintain a minimum level of professional indemnity insurance. Where some firms might have been unable to obtain insurance on the open market in a particular year, there existed an ARP for such firms. The duty to ensure that qualifying insurance is in place rests not only on the firm as a whole, but on every principal within that firm.

27.5 Rule 10.3 of the SIIR 2010 stated that by applying to enter the ARP, the firm and any person who was a principal of that firm agreed to and was jointly and severally liable to:

(a) pay the ARP premium in accordance with the Rules, together with any other sums due to the ARP Manager under the ARP Policy; and

(b) submit to such investigation and monitoring and to pay the Society's costs and expenses as referred to in Rule 11.2; and

(c) pay any costs and expenses incurred by the Society or the ARP Manager incurred as a result of any failure or delay by the firm in complying with these Rules;

and shall be required to implement at the expense of the firm any Special Measures.

27.6 In accordance with Rule 12.4, a firm that was no longer an eligible firm had either to secure qualifying insurance outside of the ARP or cease carrying on practice immediately. In accordance with Appendix 2 to the Rules, if a firm within the ARP ceased to practice it was required to pay a run-off premium as calculated by the ARP.

27.7 Mrs Bromley referred the Tribunal to the Applicant's position in relation to the number of firms/individuals in the ARP who had failed to pay their insurance premium and that the Applicant had become extremely concerned in that regard. The fundamental purpose of the ARP was to provide protection to the public by ensuring that clients had recourse to an insurance policy even if the firm did not have qualifying insurance outside of the ARP and it was not the purpose of the ARP to simply enable firms to continue in existence.

27.8 Mrs Bromley said that the failure to pay premiums/run-off premiums was of concern not only to the Applicant but also to the rest of the legal profession who as a consequence of other practices'/individuals' default, had to bear the cost of having to pay a higher premium. Mrs Bromley said that the Applicant considered that it was therefore in the public interest to take appropriate steps in relation to those who were in default. Rule 16.2 of the SIIR 2010 stated that it was a disciplinary offence for a firm or any principal of a firm to be in policy default after two months following the due date for payment. Commentary to the definition of a firm in default stated:

> "A Firm In Default, and each Principal in that Firm, will be required to pay the ARP Default Premium, and/or the ARP Run-Off Premium to the Assigned Risks Pool, and each Principal in that Firm will have committed a disciplinary offence by having breached these Rules".

27.9 Mrs Bromley submitted that a breach of Rule 16.2 was therefore a disciplinary offence which brought the profession into disrepute; had an impact on public confidence in the profession; had an impact on other solicitors who were paying insurance premiums and raised questions about the Respondents' ability properly to manage their affairs.

27.10 Mrs Bromley informed the Tribunal that the Respondents had also failed to respond to the Applicant's letters dated 13 September 2011 and 8 December 2011 respectively which had requested explanations in relation to their failure to pay the premium and the run-off premium.

<u>Allegations 1.4 to 1.10</u>

27.11 Mrs Bromley referred the Tribunal to the Supplementary Rule 7 Statement which she said detailed allegations 1.4, 1.5, 1.6, 1.7, 1.8, 1.9 and 1.10.

27.12 In relation to allegations 1.1 and 1.2, Mrs Bromley said that these related to conveyancing transactions which bore all the hallmarks of mortgage fraud and in relation to which the Applicant alleged that the First Respondent had been dishonest or alternatively grossly reckless.

27.13 Mrs Bromley referred the Tribunal to the seven conveyancing transactions detailed in the Rule 7 Statement and of these, she exemplified three such transactions:

74 Church Lane

27.14 Mrs Bromley told the Tribunal that in this transaction, the Firm had acted for the vendors, Mr ZC and the transaction had completed on 11 February 2011. Crowdy & Rose Solicitors had acted for the purchaser, Mr WC. The agreed purchase price was £250,000 of which £200,000 was to be a mortgage advance to Mr WC from Woolwich/Barclays Bank.

27.15 Office Copy Entries were printed off on 21 January 2011 and confirmed that Mr ZC was the registered proprietor of the property subject to two charges; one dated 4 April 2007 in favour of Santander UK plc ("Santander") and one dated 9 March 2009 in favour of Davenham Trust Limited ("Davenham").

27.16 The Firm replied to the request for completion information and Requisitions on Title on 7 February 2011. At paragraph number 5.1, the Firm requested that the purchase price less any deposit already paid be sent to the Firm's client account at NatWest Bank. At paragraph 6.1 the Firms stated "Confirm and undertake to redeem both the charges of "Santander" and the charge in favour of "Davenham Trust Ltd" on completion".

27.17 At paragraphs 6.2 and 6.3, Mrs Bromley said that the Firm had confirmed:

(1) that it undertook to redeem or discharge the mortgage and charges listed in their previous reply on completion and send to Crowdy & Rose Form DS1, DS3, the receipted charge(s) or confirmation that notice of release or discharge in electronic form had been given to the Land Registry as soon as they were received; and

(2) that it was the duly authorised agent of the proprietor of every mortgage or charge on the property which it had undertaken in reply to Requisition 5.2 to redeem or discharge.

27.18 The Firm had sent a further letter on 7 February 2011 which stated, inter-alia, that:

> "We hereby confirm that there is sufficient equity in the property to redeem both the Santander charge and the charge in favour of Davenham Trust Ltd". Both letters bore the First Respondent's reference.

27.19 The Crowdy & Rose matter account report showed payment in from Mr WC of £25,000 on 3 February 2011 which had then been sent to the Firm by telegraphic transfer ("TT") as a deposit upon exchange on 8 February 2011. £199,965 being the mortgage advance minus fee had then been received by Crowdy & Rose from Woolwich/Barclays Bank on 10 February 2011 in readiness for completion. A further £26,297.68 had then been received from Mr WC the following day and completion had taken place on 11 February 2011 upon which the balance of the purchase price (£225,000) had been sent by TT from Crowdy & Rose to the Firm.

27.20 The firm's NatWest bank statements showed that the balance immediately prior to completion was £10,138.56 and that at least part of the deposit had been dispersed from the bank account before the date of completion on 11 February 2011. There was

no payment out in the amount of the deposit sum. Upon completion the NatWest statement showed receipt of £225,000 from Crowdy & Rose in respect of the transaction and according to the Firm's bank statements, there were then, inter alia, three payments out of the NatWest account under the reference "H AQ/CONV/C [client ZC]":

Date	Amount	Payment to
11 February 2011	£10,000	Zeeshan Ali
11 February 2011	£80,000	INA Support LT
15 February 2011	£127,250	Foxes Limited
Total:	£217,250	

27.21 These payments had no connection with the transaction and there was no payment out to either of the vendor's mortgagees.

27.22 On 10 and 11 March 2011 a fee earner at Crowdy & Rose had had two telephone conversations with his Firm's own bank and with Barclays when he had been informed that the matter was being investigated by Barclays because they did not believe that the Firm had used the completion monies to redeem the seller's existing mortgages. Crowdy & Rose had attempted to contact the Firm leaving a telephone message which was not returned. On 15 March 2011 Crowdy & Rose had written to the Firm and requested copies of redemption statements for the two mortgages, evidence of redemption and had enquired about possible possession proceedings by Davenham.

27.23 On the same day Crowdy & Rose had sent an email to the Applicant reporting the situation including that one of the mortgages which had not been redeemed was in the sum of £253,000 being a greater sum than the purchase price of the property. In a letter from Eversheds Solicitors (for Santander) to the Applicant dated 3 February 2012, it said that Santander had not been aware of the sale until 25 May 2011, after completion had taken place. The existing mortgages were not redeemed by the Firm and Mr WC issued proceedings against the First and Second Respondents, Santander and Davenham.

27.24 Mr WC had also pursued a claim against the Compensation Fund. That claim had been put on hold pending the outcome of Mr WC's civil proceedings which was settled at a hearing on 8 December 2011 by means of a Consent Order which stated:

> "Upon…[Mr WC's]… application for summary enforcement of undertakings given by the First and Second Defendants [Mr Ul Haq and Ms Veldandi respectively]
>
> AND Upon the Court being satisfied that…[Mr Ul Haq]…is in breach of his undertaking to discharge charges registered against title to 74 Church Lane, London ("the Property") in favour of the Third and Fourth Defendants [Santander and Davenham respectively].

AND Upon…[Santander and Davenham]…undertaking not to take any steps towards seeking possession of 74 Church Lane, London, SW17 until 1st April 2012.

AND Upon…[Santander and Davenham]…undertaking to remove their charges from the Property on payment of the sums set out at paragraph 2 below.

IT IS HEREBY ORDERED

1. [Mr Ul Haq]… do by 4pm on 30th December 2011 comply with his undertaking given on 7th February 2011 and discharge the mortgages secured on the Property in favour of…[Santander and Davenham].

2. In default of compliance with paragraph 1 above,…[Mr Ul Haq]… do pay by way of compensation: a) to…[Santander]… £265,000 and…[Davenham]… £75,000 on or before 13th January 2012.

3. …[Mr Ul Haq]… do pay costs on the indemnity basis of …

   a) …[Mr WC's]… solicitors summarily assessed at £38,000;

   b) …[Santander]… summarily assessed at £10,000;

   c) …[Davenham]… summarily assessed at £9,500".

27.25 On 10 February 2012 Gordons LLP on behalf of the Applicant had written to the First and Second Respondents and informed them that an application for a grant out of the Compensation Fund in the sum of £382,422 had been made by Mr WC. No response was received. The total paid out by the Compensation Fund in respect of this matter amounted to £395,256.40.

Flat 9, The Great Hall, Victory Road

27.26 Mrs Bromley said that this transaction had also been the subject of a claim against the Compensation Fund. The Firm had acted for the vendor, Ms SKS and the purchaser had instructed DC Law (Licensed Conveyancers) in respect of the proposed purchase at a price of £475,000. The purchaser was providing a lump sum towards the purchase and the balance of the purchase price was being funded by way of a mortgage from Accord Mortgages. Office Copy Entries obtained on 6 December 2010 showed that Ms SKS was the registered proprietor subject to a registered charge dated 22 February 2008 in favour of the Bank of Scotland Plc (Birmingham Midshires).

27.27 On 20 December 2010 DC Law had written to the Firm raising various enquiries about the property, which included:

(1) an enquiry as to the current status of proceedings brought by Ms SKS's mortgagees;

(2) a request for confirmation that there was sufficient equity in the property to discharge all monies owing to Ms SKS's mortgagees;

(3) a request for an undertaking to discharge the arrears of rent and service charges and confirmation that there would be sufficient funds to discharge that indebtedness; and

(4) a request for confirmation that the Firm would retain the sum of £500 pending issue of the present years' service charge accounts.

27.28 The Firm replied on 13 January 2011 and confirmed that the mortgagee's proceedings were on hold and that no further action would be taken subject to the lender being kept updated. The Firm also gave the following response to the requests for undertakings:

> "6. We confirm that there is sufficient equity in the property to discharge all monies owing to our client's mortgage company.
>
> 7. We undertake to discharge the arrears of rent and service charge on completion and will forward you a receipt for the same. We also undertake and confirm that on completion we will have sufficient funds to fulfil this undertaking.
>
> 8. We undertake to retain the sum of £500.00 for 12 months after completion pending issue of present years' service charge accounts subject to proving (sic) us copy of the accounts before the 12 month expire".

27.29 DC Law sent to the Firm a standard form of completion information and Requisitions on Title to which the Firm replied on 4 February 2011 and confirmed that completion monies should be paid into the Firm's NatWest client account. The Firm gave an undertaking that:

> "We Confirm and undertake to redeem the Charge dated 22 February 2008 in favour of Bank of Scotland PLC on completion".

In respect of requisition 6.2:

> "Do you undertake to discharge the charges listed in 6.1 on completion and send to us DS1/END1 or the receipted charges as soon as received by you?"

the Firm replied:

> "Confirmed".

In addition, the Firm had stated in their covering letter

> "We undertake and confirm that all the arrears of rent and service charges will be cleared upon completion".

27.30 Contracts are exchanged by telephone on 4 February 2011. The deposit monies in the sum of £47,452 were paid from DC Law's client ledger firm on 4 February 2011 and the money duly received into the firm's NatWest client account on the same day.

Prior to the money being received, the balance in the Firm's account had been £473.56. Completion took place on 10 February 2011 and the balance of the completion monies £428,046 was transferred from DC Law to the Firm's NatWest account.

27.31 Thereafter, over a period of two weeks, a number of payments had been made out of the Firm's account, the following of which appeared to relate to these completion monies:

10 February 2011	Payment out ref HAQ/CONV: £240,000.00
10 February 2011	Payment out to Mr Asad Chaudhary under ref HAQ/CONV/SANGHER: £217,050.00
15 February 2011	Payment out to Arun Estate Agents under ref HAQ/CONV/SANGHER: £12,900.00
24 February 2011	Payment out to Colin Cohen Properties under ref 9 The Great Hall: £2,509.80.

27.32 The payments totalled £472,459.80. The payments to the estate agents of £12,900 and to Colin Cohen Properties of £2,509.80 appeared to relate to fees in the sale of the property and the service charge payable respectively. It was not clear how the two larger payments were related to the transaction, if at all and there was no record of a payment to Birmingham Midshires or to Ms SKS.

27.33 According to the Compensation Fund application form, DC Law became aware on 28 March 2011 that the completion monies had not been used to redeem Ms SKS's mortgage. The Compensation Fund claim was made in July 2011. On 7 October 2011 the Applicant had written to the First and Second Respondents informing them that a claim had been made against the Compensation Fund in respect of this matter in the sum of £470,659.76. There was no record of a response on file. On 28 February 2012 the Compensation fund authorised an award of £478,715.99 in respect of this matter payable to the Bank of Scotland and made a further award of £5,651.84 in respect of DC Law's costs in bringing the claim, making a total paid out by the Compensation Fund in this matter of £484,367.83.

<u>1 Burnham Crescent</u>

27.34 Mrs Bromley told the Tribunal that this transaction had come to the Applicant's attention as a claim to the Compensation Fund had been made by Hartwig Solicitors on behalf of Mr MM in August 2011.

27.35 In February 2011 Mr MM had instructed GH Cornish LLP to act in the purchase of the property and the Firm had acted for the vendor, Mr KO. The purchase price was £490,000. Mr MM had obtained a mortgage offer from NatWest Bank in the sum of £367,500 and had provided the balance of the purchase price himself.

27.36 Office Copy Entries which had been supplied by the Firm to GH Cornish during the course of the transaction showed that as at 11 February 2011 the property had been subject to six charges; two legal charges in favour of Northern Rock and four

equitable charges created by interim charges in favour of CL Finance Ltd and Bank of Scotland plc.

27.37 On 24 February 2011 GH Cornish had written to the Firm requesting undertakings to discharge all six charges and the requisite undertaking was contained in the Firm's letter of 7 March 2011, which stated:

> "We also undertake to discharge all the charges detailed as under:
>
> - Charge in favour of Northern Rock dated 09-05-2005.
> - Charge in favour of Mortgage funding 2008-1 PLC dtd 30-05-2007.
> - Equitable charge dtd 24-04-2008 in favour of CL Finance.
> - Equitable charge dtd 24-09-2008 in favour of Bank of Scotland.
> - Equitable charge dtd 03-11-2008 in favour of Bank of Scotland.
> - Equitable charge dtd 24-10-2008 in favour of CL Finance Limited".

27.38 On 31 March 2011 the Firm had replied to the completion information and Requisitions on Title confirming that the purchase price of £490,000 should be remitted to an account with the Metro Bank. The Firm also stated:

> "Confirm and undertake to redeem the following charges on completion:
>
> - Registered Charge in favour of Northern Rock (Asset Management) PLC
> - Registered Charge in favour of Mortgage Funding 2008-1 PLC
> - Equitable Charge in favour of CL Finance Limited
> - Equitable Charge in favour of Bank of Scotland Plc".

27.39 The letters were written under the First Respondent's reference. Exchange had taken place on the same day and completed on 1 April 2011 when the client ledger showed the purchase monies of £490,000 being transferred to the Firm. Prior to completion of this transaction, the balance on the Metro account in the Firm's name stood at £2,751.94. Between 1 and 13 April 2011 six payments were made out of the account, totalling £492,739 to Garath Properties Ltd leaving the Faith & Co account with a balance of £12.94.

27.40 There were no payments to the vendor or to any solicitors who might act for the vendors or to any of the vendor's mortgagees. Major payments out included £238,750 to Fentex, an apparent supplier of medical equipment; £105,000 to Goodrich Gold; £53,000 to Garath Properties and a total of £13,000 to Dimi Asi Finance.

27.41 GH Cornish applied to register Mr MM's title and was subsequently informed by the Land Registry on 8 April 2011 that Mr MM's title could not be registered as the existing charges had not been redeemed. Mr MM spoke to the First Respondent on 13 May 2011 who informed him that redemption monies had been sent to a different department of Northern Rock. GH Cornish telephoned the First Respondent the same day and he confirmed that Northern Rock had provided a redemption statement and

that monies had been paid to Northern Rock to redeem the mortgage. The First Respondent confirmed that Northern Rock had promised to send the Discharge Certificate to the Firm within three working days.

27.42 Hartwig Solicitors stated that GH Cornish discovered that Northern Rock had never been told of the intended sale. On 17 May 2011 Mr MM informed GH Cornish that the Firm's offices were locked and the intervention into the Firm took place the next day.

27.43 On 17 August 2011 Hartwig Solicitors made a claim to the Compensation Fund on Mr MM's behalf. On 28 March 2012 the Applicant's Panel of Adjudicator's Sub-Committee resolved to redeem the unredeemed mortgages in full and the sum of £660,659.93 was awarded to redeem Mr KO's mortgages/charges. Two subsequent awards were made by the Compensation Fund in respect of Mr MM's costs; £11,513.70 on for July 2012 and £1,593 on 3 August 2012. The total awarded by the Compensation Fund in respect of this matter was £673,766.63.

27.44 Mrs Bromley told the Tribunal that in every transaction, no request for Redemption Certificates from lenders had been made by the Firm from which she said it could be inferred that there had never been any intention to redeem the various charges/mortgages. She said that in each of the seven transactions exemplified in the Rule 5 Statement, monies had not been used for their intended purpose but had been transferred out of the Firm's client account to apparently unrelated third parties in breach of Rule 1 of the Code. She submitted that it was clear that the Firm had been used as a vehicle for widespread mortgage fraud, the cost of which ultimately fell upon the profession as a whole through the Compensation Fund.

27.45 Mrs Bromley submitted that this could only have occurred because both Respondents at the very least had abdicated their responsibilities as principals in the Firm and in the case of the First Respondent, he appeared to have been a willing participant in some or all of the transactions even after he had informed the Applicant that the Firm had ceased trading.

27.46 In relation to the Second Respondent, Mrs Bromley said that whilst she appeared to have been absent from the Firm throughout this time, she also appeared not to have taken any steps to dissolve the partnership nor to have ensured that the Firm was adequately managed in her absence, since at the start of her absence in December 2010 she must have known that there was no admitted solicitor remaining at the Firm capable of lawfully carrying on its conveyancing practice.

27.47 Mrs Bromley said that it was the Applicant's case that both Respondents had permitted, allowed or acquiesced in the Firm's involvement in the seven transactions and that by virtue of their conduct, the Respondents had failed to act with integrity, had not acted in the best interests of their clients and had behaved in such a way that was likely to have diminished the trust the public placed in them or in the legal profession. It was also the Applicant's case that the First Respondent's conduct had been dishonest or in the alternative, grossly reckless.

27.48 Mrs Bromley said that it was evident that undertakings had not been complied with in the seven transactions and as exemplified, inter alia, in the 74 Church Lane, Flat 9,

The Great Hall and 1 Burnham Crescent transactions. Mrs Bromley submitted that undertakings were of the utmost importance and had been described as "the bedrock of the conveyancing system". As such, she submitted that any breach was highly damaging to the reputation of the profession.

27.49 Mrs Bromley referred the Tribunal to the breaches of the SAR 1998 and that in each of the seven transactions, the Respondents had failed to comply with Rule I of the Code in their dealings with client money, failed to use each client's money for that client's matters only and had facilitated or permitted the withdrawal of client money other than in accordance with Rule 22 of the SAR 1998. Mrs Bromley said that compliance with the SAR 1998 was a matter of strict liability for both Respondents as principals in the practice.

27.50 Mrs Bromley told the Tribunal that the Second Respondents absence from the practice from December 2010 meant that there had been no admitted solicitor present at the Firm from that time as the First Respondent was not a solicitor but a Registered Foreign Lawyer. There had therefore been no person available at the Firm who could properly undertake reserved conveyancing work yet the Firm had continued to act in conveyancing transactions until it was intervened in May 2011.

27.51 Mrs Bromley said that there was no evidence that either of the Respondents had taken any steps to put appropriate measures in place to enable the Firm to comply with its regulatory requirements. She said that there had been no one at all present at the Firm's office at the time of the Applicant attempted inspection and she submitted that there had been no effective management of the firm. Mrs Bromley said that whilst the First Respondent had purported to close the firm as of 28 March 2011 by a short email to the Applicant, that had clearly not happened as transactions which had been ongoing at that date had continued through to completion without the transfer of client files and had been carried out in the Firm's name and new instructions appeared to have been accepted by the Firm.

27.52 Mrs Bromley said that the Respondents had failed to provide the FCIB Officer with any of the documents appended to the Applicant's letters dated 24 March 2011 and had failed to complete the Professional History Form or to write to the Firm's banks requesting information set out in Appendix A(2) to the letters dated 24 March 2011. As a result, she said that the Respondents also failed to comply with a Notice issued under section 44B of the SA 1974 dated 24 March 2011 which required them to produce documents and information. Mrs Bromley said that this failure was a breach of Rule 34 of the SAR 1998, section 44B of the SA 1974 and Rule 20.08 of the Code

27.53 Mrs Bromley said that the Respondents also failed to respond to the Applicant's investigation notice dated 24 March 2011 and to significant queries raised by, inter alia, Crowdy & Rose Solicitors. She submitted that by such failure the Respondents failed to act with integrity and had behaved in a way that was likely to have diminished the trust the public placed in them and in the legal profession.

27.54 Mrs Bromley told the Tribunal that substantial sums had been paid out of the Compensation Fund totalling in the region of £2,845,338.96 with the potential for more to be paid out as decisions were still awaited on other matters.

27.55 Mrs Bromley submitted that these were allegations of the utmost seriousness, bearing the hallmarks of mortgage fraud which had a significant impact on the profession and its reputation and which involved dishonesty on the part of the First Respondent. Mrs Bromley referred the Tribunal to the case of Twinsectra Limited v Yardley and Others [2002] UKHL 12 and the two tests which the Tribunal had to apply; firstly, whether the First Respondent was dishonest by the standards of ordinary people and secondly, whether he was aware by those standards that he had acted dishonestly.

27.56 Mrs Bromley submitted that on the first limb [the objective test] he was dishonest as he had taken monies paid to the firm and had used them for unconnected purposes and had deliberately failed to comply with undertakings given by him. On the second limb [the subjective test] Mrs Bromley submitted that was also proved since it was inconceivable that anyone, including the Respondent, would not appreciate that the misuse of client money was dishonest. Further, Mrs Bromley said that the First Respondent had lied to Mr MM/GH Cornish as monies had not been paid to Northern Rock for redemption purposes but he stated that they had been.

The Tribunal's Findings

27.57 The Tribunal had listened carefully to Mrs Bromley's submissions on behalf of the Applicant and had had regard to all of the documentation to which it had been referred.

Allegations 1.1, 1.2 and 1.3

27.58 The Tribunal was satisfied so that it was sure that the Respondents had failed to pay premium due to the ARP and run-off premium following closure of the Firm. It noted that the sum of £8,662.50 remained outstanding. The Tribunal found allegations 1.1 and 1.2 proved on the facts and on the documents.

27.59 The Tribunal found proved breach of Rule 20.03 of the Code as a result of the Respondents failure to respond to the Applicant's enquiries regarding the outstanding premiums. It was satisfied that there had been no response from the First Respondent to letters dated 13 September 2011 and 8 December 2011 [the re-sent letter] and no response from the Second Respondent to letters dated 13 September 2011 and 29 September 2011 respectively.

Allegations 1.4 and 1.5

27.60 The Tribunal found allegations 1.4 and 1.5 proved on the facts and on the documents.

27.61 The Tribunal was satisfied so that it was sure that the Respondents, as principals of the Firm, had allowed/permitted the Firm to become involved in conveyancing transactions which had perpetrated mortgage frauds and in the case of the First Respondent that he had done so dishonestly. The Tribunal was satisfied that both limbs of the Twinsectra test were met and that not only was the First Respondent dishonest by the ordinary standards of reasonable and honest people but it was inconceivable that by the misuse of client funds and the fact that he lied regarding redemption of mortgages, he did not know that by those standards his conduct was dishonest.

27.62 The Tribunal also took into account the FI Report and that four transactions had been reported by Santander in respect of which a total of £919,750.16 in the form of four mortgage advances had been paid to the Firm's HSBC client bank account in January and February 2011 and that in each case the Firm had failed to register title and had failed to respond to queries raised by Santander about the transactions. The FI Officer had also noted that Royal Bank of Scotland had reported eight uncompleted matters involving the Firm where it had identified that false documents had been used to support mortgage applications totalling £2,062,860 albeit there had been only one completed matter where the mortgage advance had been paid and the firm had failed to register its charge.

27.63 The Tribunal in addition to this considered the failures by the First Respondent/the Firm to comply with the various undertakings given, which appeared to have been given without any thought for their importance or seriousness and with a complete disregard for professional obligations and it was further satisfied that both limbs of Twinsectra were met with regard to the First Respondent's conduct in giving the undertakings and he had thereby acted dishonestly.

27.64 The Tribunal was satisfied that by their conduct the Respondents had failed to act with integrity, had failed to act in their clients' best interests including their lender clients and had acted in a way which was likely to have diminished the trust the public placed in them and in the profession.

Allegation 1.6 and 1.7

27.65 The Tribunal found allegations 1.6 and 1.7 proved on the facts and on the documents.

27.66 The Tribunal was satisfied that the Respondents had failed to comply with the SAR 1998 in the course of the seven exemplified conveyancing transactions and had breached Rules 1 and 22 of the SAR 1998 and Rule 1 of the Code. The Respondents had failed to use each client's money for that client's matters and had facilitated or permitted the withdrawal of client money other than in accordance with Rule 22 of the SAR 1998.

27.67 As principals of the Firm the Respondents were strictly liable for compliance with the SAR 1998 and the Tribunal noted that there appeared to have been a complete abdication by the Second Respondent of her responsibilities under the SARs and a complete disregard by the First Respondent of his responsibilities under the SARs.

Allegations 1.8, 1.9 and 1.10

27.68 The Tribunal found allegations 1.8, 1.9 and 1.10 proved on the facts and on the documents.

27.69 The Tribunal was satisfied that the Respondents had failed to provide documentation to the FCIB Officer; had failed to complete the Professional History Forms or write to their banks as required by the Applicant; had failed to comply with a section 44B Notice issued by the Applicant and had failed to reply to the Applicant's investigation notice and to enquiries from other solicitors.

27.70 The Tribunal found that as a result of the Respondents' conduct in failing to co-operate with the Applicant and to respond to the Applicant and other solicitors, they had failed to act with integrity and had behaved in a way which was likely to have diminished the trust the public placed in them and in the legal profession.

27.71 The Tribunal noted that the Firm's office and indeed the Firm itself appeared to have been abandoned by both the First and Second Respondents, the latter having left the country in December 2010 and it appeared that she had not returned since that time.

27.72 The Tribunal was satisfied that there had been no effective management or supervision at the Firm and it was particularly concerned that there had been no admitted solicitor present at the Firm as from December 2010, the First Respondent having been a Registered Foreign Lawyer. As a result, the First Respondent had been allowed to undertake reserved work namely conveyancing without proper supervision by an appropriate person and that had continued until the Firm's intervention in May 2011.

27.73 The Tribunal was satisfied that neither of the Respondents had sought to ensure compliance with their regulatory obligations as to supervision and management of the Firm but rather appeared to have shown a complete disregard for those obligations. Despite the First Respondent having informed the Applicant of his supposed intention to close the Firm as at 28 March 2011, the Tribunal noted that the Firm had continued in practice including having completed transactions and having accepted new instructions.

Previous Disciplinary Matters

28. None

Sanction

29. The Tribunal had regard to its Guidance Note on Sanctions.

30. The Tribunal had found all of the allegations against the First and Second Respondents proved including that the First Respondent was dishonest with regard to allegations 1.4 and 1.5.

31. The Tribunal had regard to the seriousness of the Respondents' misconduct. It was satisfied that the misconduct had arisen from actions which were planned on the part of the First Respondent in circumstances where he had had direct control of the circumstances which had given rise to the misconduct and in relation to the Second Respondent, where she had had responsibility for the circumstances which had given rise to the misconduct. The Second Respondent had effectively left the First Respondent "in charge" with little, if any, thought for the consequences which ultimately had been significantly damaging.

32. The Tribunal considered that the harm caused by the misconduct had been substantial and the impact upon the public and the reputation of the profession significant. It had regard to the case of Bolton v The Law Society [1994] 1 WLR 512 and that:

> "Any solicitor who is shown to have disregarded his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal".

33. The Tribunal was satisfied that there had been aggravating factors which included dishonesty of the First Respondent, that the misconduct had been deliberate and repeated over a period of time and that the Respondents knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the profession. In relation to the conduct of the Second Respondent, the Tribunal also considered aggravating features to have been her abandonment of the Firm and that she had not engaged at all with the Applicant.

34. The Tribunal found there to have been no mitigating factors. It was horrified by the amount of financial loss and the amount of claims to date on the Compensation Fund which stood at approximately £2,800,000. This was premeditated fraud on a massive scale.

35. The Tribunal ordered that the First Respondent be struck off the Register of Foreign Lawyers. It was satisfied that no lesser sanction was appropriate taking into account all of the circumstances and the seriousness of the First Respondent's misconduct and findings of dishonesty against him. It also took into account the necessity to protect the public and the reputation of the profession.

36. In relation to the Second Respondent the Tribunal had regard to the overall facts of the misconduct and what effect, in the absence of dishonesty, allowing the Second Respondent's name to remain on the Roll of Solicitors would have upon the public's confidence in the reputation of the profession. Whilst there had been no dishonesty allegation against the Second Respondent, the Tribunal considered that the seriousness of the misconduct was itself significant; it had not only found all allegations proved against her including having failed to act with integrity but that she had abandoned her practice and in so doing, had left the First Respondent to his own devices and all that that had entailed. She knew that there was no other person at the Firm qualified to carry out conveyancing but left the First Respondent to plunder the client account at will.

37. The Tribunal was satisfied that the Second Respondent's departure from the required standards of integrity, probity and trustworthiness was so serious that only the ultimate sanction was appropriate. The Tribunal ordered that the Second Respondent be struck off the Roll of Solicitors.

Costs

38. Mrs Bromley referred the Tribunal to the Applicant's Statement of Costs and asked that an order be made in the sum sought, allowing a slight reduction for attendance at the hearing which had originally been listed for two days.

39. The Tribunal summarily assessed the costs and ordered that the Respondents pay the Applicant's costs assessed at £22,500 on a joint and several basis. The Tribunal had no information before it from either of the Respondents as to their respective means.

Statement of Full Order

40. The Tribunal Ordered that the First Respondent, Anwaar Ul Haq, registered foreign lawyer, be Struck Off the Register of Foreign Lawyers and it further Ordered that he do pay jointly and severally with the Second Respondent the costs of and incidental to this application and enquiry fixed in the sum of £22,500.00.

41. The Tribunal Ordered that the Second Respondent, Sridevi Veldandi, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay jointly and severally with the First Respondent the costs of and incidental to this application and enquiry fixed in the sum of £22,500.00.

Dated this 17th day of June 2013
On behalf of the Tribunal

A G Gibson
Chairman