SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10937-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[1ST RESPONDENT – NAME REDACTED] First Respondent

and

ABDUL-AZIZ JIMOH Second Respondent

Before:

Mr D. Glass (in the chair)
Mr A. Ghosh
Mrs N. Chavda

Date of Hearing: 10th and 11th September 2012

Appearances

Edward Levey of Counsel instructed by Geoffrey Hudson, solicitor of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant.

The First Respondent appeared and was represented by Alessandra Williams of Counsel.

The Second Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the First Respondent, were that:

1.1 The First Respondent acted in breach of Rules 5.01(1)(a), (b) and (f) of the Solicitors' Code of Conduct 2007 ("SCC") in that:

(a) he failed to make arrangements for the effective supervision of the Second Respondent and failed to ensure proper supervision and direction of his clients' matters and

(b) he failed to ensure compliance with the money laundering regulations

1.2 The First Respondent acted in breach of Rule 10.05 of the SCC in that he failed to honour undertakings contained in certificates of title which he signed.

1.3 The First Respondent acted in breach of the Solicitors Accounts Rules 1998 ("SAR"), in particular:

1.3.1 Rules 1, 6 and 32 in that on 13 January 2010, the date of a visit to his firm by a Forensic Investigation Officer of the SRA, he was unable to produce:

(a) client account reconciliations for any period after 30 June 2009

(b) a list of liabilities to clients for any period after 30 June 2009

(c) a client account cashbook for any period after 30 June 2009

1.3.2 Rules 7 and 14.4 in that:

(a) his firm's client bank account was maintained at a branch which was situated outside of England and Wales, and

(b) he failed to take positive steps to remedy this breach for a period of nearly 11 months after first approaching his bank in respect of this problem

1.4 The First Respondent acted in breach of Rules 1.04 and 1.05 SCC in that in leaving signed blank client account CHAPS forms and signed blank client account cheques in the possession of members of staff who were not authorised to operate his firm's client account, he failed to put in place proper safeguards and controls over client monies contrary to the guidance in the SAR at:

(a) note (i) of Rule 23

(b) 4.1 of SAR Appendix 3 – SRA guidelines - accounting procedures and systems and

(c) 5.7 of SAR Appendix 3 – SRA guidelines - accounting procedures and systems

1.5 The First Respondent acted in breach of Rule 7.01 in that he published inaccurate information regarding his firm on the firm's website.

The allegations against the Second Respondent, Abdul-Aziz Jimoh, were that:

1.6 The Second Respondent acted in breach of Rule 1.04 SCC in that he had conduct of conveyancing transactions which bore the hallmarks of money laundering as set out in the SRA warning card in that:

(a) in four conveyancing transactions the firm's purported clients provided no purchase funds at all, that is, all the funds (apart from the mortgage advances) were received from third parties whose relationship to the purported purchasers was not clear and which he took no steps to ascertain.

(b) in one transaction unusual instructions were received in that a client provided him with a cheque for £224,000 in respect of funds for the purchase of a property but later instructed him not to pay in the cheque as the funds were to be provided by CHAPS instead.

1.7 The Second Respondent acted in breach of Rule 1.04 in that he had conduct of conveyancing transactions which bore the hallmarks of property fraud as set out in the SRA warning card in that:

(a) the firm's purported clients in four such transactions provided no purchase funds at all, that is, all the funds (apart from the mortgage advances) were received from third parties (i) whose relationship to the purported purchasers was not clear, (ii) whose identity was not confirmed and (iii) who, in two cases, appeared to be funding other, apparently unrelated transactions

(b) the file for one transaction contained contracts and other documents showing purchase prices ranging from £560,000 to £870,000 but no evidence which accounted for this variation.

1.8 The Second Respondent acted in breach of Rules 1.04 and 1.05 SCC and paragraphs 1.4, 3.1.2, 3.4, 5.12 and 5.9 of the Council of Mortgage Lenders Handbook (CMLH) (version current between 1 June 2007 and 30 November 2010) in that:

(a) he failed to act to the standard of a reasonably competent solicitor acting on behalf of a lender

(b) he failed to follow the SRA's guidance with regard to money laundering and/or to comply with the current money laundering regulations and the Proceeds of Crime Act 2002

(c) he failed to check that a passport he used to verify a client's identity was authentic and current

(d) he failed to inform lender clients of matters which had come to his attention which he should reasonably have expected those clients to consider important when deciding whether or not to lend to the borrower, namely the fact that

third parties were providing all of the funds for the purchases of properties apart from the mortgage advances and

(e) having become aware that borrower clients were not providing any portion of the purchase prices from their own funds, he failed to report that fact to his lender clients

as a result of which breaches, the firm's lender clients failed to obtain security for the substantial sums advanced to the firm's purported clients in respect of the relevant property transactions.

1.9 The Second Respondent acted in breach of Rule 1.04 SCC and Rule 22(1)(a) SAR in that funds were withdrawn from clients' accounts when they were not properly required for payment on behalf of those clients, in that completion funds for two property purchases were transferred from the firm's client account before contracts for the relevant property transactions had been exchanged.

The First Respondent admitted allegation 1.1(a) from 16 November 2009, he admitted allegations 1.3.1 and 1.3.2(a), and he admitted allegation 1.5.

Documents

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

Applicant:

- Application dated 23 February 2012 together with attached Rule 5 Statement and all exhibits
- Supplemental Witness Statement of Marsha Michelle Henry dated 6 September 2012
- Witness Statement of Jonathan Ernest Chambers dated 6 September 2012
- Letter dated 10 March 2010 from the SRA to the First Respondent
- Letter dated 10 March 2010 from the SRA to Ms M at Sovereign Solicitors & Partners LLP
- E-mail dated 7 September 2012 from Mr G Hudson, on behalf of the Applicant, to Ms A Williams, on behalf of the First Respondent
- Sovereign Solicitors & Partners LLP Draft Office Manual/Staff Handbook
- Applicant's Schedule of Costs dated 5 September 2012

The First Respondent

- Witness Statement of the First Respondent dated 24 August 2012 together with all exhibits

- Second Witness Statement of the First Respondent dated 7 September 2012 together with all exhibits
- Witness Statements of Mr Bakadde Kiwanuka dated 16 August 2010 and 26 July 2012
- Witness Statement of Ms Cynthia Fasuyi dated 7 September 2012
- Witness Statement of Mrs Olayemi Omolara Anjorin dated 19 July 2012
- Witness Statement of Mr Isaac Ayodeji Adedokun Adesina dated 11 September 2012
- Witness Statement of Mr Olugbenga Akinrodoye dated 20 August 2012
- Witness Statement of Mr Ryan Senior dated 11 August 2010
- Letter dated 2 March 2012 from Penningtons Solicitors LLP to the First Respondent
- Notebook produced by the First Respondent

The Applicant's Application to add an additional Allegation to the Rule 5 Statement

3. Mr Levey, Counsel for the Applicant, made an application to amend the Rule 5 Statement to include a further allegation that the First Respondent, had not acted with integrity, that he had acted in breach of his duty to the SRA and that he had done so dishonestly. Mr Levey submitted the First Respondent had not presented his defence in an honest way and that his evidence had changed during these proceedings. In particular, an attendance note prepared by the First Respondent relating to meetings which had taken place on 13 January 2010, 14 January 2010 and 15 January 2010 had been exhibited to the First Respondent's witness statement dated 24 August 2012, and this attendance note was different from an almost identical attendance note produced by Jonathan Chambers, the SRA's Forensic Investigation Officer, who had exhibited the same document to his witness statement dated 6 September 2012. The two documents contained a material discrepancy in their content. The version of the attendance note exhibited to Mr Chambers' witness statement had been attached to a letter sent to the SRA by another fee earner at the firm, Ms M, and it was consistent with the SRA's case. However, the version of the attendance note exhibited to the First Respondent's witness statement was consistent with the First Respondent's case.

4. Mr Levey submitted the First Respondent had been asked for an explanation regarding the discrepancy but no satisfactory explanation had been given. The First Respondent had been placed on notice on two occasions in prior correspondence from the SRA that the SRA reserved the right to allege dishonesty. Mr Levey submitted the First Respondent had still not provided an explanation today.

5. Mr Levey submitted the case had fundamentally changed. He did not consider any additional witnesses needed to be called and that these were matters that the First Respondent could deal with when giving his evidence. The SRA had acted promptly, taking action as soon as they had identified the discrepancy.

6. Ms Williams, on behalf of the First Respondent, opposed the application. She confirmed the First Respondent had only seen Mr Chambers' witness statement dated 6 September 2012 a few days ago and that was the first time he had seen the attendance note attached to it. The First Respondent had not had the opportunity to discuss the matter with Ms Williams until late on Friday 7 September 2012, with the substantive hearing due to begin on Monday 10 September 2012. Furthermore, Ms Williams confirmed that if an additional allegation was to be made relating to the attendance note referred to, then the First Respondent would seek to call Ms M who would be able to give evidence regarding that attendance note. Ms M was not here today. The letter produced by the SRA from Ms M, which attached the version of the attendance note the SRA had referred to, had been sent by Ms M without the authority or knowledge of the First Respondent and she had resigned shortly after sending the document.

7. Ms Williams reminded the Tribunal that the amendment sought would substantially alter the case and put the First Respondent in a very different position, as the potential sanction was far more severe. The First Respondent's case had been prepared on the basis the SRA had presented it to him two years ago and now the SRA was seeking to proceed on a completely different basis.

<u>The Tribunal's Decision on the Application to add an additional Allegation to the Rule 5 Statement</u>

8. The Tribunal was very concerned by the fact that there were two attendance notes which were identical, save for one differing paragraph in each of the attendance notes. The Tribunal had to consider very carefully whether to allow the late amendment requested by the SRA to amend the Rule 5 Statement to include an allegation that the First Respondent had not acted with integrity in dealing with the SRA in relation to these proceedings, and that he had been dishonest. The Applicant's case was that they had only recently become aware of the two attendance notes. Whilst the Tribunal accepted there appeared to be conflicting documentary evidence, the Tribunal also had to consider the prejudice to the First Respondent in allowing such an application to proceed.

9. The Tribunal was particularly mindful of a letter dated 16 August 2010 from the First Respondent to the SRA in which the First Respondent had set out his position in these proceedings. The explanations in that letter were consistent with the attendance note exhibited to the First Respondent's witness statement dated 24 August 2012. Accordingly, the SRA had been on notice since the date of that letter as to the First Respondent's explanation and defence. There would need to be very exceptional circumstances to allow such an allegation to be introduced at this late stage. The Tribunal was of the view that the prejudice to the First Respondent was such that it would not be fair to the First Respondent to allow an allegation of a lack of integrity and dishonesty to be introduced at such a late stage. Accordingly, the Tribunal refused the Applicant's application.

Factual Background

10. The First Respondent, born on 14 August 1963 was admitted on 16 June 2003.

11. The Second Respondent, Abdul-Aziz Jimoh, born on 26 July 1964 was admitted on 15 November 2005. He did not hold a current practising certificate.

12. At the material time the First Respondent was a member of Sovereign Solicitors & Partners LLP ("the firm") of 17-21 George Street, Croydon, Surrey. The Second Respondent was engaged as a self-employed solicitor by the firm.

13. On 13 January 2010, the SRA carried out an inspection of the firm and produced a Forensic Investigation Report ("FI Report") dated 4 March 2010. The First Respondent was interviewed by the Investigation Officers ("IOs") from the SRA on 13 January 2010. During the course of that interview the First Respondent confirmed that since May 2007 he had practised with Ms M, who was a member of the firm. The First Respondent owned all the equity in the firm. Ms M attended the offices on an infrequent basis and her involvement in the management and work of the firm was extremely limited.

Pre-Signed CHAPS Forms and Cheques

14. The First Respondent alone was authorised to operate the firm's bank accounts. It was his practice to occasionally leave signed blank client account CHAPS payment forms and signed blank client account cheques in the possession of Ms Marsha Henry (a member of the Institute of Legal Executives) so that payments could be made in respect of conveyancing matters when the First Respondent was absent from the office.

15. The Second Respondent made an attempted improper transfer of £499,000 from the firm's client account on 13 January 2010 without the First Respondent's knowledge or authorisation. The transfer was made at a time when there were insufficient funds in the firm's client account to cover the transfer, and on a day when the First Respondent was not absent from the office.

16. In an interview on 20 January 2010 the First Respondent told the IO that he had left the blank signed CHAPS transfer form with the Second Respondent on Friday 8 January 2010. However, in his letter to the SRA dated 16 August 2010, the First Respondent denied having given the Second Respondent a signed blank CHAPS form on this occasion, and said he did not know how the Second Respondent had come to be in possession of such a form. He further stated in that letter that:

- He would only leave pre-signed cheques or CHAPS forms in the office on exceptional occasions, such as when on holiday or away from the office. On such occasions he stated the strict policy was for the fee earner concerned to check with him or Ms Henry whether there were sufficient funds available to cover the payments.

- The cheques and CHAPS forms were always locked away in a cabinet to which only he and Ms Henry had access.

- He considered the Second Respondent's attempted transfer on 13 January 2010 had been a deliberate attempt to defraud the firm.

Books of Account

17. The books of accounts produced to the IOs on 13 January 2010 were not in compliance with the SAR in that the First Respondent was unable to produce:

- Client account reconciliations for any period after 30 June 2009
- A list of liabilities to clients for any period after 30 June 2009
- A client account cash book for any period after 30 June 2009
- Client account ledgers for any of the matters reviewed in the FI Report.

The First Respondent told the IOs on 13 January 2010 that the firm's external bookkeeper was working on bringing the firm's accounting records up to date and that he thought more recently dated reconciliations had been performed, although he could not confirm the dates of such reconciliations. When the IOs attended the firm again on 1 and 2 March 2010 they found up to date records which included a client bank account reconciliation as at 31 January 2010.

The Firm's Bank Account

18. The IOs established the firm's client bank account with the Bank of Scotland plc was maintained at a branch situated in Edinburgh, Scotland. In his letter of 16 August 2010 the First Respondent stated the firm had tried to open a new bank account at a branch of the Bank of Scotland in England and Wales but matters had stalled when the relevant Client Relations Manager at the bank had moved to a different department. On 25 July 2011 the First Respondent provided the SRA with copies of his correspondence with the bank regarding moving the firm's client account to a branch within England and Wales. The correspondence showed the First Respondent had first written to the bank in relation to this matter on 2 December 2009 and on 15 December 2009 he had sent a signed application for a new client account to the bank. The bank had failed to action the firm's request and the First Respondent had followed this up on 8 November 2010.

Mortgage Transactions involving the Second Respondent

19. Between November 2009 and January 2010 the Second Respondent had conduct of four conveyancing transactions on each of which:

- He purported to act for the purchaser and his/her lender
- The registered proprietor of the property was unaware of or in any way involved in the purported sale of his/her property and
- Funds advanced by the lender were paid out to third parties without the lender obtaining any security.

The four transactions bore the following additional similarities:

- Substantial portions of the purchase funds were received from third parties. Two such third parties, LG and TW, provided funds to two apparently unrelated clients of the firm in apparently unrelated property transactions

- Contractual paperwork on the files was incomplete in that there was no evidence of binding contractual agreements being reached, or completion payments were made prior to the completion date shown on the relevant contracts.

- The Second Respondent had not informed the relevant lenders that the balance of purchase monies had not been provided from the purchaser's own funds.

- The same firm of solicitors, A & Co, acted for the purported vendors in three of the transactions. A & Co was intervened into on 31 December 2009.

- The firm and/or the Second Respondent failed to verify the identity of the third parties who were providing purchase funds. In the case of AM the Second Respondent failed to query the fact that the purported client had provided two versions of his passport which were materially different.

20. In interview on 15 January 2010, the First Respondent informed the IO that he had no specific knowledge of the Second Respondent's conveyancing transactions. He said he had signed the relevant certificates of title and operated the firm's bank accounts on the basis that the Second Respondent was a competent and experienced conveyancer.

21. On 2 February 2010 the First Respondent emailed the IO and confirmed a report had been made to the police and the Serious Organised Crime Agency. He also confirmed the firm had ceased to accept new conveyancing instructions and was winding down its conveyancing department. He also stated he had terminated the Second Respondent's employment.

AM – Purchase of Property at GT

22. The firm acted for a person purporting to be AM on the purchase of a leasehold property at GT, London for £870,000. The Second Respondent had conduct of the matter. The firm also acted for the lender with respect to a mortgage advance of £495,000 being provided for the purchase of the property. The instructions from the lender confirmed the instructions were governed by and incorporated the current edition of the Council of Mortgage Lenders' Handbook ("CMLH"). A & Co Solicitors acted for the purported seller of the property. The First Respondent signed a certificate of title for the lender on 7 December 2009.

23. The firm's file contained photocopies of two versions of a Republic of Ireland passport for AM which contained the same name, the same issue date, the same expiry date and the same signatures. However the dates of birth were different, the issue numbers were different and the photographs were different. In an interview on 13 January 2010 the Second Respondent stated he had not been aware of the two versions of the passport until the IOs pointed it out, the second version must have

been in other papers sent to the office and that he had met a man who claimed to be AM, who had visited the firm's office and produce the passport as proof of his identity.

24. The Second Respondent accepted the two passports were a cause for concern, that it was possible he had been provided with a forged passport and that he was concerned about the true identity of his client. On 14 January 2010 he said that he proposed to report his concerns to the lender but there was no evidence of such a report being made by 4 March 2010.

25. An un-cashed cheque in the sum of £224,000 dated 14 December 2009 was found on the client file which was payable to the firm and drawn on an account in the name of AM t/a MD. This cheque had not been paid into the firm's client account. The Second Respondent told the IO that the cheque had been provided with respect to part of the completion funds required to complete the purchase but that AM had subsequently given him alternative instructions to the effect that completion monies were to be paid to the firm by CHAPS transfer from his own funds.

26. The balance of the purchase monies, rather than being provided by the purchaser were provided by three parties:

- TW who also provided £49,884.05 towards the purchase of an apparently unrelated client, Mr AQ
- LG who also provided £127,309.05 towards the purchase of an apparently unrelated client, NN and
- SO.

In interviews on 13 and 15 January 2010 the Second Respondent confirmed he had not told his lender client about the involvement of third parties in the transaction.

27. The other concerns raised in relation to AM's transaction included the following:

- The file contained no documentary evidence to demonstrate that a contract had been exchanged with the vendor's solicitors.
- The file contained two versions of a sale/purchase contract both of which were undated. One showed a purchase price of £640,000 and the second showed a purchase price of £870,000.
- The version of the contract showing a purchase price of £870,000 appeared to be signed by AM and the vendor, but the contract was undated and did not show any completion date or the amount of any contractual deposit payment. Deposit payments of £435,025 were made to the vendor's solicitors but neither contract specified this.
- There was no evidence on the file to show that the Second Respondent had taken any steps to register the property in the name of AM or to secure the lender's mortgage advance of £495,000 by registering a charge.

- There was no documentary evidence on the file to demonstrate the Second Respondent had met with the person purporting to be AM.

- The file contained reference to purchase prices ranging from £560,000 to £870,000 but there was no documentary evidence to account for the variation.

- There was no client care letter on the file.

28. In a letter to the SRA dated 16 August 2010 the First Respondent confirmed that the registered proprietor of the property at GT had confirmed he had never sold his property. Furthermore, the solicitors acting for the lender confirmed that there had not been a valid sale of the property.

GA – Purchase of Property at DH

29. The firm acted for a person purporting to be GA on the purchase of a property at DH, Middlesex, in the sum of £560,000 and also acted for the lender with respect to a mortgage advance of £336,000. The Second Respondent had conduct of the matter. A & Co Solicitors acted for the purported vendor of the property. The First Respondent signed a certificate of title on 15 December 2009.

30. The balance of purchase monies was provided by a third party, Mr AH and also by a source who could not be ascertained by the IO. In interviews on 13 and 15 January 2010 the Second Respondent confirmed he had not informed the lender of the involvement of third parties in the transaction and that his client had informed him the balance of the purchase monies were to be provided from his own funds. Other matters of concern with this transaction were:

- There was no evidence to show that a sale/purchase contract was exchanged with the purported vendor's solicitors A & Co.

- A contract showing a purchase price of £560,000 which appeared to be signed by GA was not dated and had no completion date.

- There was no evidence to show that the title to the property was registered in GA's name or that the lender's charge had been registered.

- There was no evidence on the file to show that the Second Respondent had met GA.

31. In a letter to the SRA dated 16 August 2010 the First Respondent confirmed the registered proprietor of the property at DH had advised he had never sold his property, that the interest of the lender could not be registered, and that the solicitors who had intervened into A & Co Solicitors had advised they did not have a file for this transaction.

NN – Purchase of Property at M

32. The firm acted for a person purporting to be NN in relation to the purchase of a property at M, London in the sum of £310,000. The firm also acted for the lender with respect to its mortgage advance of £193,750 who provided instructions in accordance with the CMLH. The Second Respondent had conduct of the matter. A & Co Solicitors acted for the purported vendor. The First Respondent signed a certificate of title for the lender on 12 November 2009.

33. The balance of purchase monies was provided by a third party, LG. A handwritten note signed by the Second Respondent recorded that on 16 November 2009 NN visited the office with a man who introduced himself as Mr M. The note recorded that Mr M would be assisting NN to acquire what was to be her first property and that two letters were handed to the Second Respondent. The note also recorded that the Second Respondent had previously asked NN about the source of her funds and had been told that a member of her family was assisting her.

34. A letter of authority dated 12 November 2009 signed by NN authorised the firm to:

> "receive the sum of £127,415.05 from Mr [LM] being money in respect of deposit for the purchase of the property above [property at M]."

The letter also stated that the funds:

> "are due to [NN] from Mr [LM] and will not form part of a charge on the property".

35. A letter addressed to the firm dated 12 November 2009 and signed by Mr M confirmed he had transferred the sum of £127,415.05 to the firm's client account to assist NN in the purchase of the property. The letter stated:

> "I further confirm that I have known Ms [NN]'s family for years and these money [sic] is being paid as a result of the promise made to assist Ms [NN] in the purchase of her first property".

36. There was no evidence that the Second Respondent obtained proof of Mr M's identity or that he made any enquiries to establish why the funds appear to have been received from LG rather than LM. The other concerns regarding this matter were as follows:

- The contract was dated 19 November 2009 and specified a completion date of 19 November 2009. However, completion funds were sent to A & Co Solicitors on 18 November 2009.

- There was no documentary evidence on the file to show that the title to the property had been registered in the name of NN or that the lender's charge had been registered.

- NN's name was spelt incorrectly on the transfer deed

- The file contained an undated typed file note which indicated the Second Respondent had spoken to his client on the telephone on 21 October 2009 and that:

> "she had initially instructed another firm of solicitors but …… had to withdraw her papers because of problems with that firm".

There was no evidence that the Second Respondent made enquiries as to the nature of those problems. The note also recorded that the Second Respondent met NN and "her boyfriend" on 3 November 2009.

37. In a letter to the SRA dated 16 August 2010 the First Respondent stated the registered proprietor of the property at M had confirmed he had no knowledge of the transaction relating to his property, it was clear that there had been no valid transaction and the lender's interest could not be registered.

AQ – Purchase of Property at FA

38. The firm acted for a person purporting to be AQ on the purchase of a property at FA, Essex, in the sum of £185,000. The firm also acted for the lender with respect to its mortgage advance of £138,750 who instructed the firm in accordance with the CMLH. The Second Respondent had conduct of the matter. The First Respondent signed a certificate of title for the lender on 7 December 2009.

39. The balance of the purchase monies were provided by a third party, TW. A handwritten attendance note made by the Second Respondent dated 2 November 2009 stated that AQ attended the firm's offices and provided satisfactory identification. The attendance note also recorded that the balance of the purchase funds was to comprise:

> "his own resources … augmented by an inheritance from an uncle of his".

The full sale proceeds were paid to the vendor's solicitors on 10 December 2009 but contracts were exchanged the following day on 11 December 2009. There was no evidence that the title to the property was registered in the name of AQ or that the lender's charge had been registered.

40. The First Respondent confirmed in a letter to the SRA dated 16 August 2010 that the lender's solicitors had confirmed the transaction had not completed and that the registered proprietor of the property at FA had no knowledge of any sale of the property.

GA – Purchase of Property at HS

41. The firm acted for a person purporting to be GA on the purchase of a property at HS, London, in the sum of £499,000. The firm also acted for the lender with respect to its mortgage advance of £299,999 who instructed the firm on the basis of the CMLH. The Second Respondent had conduct of the file. The First Respondent signed a certificate of title for the lender on 7 January 2010.

42. On 13 January 2010 the Second Respondent attempted to pay the full purchase price of £499,000 to the vendor's solicitors at a time when only £299,999 was available. In an interview with the IO on 14 January 2010 the Second Respondent stated contracts had not yet been exchanged.

43. The First Respondent told the IO on 20 January 2010 that he had left a pre-signed CHAPS payment form with the Second Respondent on 8 January 2010 and that the Second Respondent had used the form to attempt to make an improper CHAPS payment without his knowledge or authorisation. The First Respondent said that the first he knew of the attempted transfer was when he telephoned the firm's bank on 14 January 2010 following an attempt by the bank to contact him on 13 January 2010. Following a faxed request from the lender on 14 January 2010 to return the mortgage advance as a matter of urgency, the firm paid the funds back on 15 January 2010.

Supervision Arrangements

44. The Second Respondent joined the firm in about September 2008 as a litigator. Following a significant increase in the firm's professional indemnity insurance premium for the year, the Second Respondent suggested, on an unknown date in or about the first half of 2009, that he might commence conveyancing work in order to increase his and the firm's fee income. At that time the only member of staff undertaking conveyancing work was Ms Marsha Henry.

45. In anticipation of the Second Respondent commencing conveyancing, the First Respondent told Ms Henry and the Second Respondent that they should review each other's files. Although they both agreed to carry out such reviews, the way in which the proposed system was to work was never properly explained by the First Respondent.

46. In a memo dated 27 August 2009 from Ms Henry to the First Respondent, Ms Henry drew to the First Respondent's attention that he had not indicated how regular such reviews would be, and how the reviews would be done. The First Respondent took no steps to clarify the file review process in response to this memo. In early November 2009, the Second Respondent began to undertake conveyancing work.

47. On 16 November 2009 a lender, Abbey National (now Santander), informed the firm that it had been removed from their panel of solicitors as of that date. At the date of removal from the panel, the firm had been instructed by Abbey in respect of at least five mortgage offers, all of which were being dealt with by the Second Respondent. All instructions were withdrawn by Abbey following the firm's removal from its panel.

48. Ms Henry ascertained on 23 November 2009 that the decision to remove the firm from Abbey's panel had been taken following an investigation by the Fraud Management Team and she advised the First Respondent of this. The First Respondent wrote a letter to Abbey's Fraud Management Team on 25 November 2009 in which he:

- Sought an explanation for the firm's removal from Abbey's panel
- Explained that the removal might have serious consequences for the firm
- Noted that the firm had received "approximately" seven instructions from Abbey in the preceding few weeks and
- Said that the firm was "alarmed by the reference to fraud …" and "…… would like any of our conveyancer [sic] suspected of fraud to be referred to the SRA or the police for the necessary action".

49. On 9 December 2009 the First Respondent sent an email to Ms Henry and the Second Respondent stating that he would be:

> "grateful if [file reviews] could commence ASAP".

By this date the Second Respondent had completed the purchase of the property at M for the purported client NN, he was about to complete the purchase of the property at FA for the purported client AQ and he would shortly complete the purchases of the properties at GT and DH for his clients AM and GA respectively.

50. During the course of the interviews on 13 and 15 January 2010, the Second Respondent and Ms Henry both confirmed to the IO that although they were aware of the review process described by the First Respondent, it had not been implemented and no conveyancing file reviews had in fact been carried out. The Second Respondent stated he believed the First Respondent exercised supervision over his work generally but said that he was "not supervised day to day". However, professional history forms provided to the IOs confirmed neither the First Respondent, nor Ms M, undertook any conveyancing work and neither was responsible for supervising any such work at the firm.

51. Furthermore, the First Respondent was aware of potential interpersonal difficulties between Ms Henry and the Second Respondent.

52. Ms Henry sent a memorandum to the First Respondent on 27 August 2009 which was headed "Reviewing of files and Mr A Jimoh joining the conveyancing Department" in which she wrote:

> "I have already highlighted to you the previous tension I have experienced from Mr Jimoh, and as a result of this am concerned at the way in which I will be dealt with by him whilst my files are reviewed".

Ms Henry concluded by stating she would continue to review the situation and the way in which she was being treated. The First Respondent did not respond to this memorandum.

Inaccurate Information Published on the Firm's Website

53. At or around the end of January 2010 the firm stopped accepting conveyancing instructions and steps were taken to shut the conveyancing department down. Ms Henry terminated her contract with the firm on 2 February 2010 and Ms M resigned as a member of the firm with effect from 31 April 2010. The First Respondent failed to update the firm's website to reflect these matters and until at least January 2011 the website stated the firm undertook conveyancing work, that Ms M was a member of the firm, and Ms Henry was employed by the firm as a conveyancer.

54. In a letter to the First Respondent dated 9 April 2010 the SRA pointed out that the firm's website continue to represent that it was offering conveyancing as an area of practice. No changes were made and further letters were sent to the firm regarding this matter on 25 June 2010, and again on 16 December 2010. In March 2010 Ms Henry's solicitors asked the First Respondent to update the firm's website to reflect her departure.

55. In letters to the SRA dated 16 August 2010 and 12 January 2011, the First Respondent explained that an update for the firm's website had been prepared by its IT consultant to remove all references to Ms M and the firm's conveyancing department. However the revised website was never made "live" because further amendments were likely due to ongoing changes at the firm. The IT consultant had advised it would be better to complete all the changes "otherwise it will be fluid, frequent, unprofessional and costly to the firm".

Witnesses

56. The following witnesses gave evidence:

- Ms Marsha Michelle Henry
- Jonathan Ernest Chambers (Forensic Investigation Officer with the SRA)
- The First Respondent
- Ms Cynthia Fasuyi
- Ms Olayemi Omolara Anjorin
- Mr Isaac Ayodeji Adedokun Adesina

Findings of Fact and Law

57. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of the Applicant and the First Respondent. The Second

Respondent had not appeared, he had not made any submissions to the Tribunal and had not engaged in the proceedings. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

58. **Allegation 1.1: The First Respondent acted in breach of Rules 5.01(1)(a), (b) and (f) of the Solicitors' Code of Conduct 2007 ("SCC") in that:**

(a) He failed to make arrangements for the effective supervision of the Second Respondent and failed to ensure proper supervision and direction of his clients' matters and

(b) He failed to ensure compliance with the money laundering regulations

58.1 The First Respondent had admitted allegation 1.1(a) from 16 November 2009. The Second Respondent had started to undertake conveyancing transactions from about early November 2009. The First Respondent's case was that Ms Henry should have reviewed the Second Respondent's files and vice versa. The First Respondent claimed the Second Respondent's files were reviewed by Ms Henry as soon as they were opened and that Ms Henry had also reviewed the files of two other fees earners on two occasions. He said he had delegated some supervision responsibilities to Ms Henry. The First Respondent said he had spoken to Ms Henry who had told him that the files had been reviewed and were in order. Whilst the First Respondent maintained file reviews were carried out, he accepted file review sheets were not completed. He accepted with hindsight he should have been "more cautious". He said that it was only after January 2010 when Mr Chambers visited the firm that he realised files were not being reviewed.

58.2 The Tribunal also heard evidence from Mr Isaac Adesina who appeared to have some recollection concerning the review of the Second Respondent's files by Ms Henry but he could not say when this was discussed and he confirmed he had not seen any evidence of such file reviews. The Tribunal had been provided with witness statements from Mr Bakadde Kiwanuka and attached limited weight to these in view of the fact that he had not given oral evidence. Mr Kiwanuka confirmed his files had been reviewed by the First Respondent and that the policy when he joined the firm was that Ms Henry would review conveyancing files, including the Second Respondent's files.

58.3 The Second Respondent, when interviewed by Mr Chambers on 13 January 2010, had admitted that whilst he was aware of the file review process, this had not been implemented and no file reviews had been done. He stated that his work was supervised by the First Respondent but that "I am not supervised day to day".

58.4 The guidance to Rule 5.01(1)(a) SCC stated that conveyancing work could not be supervised by a manager who was a legal executive. Ms Henry was a legal executive and therefore, she was not able to supervise the Second Respondent under Rule 5.01.

58.5 The Tribunal heard evidence from Ms Henry and found her to be a credible, impressive, precise and consistent witness. The Tribunal accepted her evidence. In

her evidence Ms Henry confirmed that she had sent an email to the First Respondent dated 27 August 2009 in which she had stated:

> "I thought it best that I confirm the way forward in terms of file reviews and my concerns that may arise. I therefore enclose a memeo [sic], and as agreed I will monitor the situation."

Attached to that e-mail was a memorandum also dated 27 August 2009 in which Ms Henry raised concerns about the regularity of file reviews and the way in which they would be done. She had also raised concerns about the tension between her and the Second Respondent and how this may impact on her files being reviewed by him.

58.6 It was clear to the Tribunal that the issue of file reviews of the Second Respondent's files had been raised at least by 27 August 2009. It was also clear that file reviews of the Second Respondent's files were not being conducted as the First Respondent sent an e-mail to both Ms Henry and the Second Respondent on 9 December 2009 reminding them about file reviews and requesting that they should "commence asap ….". This was clear evidence that reviews of the Second Respondent's client files were not being carried out and that the First Respondent was aware that such file reviews were not being done. The Tribunal rejected the First Respondent's assertion that he was unaware until January 2010 that the Second Respondent's files were not being reviewed. The Tribunal was not satisfied that the First Respondent had given proper instructions in relation to the file reviews to either Ms Henry or the Second Respondent. It was up to the First Respondent to ensure the Second Respondent was properly supervised especially in view of the fact that he had just started conveyancing work. The Tribunal was satisfied that the First Respondent had failed to make arrangements for the effective supervision of the Second Respondent and his client matters prior to 16 November 2009. The Tribunal found allegation 1.1(a) proved.

58.7 In relation to allegation 1.1(b) the Tribunal noted that the First Respondent, on cross examination, had accepted that if file reviews of the Second Respondent's conveyancing files had been properly carried out and proper steps were in place, warning signs on a number of those files would have been obvious if someone had looked at them. He accepted that issues would immediately have been raised and he would not have allowed these transactions to proceed. The First Respondent referred in his witness statement dated 24 August 2012 to an Office Manual. He stated the procedures set out in that manual were in place. That Office Manual contained information and procedures relating to Money Laundering. It also contained procedures relating to the audit/review of case files and attached as an Appendix to the Office Manual was a File Review Sheet.

58.8 Ms Henry, who was in charge of the Conveyancing Department, stated in her evidence, that she had not seen this Office Manual. The Tribunal also heard evidence from Ms Cynthia Fasuyi who had been employed as a secretary at the firm from October 2009 until 15 July 2010. She stated the First Respondent had encouraged all the solicitors to review files and that file reviews were discussed at monthly staff meetings. She said the First Respondent had told Ms Henry and the Second Respondent to review each other's files. She stated the First Respondent had prepared a binder which was in the office and which contained policies that the staff could

read. She confirmed that this binder was indeed the Office Manual that the First Respondent had referred to.

58.9 Mr Kiwanuka in his witness statement of 26 July 2012 stated he was aware of the firm's Office Manual and guidance notes on money laundering. Ms Olayemi Anjorin had given evidence to the Tribunal in which she confirmed Ms Henry's seniority at the firm, in that she was in charge of conveyancing work at the firm.

58.10 The Tribunal was mindful that Ms Fasuyi was a secretary at the firm and that Ms Henry, who was more senior as the person in charge of the Conveyancing Department, said she had never seen the Office Manual. The Tribunal preferred Ms Henry's evidence because of her position within the firm and the clarity with which she gave her evidence to the Tribunal. The Second Respondent's conveyancing files drove a coach and horses through the Money Laundering Regulations and clearly did not comply with them. The Tribunal was satisfied that the First Respondent had failed to ensure there had been compliance with Money Laundering Regulations and therefore found allegation 1.1(b) proved.

59. **Allegation 1.2: The First Respondent acted in breach of Rule 10.05 of the SCC in that he failed to honour undertakings contained in Certificates of Title which he signed.**

59.1 The First Respondent had signed a number of certificates of title and in doing so he had certified that the identity of the borrower had been checked, the borrower and the buyer would have good title on completion and that the seller had owned the property for at least six months. The First Respondent had also given undertakings to obtain and register the mortgage on completion, to notify the lender in writing if any matter came to the firm's attention before completion which would render the certificate of title untrue or inaccurate, and in such circumstances to defer completion pending the lender's authority to proceed, and to return the mortgage advance to the lender if so required.

59.2 In his evidence the First Respondent stated he had spoken to Ms Henry who had told him files had been reviewed and all was in order. He said he signed the Certificates of Title on this basis. The Tribunal had already found such file reviews had not taken place and had rejected the First Respondent's assertion that they had.

59.3 It was quite clear from the First Respondent's letter to the SRA dated 16 August 2010 that on a number of conveyancing transactions, namely those involving clients AM, GA, AQ and NN, the First Respondent had failed to honour the undertakings given. On each of those cases the registered proprietor of the properties concerned did not know anything about the transaction and there had not been a valid sale of the property, as a result of which the lender's charge could not be registered. There were other additional factors in a number of those transactions which were material matters that should have been notified to the lender, such as payments being made by third parties, unsatisfactory identification documentation being provided, unusual changes in instructions being given by the client and discrepancies with the contract and purchase price. If the First Respondent had been properly supervising and reviewing the Second Respondent's conveyancing files, these matters would have come to his attention. It would have been clear to him that the certificates of title were inaccurate

and reports should have been made to lenders immediately. The Tribunal found allegation 1.2 proved.

60. **Allegation 1.3: The First Respondent acted in breach of the Solicitors Accounts Rules 1998 ("SAR"), in particular:**

1.3.1: Rules 1, 6 and 32 in that on 13 January 2010, the date of a visit to his firm by a Forensic Investigation Officer of the SRA, he was unable to produce:

(a) client account reconciliations for any period after 30 June 2009;

(b) a list of liabilities to clients for any period after 30 June 2009;

(c) a client account cashbook for any period after 30 June 2009.

1.3.2: Rules 7 and 14.4 in that:

(a) his firm's client bank account was maintained at a branch which was situated outside of England and Wales, and

(b) he failed to take positive steps to remedy this breach for a period of nearly 11 months after first approaching his bank in respect of this problem

60.1 The First Respondent had admitted allegations 1.3.1 (a), (b) and (c). Accordingly, the Tribunal found these allegations proved. The First Respondent had also admitted allegation 1.3.2(a) and the Tribunal found this proved.

60.2. In relation to allegation 1.3.2(b) the First Respondent in his witness statement dated 24 August 2012 had stated that he had taken steps to rectify the breach as soon as it was brought to his attention and he set out at paragraphs 59 to 65 of his witness statement the steps that he had taken. The First Respondent was not challenged on this evidence and accordingly the Tribunal accepted it. The Tribunal was satisfied the First Respondent had taken positive steps to remedy the breach and that he had telephoned and communicated with the bank several times to find out about the progress of his application. The Tribunal found allegation 1.3.2(b) not proved.

61. **Allegation 1.4: The First Respondent acted in breach of Rules 1.04 and 1.05 SCC in that in leaving signed blank client account CHAPS forms and signed blank client account cheques in the possession of members of staff who were not authorised to operate his firm's client account, he failed to put in place proper safeguards and controls over client monies contrary to the guidance in the SAR at:**

(a) note (i) of Rule 23

(b) 4.1 of SAR Appendix 3 – SRA guidelines - accounting procedures and systems and

(c) 5.7 of SAR Appendix 3 – SRA guidelines - accounting procedures and systems

61.1 Rule 1.04 of the Solicitors Code of Conduct 2007 ("SCC") stated:

> "You must act in the best interests of each client".

Rule 1.05 stated:

> "You must provide a good standard of service to your clients".

The First Respondent had stated in his evidence that he signed blank CHAPS forms and left them in the office in a locked drawer, to which he said only he and Ms Henry had keys. The First Respondent had written to the SRA on 16 August 2010 and in that letter he had stated:

> "I have never given a signed client account cheque to Mr Jimoh although it is accepted that I will in exceptional circumstances give signed blank client account cheques to Ms Henry to effect a completion …….. The cheques and CHAPS forms (even blank signed CHAPS forms) are always locked away in a cabinet that only myself and Ms Henry has access to."

61.2 However, the Tribunal heard evidence from Ms Henry in which she confirmed that by the time the Second Respondent started doing conveyancing work, the locked drawer was no longer used. She stated that in practice the conveyancers could help themselves to pre-signed cheques and CHAPS forms because the key to the drawer was kept in a central place on her desk under some papers for anyone to take. The Tribunal was referred to an email dated 29 October 2008 from Ms Henry to the First Respondent in which she requested him not to sign TT forms unless there was evidence of payment. She also stated in that email that she would only give conveyancers pre-signed TT forms if she had seen the funds come in. Despite this email, Ms Henry said the First Respondent continued with his practise of signing blank CHAPS forms and cheques.

61.3 The Tribunal had also heard evidence from Mr Jonathan Chambers, the Forensic Investigation Officer from the SRA, who had interviewed the First Respondent on 20 January 2010. In his evidence Mr Chambers had confirmed he had taken contemporaneous notes during the interview and that the First Respondent had stated in the course of that interview:

> "If I am going on holiday I would sign blank form and two cheques and expect them to act honestly. I signed a blank form on this one. I think that I had signed this one last Friday. I do not work on Fridays."

61.4 Mr Chambers confirmed the First Respondent told him that he had left the blank signed CHAPS transfer form with the Second Respondent on 8 January 2010. The Tribunal accepted Mr Chambers' evidence. This evidence was consistent with the first attendance note of the meetings, which took place on 13/1/10, 14/1/10 and 15/1/10, attached to a letter dated 29 March 2010 sent by Ms M, a member of the firm's staff, to the SRA. The letter was stated to be "a joint response from me and

[name redacted]" but appeared to be signed by Ms M. Under her signature, written in manuscript, were the words:

> "For and on behalf of [name redacted] and [MM]".

That attendance note contained a paragraph which stated:

> "I said I have signed the CHAPS form subject to him making sure we have sufficient funds to complete (from his client and banks) and he said he agreed."

However, the same paragraph in the version of this attendance note which the First Respondent had produced attached to his witness statement dated 24 August 2012 stated as follows:

> "I asked him how he managed to obtain the CHAPS form with my signature on it and he evaded answering the question and after some pause said 'I have said all I need to say'."

Apart from this difference, both versions of the attendance note were identical.

61.5 The First Respondent's evidence was that the letter sent by Ms M dated 29 March 2010 attaching the first version of the attendance note was sent without his knowledge or approval. At the time that she had written that letter, Ms M had hardly been on speaking terms with the First Respondent in March 2010, and indeed, shortly after she left the firm. Although the letter sent by Ms M was stated to have been sent on behalf of the First Respondent, he confirmed that he did not ask Ms M to send that letter on his behalf and that it did not contain his handwriting. The First Respondent stated he had not seen that version of the attendance note prior to receiving Mr Chambers' witness statement dated 6 September 2012. His explanation for the differing attendance note produced by Ms M was that Ms M had been making her own enquiries having instructed her own legal representative. He stressed the letter had not been a joint response.

61.6 The First Respondent was unable to explain how Ms M had obtained the attendance note, although he did confirm he had prepared it. The First Respondent produced a notebook containing the hand written notes he had made contemporaneously during meetings with the Second Respondent on 13 and 15 January 2010. He stated that he had prepared the attendance note based on his own notes from his notebook. The relevant handwritten manuscript note in that notebook stated:

> "How did he manage to obtain CHAPS forms with my signature – I have said all I have to say".

61.7 When the First Respondent had been preparing for this hearing, he said that he had gone through his notebook to ensure the attendance note was accurate and he had altered the note, which was already on his computer, as the first version was not accurate. The First Respondent had not been aware of the letter dated 29 March 2010

sent by Ms M, or indeed the version of the attendance note attached to that letter when he had prepared his own witness statements and exhibits.

61.8 The Tribunal accepted the First Respondent's explanation regarding the discrepancy in the two attendance notes. The Tribunal was particularly mindful that it was extremely unlikely the First Respondent would have exhibited the second version of the attendance note to his witness statement, had he been aware that the SRA had already been provided with the version attached to Ms M's letter dated 29 March 2010. The Tribunal accepted that the First Respondent and Ms M were on bad terms in March 2010 and it was therefore possible that Ms M obtained her version of the attendance note from the First Respondent's computer without his knowledge or consent. The Tribunal was also mindful that the letter of 29 March 2010, whilst purporting to be a joint response on behalf of the First Respondent and Ms M, was in fact written in the singular throughout, it contained only Ms M's reference and concluded by stating:

> "However please note that my resignation from the firm is effective from 30 April 2010. After this date, it will not be possible for me to have access to files or documents in the firm."

61.9 Although the Tribunal accepted the First Respondent's explanation regarding the discrepancy in the attendance notes, and appreciated that he thought the note would be more effective if it was altered to reflect his position, the Tribunal found the first attendance note attached to Ms M's letter dated 29 March 2010 was the correct version.

61.10 During his interview with the First Respondent on 20 January 2010, Mr Chambers confirmed the First Respondent told him that he had left the blank signed CHAPS transfer form with the Second Respondent on 8 January 2010. Mr Chambers' manuscript notes of that meeting also confirmed this. The First Respondent, however, denied giving the blank signed CHAPS transfer form to the Second Respondent. Whatever the position, the Second Respondent had in his possession the signed blank CHAPS form. There had therefore been a failure to comply with the rules which had led to the Second Respondent having such an opportunity. The Tribunal was satisfied that the First Respondent had failed to act in his client's best interests and failed to provide a good standard of service by allowing the Second Respondent the opportunity to access a signed blank client account CHAPS form. The Tribunal found allegation 1.4 proved.

62. **Allegation 1.5: The First Respondent acted in breach of Rule 7.01 in that he published inaccurate information regarding his firm on the firm's website.**

62.1 The First Respondent had admitted this allegation and accordingly, the Tribunal found it proved.

63. **Allegation 1.6: The Second Respondent acted in breach of Rule 1.04 SCC in that he had conduct of conveyancing transactions which bore the hallmarks of money laundering as set out in the SRA warning card in that:**

(a) in four conveyancing transactions the firm's purported clients provided no purchase funds at all, that is, all the funds (apart from the mortgage advances) were received from third parties whose relationship to the purported purchasers was not clear and which he took no steps to ascertain;

(b) in one transaction unusual instructions were received in that a client provided him with a cheque for £224,000 in respect of funds for the purchase of a property but later instructed him not to pay in the cheque as the funds were to be provided by CHAPS instead.

63.1 The Second Respondent had not participated in these proceedings and had not made any written submissions to the Tribunal. He had, however, been interviewed by the SRA's Investigation Officers in January 2010. The Tribunal had seen a number of files of which the Second Respondent had conduct, where purchase funds had been provided by various third parties and the Second Respondent had not ascertained the nature of the relationship between the third party and the respective client. In an interview with Mr Chambers on 15 January 2010 the Second Respondent stated that he was not familiar with the contents of the SRA warning cards on Money Laundering and Property Fraud, but stated that he was familiar with similar warning cards previously issued by the Law Society. He also stated that none of the transactions for which he had conduct gave him any cause for concern and that he believed he had complied with the obligations of the CML Handbook.

63.2 The SRA's "Money Laundering" warning card issued in May 2009 stated that unusual payment requests were:

> "Payments from a third party where you cannot verify the source of the funds."

Furthermore, the SRA's "Property Fraud" warning card issued in May 2009 clearly stated that one of the warning signs of property fraud was:

> "unusual or suspicious instructions such as transactions controlled or funded by a third party …".

The warning card also stated:

> "Ensure you verify and question instructions to satisfy yourself that you are not facilitating a dubious transaction".

The Second Respondent had not taken the appropriate steps to investigate the unusual payment requests or to notify his lender clients of the circumstances. In each of the four transactions concerning AM, GA, NN and AQ the registered proprietors of the respective properties being sold had no knowledge of the transaction and there had clearly been a property fraud. In each of the four transactions the lender's charge could not be registered as there had been no valid transaction.

63.3 On a matter of AM, an un-cashed cheque in the sum of £224,000 dated 14 December 2009 was found on the client file. It had clearly not been paid into the firm's client

account and the Second Respondent told Mr Chambers that although the cheque had been provided initially to complete the purchase, AM had subsequently given alternative instructions to the Second Respondent stating that completion monies were to be paid by a CHAPS transfer from his own funds. These were unusual instructions and whilst the Second Respondent claimed to be familiar with warning cards issued by the Law Society, he failed to verify or question those instructions, thereby allowing a property fraud to take place. The Tribunal was satisfied that the Second Respondent had breached Rule 1.04 of the Solicitors Code of Conduct 2007 and that he had failed to act in the best interests of each lender client by failing to make proper enquiries when he should have done so.

64. **Allegation 1.7: The Second Respondent acted in breach of Rule 1.04 in that he had conduct of conveyancing transactions which bore the hallmarks of property fraud as set out in the SRA warning card in that:**

(a) the firm's purported clients in four such transactions provided no purchase funds at all, that is, all the funds (apart from the mortgage advances) were received from third parties (i) whose relationship to the purported purchasers was not clear, (ii) whose identity was not confirmed and (iii) who, in two cases, appeared to be funding other, apparently unrelated transactions;

(b) the file for one transaction contained contracts and other documents showing purchase prices ranging from £560,000 to £870,000 but no evidence which accounted for this variation.

64.1 The Tribunal had been referred to the cases of AM, GA, NN and AQ in all of which the clients had not provided any purchase funds and, apart from the mortgage advance, monies were received from third parties. In the case of AM funds were provided by TW, LG and SO. TW also provided funds for AQ's unrelated purchase and LG also provided funds for NN's unrelated purchase. There was no evidence that the identities or sources of funding provided by TW, LG and SO had been verified or that their respective relationships with the firm's clients had been properly checked.

64.2 On the matter concerning AM, Mr Chambers found two undated versions of a sale/purchase contract one showing a purchase price of £640,000 and the other showing a purchase price of £870,000. Mr Chambers also found a letter dated 5 November 2009 from the vendor's solicitors, A & Co, making reference to a purchase price of £560,000. In each of the transactions involving AM, GA, NN and AQ, the registered owner of the property subsequently confirmed that he/she had never sold the property and/or had no knowledge of the transaction. The Tribunal was satisfied that these four transactions not only bore the hallmarks of property fraud, but clearly property fraud had in fact taken place. By having conduct of such transactions, the Second Respondent had failed to act in the best interests of his clients, namely the lenders, and had therefore breached Rule 1.04 of the Solicitors Code of Conduct. The Tribunal found this allegation proved.

65. **Allegation 1.8: The Second Respondent acted in breach of Rules 1.04 and 1.05 SCC and paragraphs 1.4, 3.1.2, 3.4, 5.12 and 5.9 of the Council of Mortgage**

Lenders Handbook (CMLH) (version current between 1 June 2007 and 30 November 2010) in that:

(a) he failed to act to the standard of a reasonably competent solicitor acting on behalf of a lender

(b) he failed to follow the SRA's guidance with regard to money laundering and/or to comply with the current money laundering regulations and the Proceeds of Crime Act 2002

(c) he failed to check that a passport he used to verify a client's identity was authentic and current

(d) he failed to inform lender clients of matters which had come to his attention which he should reasonably have expected those clients to consider important when deciding whether or not to lend to the borrower, namely the fact that third parties were providing all of the funds for the purchases of properties apart from the mortgage advances and

(e) having become aware that borrower clients were not providing any portion of the purchase prices from their own funds, he failed to report that fact to his lender clients

as a result of which breaches, the firm's lender clients failed to obtain security for the substantial sums advanced to the firm's purported clients in respect of the relevant property transactions.

65.1 The Tribunal had already found that the Second Respondent had failed to make proper enquiries into the relationship between clients and those third parties who were funding the respective clients' purchase, and that he had proceeded with conveyancing transactions which not only bore the hallmarks of property fraud, but indeed property fraud had taken place.

65.2 When the Second Respondent had been interviewed by Mr Chambers on 13 and 15 January 2010 he admitted he had not informed his lender clients of the involvement of third parties on the matters of AM and GA. It was clear to the Tribunal that the Second Respondent had failed, on his own admission to Mr Chambers to inform his lender clients that third parties were providing funding for the purchases of property, and had failed to advise lenders that the purchaser had not provided any portion of the purchase monies from their own funds. As a result of his conduct, lender clients had suffered in that their mortgage advances could not be secured over the properties involved or registered as charges. The Tribunal was satisfied the Second Respondent had failed to act to the standard of a reasonably competent solicitor acting on behalf of the lender and that he had failed to follow the SRA's guidance on Money Laundering or comply with current money laundering regulations and the Proceeds of Crime Act 2002.

65.3 On the matter of AM, the file contained two versions of a passport provided by AM which contains different dates of birth, different issue numbers and different photographs. When the Second Respondent was interviewed by Mr Chambers on 13

January 2010, he accepted he had not been aware that there were two versions of this passport on the file until this had been pointed out to him by the Investigation Officers from the SRA. The Second Respondent further admitted during interview on 14 January 2010 that he had concerns regarding the forged passport of AM and that he would report these concerns to his lender client. However he failed to do so. The Tribunal was satisfied the Second Respondent had failed to check AM's passport was authentic and current. The Tribunal found this allegation proved in full.

66. **Allegation 1.9: The Second Respondent acted in breach of Rule 1.04 SCC and Rule 22(1)(a) SAR in that funds were withdrawn from clients' accounts when they were not properly required for payment on behalf of those clients, in that completion funds for two property purchases were transferred from the firm's client account before contracts for the relevant property transactions had been exchanged.**

66.1 Rule 22(1)(a) of the Solicitors Accounts Rules 1998 stated:

> "(1) Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held)".

66.2 The Tribunal had been referred to the matter of NN which contained a contract specifying a completion date of 19 November 2009. However, despite this, completion funds (including the lender's mortgage advance) were sent to A & Co Solicitors the day before on 18 November 2009. Furthermore, on the matter of AQ, the full sale proceeds, including the lender's mortgage advance, were paid to the vendor's solicitors on 10 December 2009, yet, contracts were exchanged the following day on 11 December 2009. On the matter of GA's purchase of property HS, the Second Respondent attempted to pay the full purchase price of £499,000 to the vendor's solicitors on 13 January 2010 before contracts had been exchanged, even though only £299,999 (all of which consisted of the lender's mortgage advance) was available. The Second Respondent admitted during his interview with Mr Chambers on 14 January 2010 that contracts had not yet been exchanged on the matter of GA. He said that contracts were supposed to be simultaneously exchanged and completed on 13 January 2010 but this did not happen as outstanding papers were received late on 13 January 2010.

66.3 The Second Respondent had conduct of each of these files and in the absence of a proper explanation from him as to why funds were transferred on each matter prior to completion, the Tribunal was satisfied he had not acted in the best interests of each lender client and that he had acted in breach of Rule 22(1)(a) of the Solicitors Accounts Rules 1998. The Tribunal found this allegation proved.

Previous Disciplinary Matters

67. None.

Mitigation

68. Ms Williams on behalf of the First Respondent submitted that the First Respondent had shown insight and had made appropriate admissions. She referred the Tribunal to a number of testimonials provided. The First Respondent did not intend to do any conveyancing work in the future and would not put himself in such a position again. He had an unblemished career having been a solicitor since 2003, although there were now conditions on his practising certificate which had been in place since March 2010 and prevented him from working as a sole proprietor or without the approval of the Authority. As a result of these conditions the First Respondent had been unable to obtain any employment. The First Respondent provided the Tribunal with details and evidence of his means. His financial position was dire and it was clear that he was unable to meet his debts. He was likely to be declared bankrupt in the near future.

Sanction

69. The Tribunal had considered carefully the First Respondent's submissions and statements. The Second Respondent had not engaged with the Tribunal at all. The Tribunal had also taken into account the various statements provided, which contained comments on both of the Respondents' characters, as well as the testimonials in support of the First Respondent. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

70. It was clear to the Tribunal that the First Respondent had been deceived by the Second Respondent. However, the Tribunal noted that he had acted in breach of the Solicitors Accounts Rules, he had failed to properly supervise the Second Respondent and he had signed inaccurate certificates of title. That lack of supervision had allowed property fraud to take place. Lender clients had suffered significant financial losses and the reputation of the profession had been seriously damaged. Not only had lender clients suffered but it was clear that blatant property fraud had taken place which should not have been allowed to happen. Indeed, if the Second Respondent's files had been properly supervised, alarm bells would have rung at an early stage and the fraud could have been prevented. Solicitors were the gatekeepers of client funds and lenders relied upon them to protect and safeguard mortgage funds. They relied upon undertakings contained in certificates of title as the basis upon which to advance funds. Furthermore the First Respondent had allowed the Second Respondent the opportunity to access a blank signed CHAPS transfer form which had enabled the Second Respondent to attempt to withdraw client funds in circumstances when he should not have done so.

71. The Tribunal was satisfied that the appropriate sanction was to fine the First Respondent the sum of £10,000. However, the Tribunal also considered the case of Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay that fine. In that case Mr Justice Coulson stated:

> "…there will be exceptional cases where even though a solicitor is allowed to continue in practice, his income may be a relevant consideration both as to any costs sanction and in respect of any financial penalty that might be imposed."

The First Respondent had not worked full time since January 2010 and had provided evidence of his substantial debts. His financial situation was precarious and he was likely to be made bankrupt in the near future. Having taken into account the parlous state of the First Respondent's finances, and following the guidance issued in D'Souza v The Law Society, the Tribunal reduced the fine to £500 in order to reflect the First Respondent's very limited means and his ability to meet the fine. The Tribunal also recommended that conditions should continue to be placed on the First Respondent's practising certificate to ensure that he would not be able to practice on his own account or without the approval of the SRA in the future.

72. In relation to the Second Respondent, his conduct had clearly allowed property fraud to take place and indeed, registered proprietors of the properties concerned were not aware that their properties had been used in fraudulent transactions. Lender clients had trusted and relied upon the Second Respondent to act in their best interests and his failure to do so had resulted in lenders suffering substantial financial losses. He had failed in his fundamental duty to protect client funds which were sacrosanct. The Second Respondent had caused serious damage to the reputation of the profession and had failed to act to the standard of a reasonably competent solicitor representing lender clients.

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

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

74. The Second Respondent's conduct had not only damaged the reputation of the profession but had also placed the public at risk. Innocent members of the public had been subjected to property fraud due to the Second Respondent's failure to properly investigate the source of funds, identities and relationships of third parties to clients, discrepancies in identification documents, variations in purchase prices and irregularities on documents. The Second Respondent had released funds to vendors on at least two transactions in breach of the Solicitors Accounts Rules before contracts had been exchanged. The Second Respondent had clearly acted with a complete lack of probity and trustworthiness. The Tribunal was satisfied that he was

a serious risk to the public and was not fit to practise as a solicitor. The appropriate sanction was to strike the Second Respondent off the Roll of Solicitors.

Costs

75. Mr Levey on behalf of the Applicant requested an Order for the Applicant's costs in the total sum of £48,734.68. He provided the Tribunal with a Statement of Costs which contained a breakdown. Mr Levey requested the Tribunal to summarily assess the costs and submitted that a joint and several liability order should be made in this case. He submitted that the First Respondent's failure to supervise the Second Respondent properly had led to these proceedings and accordingly both Respondents were equally liable for the costs. There had been a huge number of documents to look at in this case and he submitted the costs were reasonable. He also reminded the Tribunal that if the matter were to be referred to a detailed assessment, this would lead to an increase in the costs claimed.

76. Ms Williams on behalf of the First Respondent requested an order that the costs be subject to detailed assessment. She submitted the time claimed was excessive and given the amount of costs, further details and information were required. This was not a case that could be summarily assessed and Ms Williams submitted the Second Respondent was more culpable and therefore should bear the brunt of any costs ordered. She also reminded the Tribunal that the First Respondent had made a number of admissions.

77. The Tribunal had considered carefully the matter of costs. The Tribunal was satisfied it was appropriate to summarily assess the costs in this case. The costs claimed by the Applicant were high and the Tribunal summarily assessed those costs at £35,000 in total. This was not a case where it was appropriate for a joint and several liability order to be made, particularly as the Second Respondent was more culpable than the First Respondent. In the circumstances, the Tribunal Ordered the First Respondent pay costs of £14,000 and the Second Respondent pay costs of £21,000.

78. In relation to enforcement of those costs, the Tribunal noted the First Respondent had provided detailed information in relation to his financial circumstances which clearly showed that he did not have the means to meet any order for costs. The Tribunal was once again mindful of the case of Frank Emilian D'Souza v The Law Society in relation to the First Respondent's ability to pay those costs and Ordered that the Order for costs against the First Respondent was not to be enforced without leave of the Tribunal.

79. In relation to the Second Respondent, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

80. In this case the Second Respondent had not engaged with the Tribunal at all and therefore the Tribunal did not have any information or evidence of his current income, expenditure, capital or assets. The Tribunal was also mindful of the case of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin). Although the Second Respondent had been deprived of his livelihood as a result of the Tribunal's order, he had failed to provide any information relating to his financial position to the Tribunal and therefore the Tribunal could not take a view of his financial circumstances.

Statement of Full Order

81. The Tribunal Ordered that the 1ST Respondent, solicitor, do pay a fine of £500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00, such costs not to be enforced without leave of the Tribunal.

82. The Tribunal Ordered that the Respondent, Abdul-Aziz Jimoh, 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 £21,000.00.

Dated this 26th day of October 2012
On behalf of the Tribunal

D. Glass
Chairman