SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10946-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MILES RODERICK COX First Respondent

and

[RESPONDENT 2 – NAME REDACTED] Second Respondent

Before:

Mr R. Nicholas (in the chair)
Mr R. Hegarty
Mr D. E. Marlow

Date of Hearing: 26th September 2012

Appearances

Margaret Bromley, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ, for the Applicant.

The First Respondent was present and represented himself.

Nick Trevette, solicitor, of Murdochs Solicitors, 45 High Street, Wanstead, London E11 2AA for the Second Respondent, who was present.

JUDGMENT

Allegations

1. The allegations made against both Respondents were that:

1.1 They failed to keep accounting records properly written up at all times and/or to appropriately record dealings with client money contrary to Rules 32(1) and (2) of the Solicitors' Accounts Rules 1998 ("SAR");

1.2 They failed to carry out client reconciliations at least once every five weeks in the manner required under Rule 32(7) of the SAR;

1.3 They withdrew money from the general client account in relation to particular clients in excess of the amounts held on behalf of the particular client in breach of Rule 22(5) of the SAR;

1.4 They withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of the SAR and thereby created a cash shortage;

1.5 They failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7(2) of the SAR;

1.6 They failed to make arrangements for effective management of the firm and the adequate direction of clients' matters contrary to Rule 5.01 (1) of the Code;

1.7 They failed to comply with undertakings given on behalf of the firm within a reasonable time in breach of Rule 10.05 of the Code including:

1.7.1 In requisitions on title in the sale of 35 A Road;

1.7.2 In requisitions on title in the sale of Flat 5, 4 F Road

1.8 They failed to act with integrity (First Respondent only), failed to act in the best interests of clients and acted in a way that is likely to diminish the trust the public places in them or in the legal profession contrary to Rules 1.02 (First Respondent only), 1.04 and 1.06 of the Code by virtue of:

1.8.1 The matters set out above;

1.8.2 Withdrawn

2. The further allegations against the First Respondent alone were that:

2.1 In respect of the period from October 2010 he failed to keep accounting records properly written up at all times and/or to appropriately record dealings with client money contrary to Rule 32(1) and (2) of the SAR;

2.2 He failed to carry out client account reconciliations at least once every five weeks in the manner required under Rule 32(7) of the SAR;

2.3 He withdrew money from the general client account in relation to particular clients in excess of the amounts held on behalf of the particular client in breach of Rule 22(5) of the SAR;

2.4 He withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of the SAR and thereby created a cash shortage;

2.5 He failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7(2) of the SAR;

2.6 He failed to comply with undertakings given on behalf of the firm within a reasonable time in breach of Rule 10.05 of the Code including:

2.6.1 In requisitions on title in the sale of Flat 8 L B House;

2.6.2 In a certificate of title to the Nationwide Building Society in respect of the purchase of 175 W;

2.6.3 In a certificate of title to the Nationwide Building Society in respect of the purchase of 7 V Place;

2.6.4 To De Cruz solicitors on 12 January 2011 as subsequently varied;

2.6.5 In requisitions on title in the sale of 32 P Road;

2.6.6 To Thakrar & Co on 1 April 2011.

2.7 He failed to provide Clarion Solicitors Limited with the name, address and policy number of his firm's qualifying professional indemnity insurer in breach of Rule 18 of the Solicitors Indemnity Insurance Rules ("SIIR") 2010 and 2011.

2.8 He failed to act with integrity, failed to act in the best interests of clients and acted in a way that is likely to diminish the trust the public places in him or in the legal profession contrary to Rules 1.02, 1.04 and 1.06 of the Code by virtue of:

2.8.1 Misusing client money;

2.8.2 Delaying in paying SDLT in the matter of S;

2.8.3 The matters set out above.

2.9 It was alleged in respect of allegation 2.4 and 2.8.1 that the First Respondent acted dishonestly or in the alternative recklessly but it was not necessary to prove dishonesty or recklessness to prove the allegations.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:

- Application dated 1March 2012
- Rule 5 Statement and exhibit "MEB1"dated 1March 2012
- Statement of costs dated 25 September 2012

First Respondent:-

- Statement dated 25 September 2012
- Bundle of three references and one witness statement (character evidence)

Second Respondent:-

- Statement dated 25 September 2012 with exhibit "TLB/1"
- Financial statement
- Bundle of three testimonials

Preliminary Matter (1) – Application to withdraw and amend allegations

4. The Applicant applied to withdraw allegation 1.8.2, which was an allegation against the Second Respondent alone, in its entirety. The application was made in the light of information exchanged before the hearing between the Applicant and the Second Respondent's solicitor. A further application was made by the Applicant to withdraw the allegation of a breach of Rule 1.02 of the Code against the Second Respondent at allegation 1.8. The Applicant proposed to maintain the allegation in its entirety against the First Respondent. Again, the application was made on the basis of information exchanged before the hearing.

5. The Tribunal considered the applications and granted both, this being the appropriate order in the circumstances of this case.

Preliminary Matter (2) – Burden and standard of proof/legal tests

6. The burden of proving the allegations rested on the Applicant. In considering the allegations, the Tribunal would apply the highest standard of proof.

7. In relation to the dishonesty allegations, the Tribunal would apply the test for dishonesty set out in Twinsectra v Yardley and others [2002] UKHL 12. In accordance with the principles in Bryant and Bench v The Law Society [2007] EWHC 3043 (Admin), the Tribunal would consider character evidence in determining the dishonesty allegation.

8. The Tribunal informed the First Respondent, who was not represented, that the weight given to written evidence was not the same as if oral evidence were given and the witness were subject to cross-examination. The First Respondent was given an opportunity to consider and chose not to give evidence in person but relied on his written statement and oral submissions.

Factual Background

9. The First Respondent was born in 1979 and was admitted as a solicitor in 2006. His name remained on the Roll of Solicitors at the date of hearing.

10. The Second Respondent was born in 1976 and was admitted as solicitor in 2002. Her name remained on the Roll of Solicitors at the date of hearing.

11. The First Respondent practiced on his own account as Cox Roderick from March 2009. In July 2009 the Second Respondent became an employee of the firm. In November 2009 the firm became Cox Roderick LLP ("the Firm") and the Second Respondent became a member of the Firm on that date. The Second Respondent left the Firm on or about 30 September 2010, although there was some uncertainty about the date on which her resignation from the Firm had taken effect. From 4 January to 6 April 2011 the First Respondent practiced in partnership with a Mr W and from 5 May to 3 June 2011 the First Respondent practiced in partnership with a Mr S.

12. The Firm had offices at 1a, Station Road, Poole, Dorset BH14 8UA ("the Poole office") and at different addresses in London, initially at 16 Old Town, Clapham, London SW4 0JY ("the Clapham office") and subsequently at 118 Piccadilly, London W1 7NW ("the London office"). The Second Respondent practiced at the Poole office only at all material times. From February 2011 the First Respondent practiced at the Poole and London offices.

13. On 5 October 2010 an inspection of the books of account and other records of the Firm was commenced by Mr Norton, a Forensic Investigation Officer ("FIO") of the SRA. The report based on that inspection, dated 22 November 2010 ("the first report") was relied on by the Applicant. A further inspection of the Firm commenced on 19 April 2011 by Mr Grehan, a FIO of the SRA. The report based on that inspection, dated 8 June 2011 ("the second report") was further relied on by the Applicant. The factual matters recorded in the first and second reports were not disputed by the Respondents.

<u>The first investigation and report</u>

14. Mr Norton, the FIO, attended the Poole office of the Firm on 5 October 2010 to commence the inspection, after giving prior notice. On telephoning the office number, the call was diverted to the First Respondent's voicemail. A telephone call to the Clapham office similarly diverted to the First Respondent's voicemail. The FIO posted the inspection notification letter through the Poole office letterbox with a note to telephone him.

15. The FIO then attended the Clapham office and left another notification letter as no-one was present at that office.

16. On 6 October 2010 the FIO returned to the Poole office and found the office unattended. The FIO then attended the Second Respondent's home address where he discussed the current situation concerning the practice. The Second Respondent told him that since 30 August 2010 she had only attended the office intermittently and

only to deal with her own cases, refusing to involve herself in the running of the practice. The Second Respondent had no knowledge of the nature of the Clapham office and had never attended there.

17. The Second Respondent provided the FIO with a telephone number for the First Respondent. The FIO telephoned and emailed the First Respondent with a request to contact him. The First Respondent telephoned the FIO and stated that he was overseas and had not had sight of the notification letter. The FIO explained that he was investigating the financial position of the Firm and agreed to send a copy of the notification letter by email. The First Respondent agreed to meet the FIO at the Poole office on 11 October 2010, which he did.

18. The First Respondent's sole practice ceased in November 2009 with the formation of the Firm. However, bank accounts for the Firm were not established until May 2010 with the sole practice accounts being used in the interim. Further, the practice maintained a manual ledger system until May 2010 when a computerised system comprising spreadsheets was adopted. At the date of the inspection, the First Respondent was only able to produce the computer ledgers, not the manual records. A number of the matter ledgers produced recorded a debit balance.

19. The FIO identified that the First Respondent had only recorded transactions on the matter ledger when the matter appeared on the bank statement. The date recorded as the date of the transaction was the date it appeared on the bank statement. The First Respondent accepted that this was inadequate.

20. The FIO further identified that the Second Respondent had not seen a matter ledger for any of her files and relied on notes made on the files to monitor the financial situation. The Second Respondent accepted that this approach was inadequate. In at least one of the Second Respondent's matters, S, no matter ledger existed.

21. The Respondents were only able to provide the computer cash book to the FIO; this did not record the balance brought forward from the manual system. The cash book balance was not computed at suitable dates for use in the reconciliation process.

22. Following the inspection, the First Respondent agreed to update the matter ledgers and cash book to incorporate all transactions and to produce a meaningful reconciliation statement. Updated information was received from the First Respondent on 1 November 2010, under cover of a letter of 29 October 2010. The FIO identified shortcomings in the updated information, including:

22.1 Of the 48 updated matter ledgers provided, 12 exhibited a debit balance on the client side totalling £268,045.52;

22.2 Of the 48 updated matter ledgers provided, 23 exhibited a credit balance on the office side totalling £182,730.12;

22.3 The cash book provided did not record a balance at any date;

22.4 The reconciliation statement as at 11 October 2010 recorded a difference of £3,745.78 between the bank statement balance after allowance for un-presented items and the

cash book balance. This difference equated to the total of un-presented cheques, which indicated that un-presented cheques had not been posted;

22.5 The reconciliation statement as at 11 October 2010 recorded total liabilities of £48,815.88, indicating an apparent shortage of client funds of £5,058.99 when compared to stated client liabilities;

22.6 Several matter ledger balances recorded as part of the reconciliation statement as at 11 October 2010 differed from the balance shown by the relevant ledger. In addition, the balance on one of the matter ledgers had not been included. Five matters were exemplified;

22.7 The total of matter ledger balances as at 11 October 2010 totalled £57,907.52, indicating an apparent shortage of £14,150.63, being £57,907.52 less £43,756.89;

22.8 A facility agreement between the First Respondent and AC LLP appeared to provide for a loan of £259,300 in order to reimburse a Mr S and redeem the mortgages in connection with clients P and G (see paragraphs 33 to 41 below). However, the documents provided on 1 November 2010 included a matter ledger in the name of AC LLP which appeared to record the receipts of two tranches of £175,000 on 8 October 2010 and a payment of £259,300 to Mr S on the same day. These receipts were consistent with receipts on the relevant bank statement but were inconsistent with the loan facility.

23. The FIO identified a number of issues in respect of the reconciliations as follows:

23.1 No cash account balance was computed for use in the reconciliation process;

23.2 As a result of transactions not being recorded until they appeared on the bank statement, it was not possible to identify and allow for un-presented items;

23.3 A purported list of computer matter ledger balances had been produced as at each month end. However, a comparison of the matter ledgers with the list produced showed that many ledger balances had not been included;

23.4 A document purporting to record the reconciliation had been prepared at each month end which the First Respondent accepted did not constitute a valid reconciliation statement.

OI plc

24. The First Respondent was required to lodge £105,000 in a bank account held jointly with HLW Commercial Lawyers LLP ("the joint account") on behalf of his client in connection with a mediation agreement. On 26 November 2009 the First Respondent gave instructions to his bank to pay £105,000 to the joint account from the Firm's client account, with the condition that payment should not be processed until similar funds had been received from the client.

25. On 30 November 2009 the bank made the transfer to the joint account without funds being received from the client, resulting in a client account shortage of £105,000 at that time.

26. The First Respondent explained that his client had received banker's drafts which had proved to be fraudulent, resulting in the sum of £105,000 not being available. The client had later gone into compulsory liquidation. The First Respondent told the FIO that the official receiver had agreed that the funds in the joint account were not an asset of the client. However, the First Respondent had been unable to obtain the release of the funds from the joint account. The First Respondent stated that his bank had apologised for their error in making the payment and suggested that the First Respondent could lodge a complaint. The First Respondent had not notified his professional indemnity insurers of the circumstances as he did not realise he may be able to make a claim. Instead, the First Respondent stated he had paid funds into the client bank account from his own resources and from loans. However, the annotated bank statements provided on 1 November 2010 showed the replacement of only £49,000, leaving £56,000 outstanding.

C-NVAE Ltd/F

27. The First Respondent acted for Mr C of NVAE in commercial matters and needed to make a payment on the client's behalf by a deadline. The First Respondent explained that because funds from the client were normally in respect of his fees, these were paid by the client directly into the office bank account. On 19 August 2010, £162,774.92 was lodged into the office bank account, which the First Respondent presumed was from his client, Mr C. The narrative on the bank statement, however, showed that the funds had been transferred from the Firm's client bank account and were not a receipt from Mr C. On 20 August 2010 the First Respondent made a payment of £103,718 from office account on behalf of his client, Mr C.

28. The Second Respondent acted for Mr F in the sale of a property for £255,000 on 17 August 2010. Mr F was due to receive £162,774.92 following the sale but at the time she needed to make the payment the First Respondent had the client account cheque book with him at the Clapham office. In order to make the payment to Mr F the Second Respondent transferred the relevant funds from client account to the office bank account and issued an office account cheque to Mr F. The Second Respondent stated that she had informed the First Respondent about this transfer. The office account cheque to Mr F was presented on 23 August 2010 but was not honoured as insufficient funds were available as a result of the First Respondent's payment on behalf of Mr C. These circumstances resulted in a shortage of client funds of £162,774.92 at that time.

29. Mr F queried the failure to honour the cheque for his sale proceeds and the Respondents recognised what had happened. A payment of £162,774.92 was made to Mr F on 1 September 2010 by bank transfer from client bank account, creating a shortage of client funds at that time of £325,549.84 in respect of this matter. On 10 September 2010 £259,300 was lodged in client bank account with a narrative indicating that it had originated from "Creans Client AC". The First Respondent explained that a friend, DS, was a client of Creans and had agreed to lend him this sum. Even with the introduction of this sum, a shortage of £66,249.84 remained in relation to this matter.

30. The First Respondent stated that during the week ending 8 October 2010 his client, Mr C, had provided the funds which had been due by 20 August 2010. This was not apparent from the Firm's bank statements and the First Respondent explained that Mr C had paid the funds direct to AC LLP. No evidence of the repayment was received by the FIO, despite a request to the First Respondent.

31. On 5 November 2010 the FIO sent an email to the First Respondent in which he highlighted issues outstanding from his previous email of 13 October. In respect of the C matter he stated that the evidence of payment from Mr C to AC LLP was not enclosed and continued, "The C ledger continues to show a debit balance of £103,733 whilst the AC LLP ledger shows available funds of £68,685". The First Respondent stated that funds from AC LLP were lodged in the client bank account on 8 October 2010 to enable the repayment of the £259,300 loan from Mr S. However, the bank statement showed that on 8 October 2010 £175,000 was received from "W...J..." and a further £175,000 from "Roderic Crawfor(d)". These amounts are shown on the AC LLP ledger as receipts from AC LLP.

32. The Second Respondent stated that when she became aware of the circumstances she contacted the Firm's professional indemnity insurers by telephone.

33. At the date of the inspection, the FIO was not able to identify the liabilities to clients or the available funds due to the Firm's inadequate accounting procedures, but he was able to establish there was a minimum cash shortage of £236,321.43.

<u>GP – Sale of 35 A Road</u>

34. The Firm was instructed to act by Mrs GP in the sale of 35 A Road. The matter was dealt with by the Second Respondent and Humphries Kirk ("HK") acted for the buyer.

35. Contracts were exchanged on 13 August 2010 and on 16 August 2010 the Second Respondent completed the standard requisitions on title and sent the replies to HK. In response to requisition 6 the Second Respondent gave an undertaking to redeem the charge in favour of B of S dated 7 November 2002 on completion and to forward the Form DS1, DS3, the receipted charge or confirmation that notice of release or discharge in electronic format had been given to the Land Registry ("LR") as soon as she received them.

36. The matter completed on 20 August 2010 when £180,000 was transferred to the Firm's client account from HK. On 2 September 2010 the Second Respondent wrote to HK stating:

> "We confirm we have redeemed our client's mortgage account and will let you have notification once received".

The Second Respondent later accepted that at the date of the letter, this statement was incorrect.

37. The completion statement showed that £153,697.40 was due to the client's former lender to redeem the mortgage. A review of the matter file and the client account

bank statements showed that by 30 September 2010 this sum had not been paid out and should therefore have been retained in the client bank account.

38. On 8 September 2010 HK wrote requesting notice of discharge and telephoned on 27 September 2010. On 7 October 2010 HK wrote to the Firm chasing for evidence of the redemption of the mortgage as a matter of urgency. HK chased again by email on 19 October 2010 and the First Respondent replied, indicating that he would chase the matter and return to HK as soon as possible. HK chased again on 9 November 2010 and the First Respondent responded, apologising for the continued delay. HK chased again by emails on 22 and 24 November. The First Respondent replied on 6 December 2010 indicating that he was astonished and embarrassed the matter had not been resolved. On 9 December 2010 HK's application for the purchaser's registration was cancelled. HK emailed the First Respondent on 13 December informing him, and emailed again on 14 December asking for an update. On 14 December the First Respondent replied and promised to obtain the discharge notice during the week. On 21 December HK emailed the First Respondent again, stating that they had still not received evidence of discharge of the vendor's mortgage. On 23 December HK wrote to the Firm referring to the breach of undertaking and requesting evidence of discharge as matter of urgency, warning that in the absence of such evidence the matter would be reported to the Law Society. On 4 January 2011 HK wrote to B of S to ascertain the position. On 7 January, HK spoke to the First Respondent who apologised, stating that the matter had slipped his mind. After further chasing correspondence and communications, the Firm sent the form DS1 to HK on 4 February 2011. The First Respondent told the FIO that the mortgage was redeemed during the week ending 8 October 2010 but the payments did not appear on the client bank account and no evidence of payment was produced to the FIO. As a result of the delay in redeeming the mortgage, Mrs GP remained liable for servicing the mortgage.

SG – Sale of Flat 5, 4 F Road

39. The Firm was instructed to act for Mr SG in the sale of Flat 5, 4 F Road. The Second Respondent dealt with the matter until 2 November 2010 and the First Respondent dealt with it thereafter. Fowlers acted for the buyer.

40. On 31 August 2010 replies to requisitions on title were signed and sent to Fowlers. The replies included an undertaking to redeem the existing mortgage and forward evidence of discharge as soon as received.

41. Exchange and completion took place on 31 August 2010. The sum of £133,250, being the sale price, was received from Fowlers by way of transfer. On 1 September 2010 the Firm wrote to Fowlers stating,

> "We confirm we have redeemed our client's mortgage account and will let you have notification once received".

It was later accepted that at the date of the letter that statement was incorrect.

42. On 3 September 2010 Fowlers chased for the documents. The completion statement showed that the sum of £90,004.77 was required to redeem the existing mortgage, with a balance due to Mr SG of £40,217.82. A review of the matter file and client

bank account statements showed that by 30 September 2010 these sums had not been paid and should have been retained in the client bank account. The bank statement showed a payment to Mr SG of £40,000 on 3 September, being less than the sum due to him. Fowlers wrote to the Firm on 22 and 23 September regarding the AP1 application. On 28 September the application was submitted, but the fee of £50 was omitted. On 30 September the LR raised a requisition as no evidence of discharge of the charge dated 8 October 2009 had been lodged. Fowlers wrote to the Firm on 4 October 2010 concerning the requisition and asking the Firm to comply with their undertaking. Fowlers wrote to the Firm again on 8, 19 and 25 October and 18 November chasing for compliance with the undertaking. Following further correspondence the registration of the buyer's title was completed on 18 November. However, the application by the Firm for the registration of a Deed of Rectification had been cancelled. Relevant correspondence and documents were passed to Fowlers by the First Respondent on 23 November so that they could take steps to resolve the situation. As a result of the delay in redeeming the mortgage, Mr SG remained responsible for servicing the mortgage until it was redeemed.

Shortage on client account

43. The client bank account statement as at 30 September 2010 showed that in total the Firm held client funds of £11,161.52. Cheques totalling £3,780.78 had been issued between 14 and 30 September 2010 and had not been presented, resulting in the available funds being no more than £7,380.74.

44. The sums of £153,697.40 in connection with SG and £90,004.77 in connection with GP, a total of £243,702.17 should have been available in client account as at 30 September 2010, so there was a minimum cash shortage of £236,321.43. Both Respondents accepted the existence of the minimum shortage.

45. The First Respondent stated that he had arranged for funds to be paid to the relevant lenders during the week ending 8 October 2010. These payments did not appear on the client account bank statements. The First Respondent stated that the payments had been made on his behalf by AC LLP with which he had made a funding arrangement. On 1 November 2010 the FIO received details of the funding arrangement. There was a loan agreement under which the First Respondent agreed to borrow £259,300 and certain other sums but the First Respondent did not produce any evidence that any payments had been made to the lenders.

46. The first report was sent to both Respondents separately on 22 November 2010 but no responses were received. The SRA wrote further on 22 December 2010, requiring a response by 7 January 2011.

47. The Second Respondent emailed the SRA on 7 January 2011 stating that she had not received the first report and letter and nor had the First Respondent. The Second Respondent stated that she had had very limited access to the accounts during her time at the Firm. The Second Respondent also stated that on paper there were no cash shortages in respect of her conveyancing matters. The Second Respondent accepted that both the GP and SG files were her responsibility and stated that, on paper, sufficient funds appeared to be available. Upon realising the funds were not available

the Second Respondent had spoken to the First Respondent and reported the matter to the SRA.

48. On 7 January 2011 the First Respondent also emailed the SRA requesting extra time to respond. He responded by letter dated 14 January 2011 and agreed with the FIO's finding that there had been a cash shortage of £236,321.43. The First Respondent set out a number of steps taken to rectify the cash shortage of £14,150.63 (referred to at paragraph 21.7 above) but not the cash shortage of over £236,000. The First Respondent accepted that the delay in redeeming the mortgages of GP and SG was not satisfactory and blamed his own inadequacy in maintaining the books of account for the overall cash shortage and set out changes he made to the practice and management of the accounts.

The second investigation and report

49. On 4 April 2011 the SRA received an email from Mr W, the First Respondent's partner at that time, which stated that the Firm had been required to make two payments totalling almost £250,000 from client account by 30 March 2011 from funds that had been previously received; a payment to complete a purchase and a payment to redeem a mortgage following a sale. Upon checking the Firm's bank statement he found the client account balance at 30 March 2011 totalled £6,742.47 and neither payment had been made. Mr W had no access to the Firm's bank accounts and all of the Firm's financial dealings were conducted by the First Respondent as the Firm did not have any support staff, cashiers or finance department.

50. On 5 April 2011 the First Respondent emailed the SRA and stated that he was "disappointed and embarrassed" to report that a further error had occurred in the accounting of the client account in the previous week. He stated that the wrong client ledger was credited with a deposit and once utilised left a deficit on another ledger. The First Respondent stated that this had been rectified and all client ledgers were now properly funded by the relevant client.

51. On 6 April 2011 Mr W emailed the SRA to state that he had resigned from the Firm.

52. As a result of these emails, the SRA decided to carry out a further investigation and Mr Sean Grehan, a FIO, attended the Poole office on 19 April 2011 and met with the First Respondent. The First Respondent stated that he had made a mistake by using monies deposited into the Firm's client account re clients M and B for the benefit of client AC LLP. This meant that the firm could not complete a purchase in the M matter and could not redeem a mortgage in the B matter. The First Respondent stated that he was not aware of any other problems with the books of account.

53. The FIO identified that the Firm's books of account contained numerous errors and omissions and were therefore unreliable.

54. On 19 April 2011 the First Respondent provided the FIO with a client account reconciliation for 30 March 2011 which showed a client account shortage of just over £20,000. On 20 April 2011 the First Respondent provided the FIO with a further client account reconciliation for 30 March 2011 which showed a client account

surplus of just over £255. The client account shortage caused by the improper withdrawals on the M, B, P and S/C matters (further details of which are given below) was not shown in either of the client account reconciliations provided to the FIO.

55. The FIO established that as at 30 March 2011 the Firm should have been holding client funds of just under £889,900 in respect of the four clients M, B, P and S/C. The funds available on client bank account on that date were just over £6,740 leaving a minimum cash shortage of just under £883,150.

56. The FIO identified that the minimum client cash shortage had been caused by the Firm incorrectly posting monies received into client account on to the client ledger account of AC LLP and then utilising the monies for AC LLP by making improper withdrawals from client account.

57. On 4 April 2011 the Firm received £449,675 into client account for the benefit of AC LLP which funds were subsequently posted on various ledgers in the name of AC LLP. Following the receipt:

57.1 On 5 April 2011 the Firm made a payment of just over £203,086 on behalf of M to the vendor's solicitors to complete a purchase;

57.2 On 6 April 2011 the Firm made a payment of just under £45,090 on behalf of B to redeem a mortgage following the completion of a sale.

58. These payments, totalling just over £248,176 partially rectified the cash shortage, leaving a minimum cash shortage of just over £634,972, primarily related to the matters of P and S/C. The First Respondent stated that the funds were due to be repaid by AC LLP but the funds had not been forthcoming.

Re M – Purchase of Flat 5 S Lodge

59. The Firm acted for Mrs M in the purchase of Flat 5 S Lodge for £202,000. Mr W dealt with the transaction. The funds were provided by Mrs M's daughter and son-in-law, Mr and Mrs L. On 11 March 2011 the Firm received £20,200 by way of telegraphic transfer on behalf of the client, which sum was correctly credited to the client account of Mrs M. On the same day the Firm's bank statement showed a withdrawal from the client account of £20,000 in respect of the Firm's costs. The Firm made an inter ledger transfer of £20,000 from M's client ledger to that of AC LLP and costs of £20,000 were debited from the client ledger account for AC LLP – O.

60. The FIO's review of the AC LLP – O file found no evidence of a bill of costs for £20,000 or any reason why a client account withdrawal of £20,000 was properly required.

61. Contracts for Mrs M's purchase were exchanged on 17 March 2011, stating that a deposit of £20,200 would be held to order and that completion would be on 30 March 2011 or earlier by agreement. The amount required to be paid on completion was £202,000. On 22 March 2011 the Firm received from the client a sum of just under £185,700, which was paid into client account, being the balance of the sum required

to complete. The FIO noted that on the same day the bank statement showed a withdrawal from client account of £75,474 in respect of a payment to "De Cruz". The FIO noted a further withdrawal from client account on 23 March 2011 of £350,000 in respect of a payment to "De Cruz".

62. The funds of just under £185,700 received for M were posted to the M ledger and on the same day the M ledger records a transfer of £183,086.24 to the client ledger for AC LLP – O. The ledger for AC LLP – O records receipt of £185,687.84 on 22 March and the same day a payment of £75,474 was debited from that ledger account to De Cruz. A further payment of £350,000 was debited from the AC LLP – O ledger account on 23 March 2011 to De Cruz.

63. On 25 March 2011 Mr W spoke to Mrs L who told him that the funds had been sent on 22 March by same day transfer. Mr W spoke to the First Respondent the following day. The First Respondent stated he thought he had told Mr W earlier in the week that the funds had arrived. Mr W provided the First Respondent with the necessary details to effect completion and the First Respondent stated he would transfer the money immediately. Just before 4pm that day Mr W spoke to the vendor's solicitor who stated that the money had not arrived.

64. The next working day, 28 March 2011, Mr W spoke to the First Respondent who stated that it appeared he had accidentally done a BACS transfer which meant the money was due to arrive on 30 March. The First Respondent stated that he had spoken to the bank and they could try to cancel the BACS, return the money to the Firm's account and do a CHAPS transfer on 29 March. Around close of business on 29 March the First Respondent told Mr W that the bank had been unable to retrieve the BACS and it would now go through in the normal way. Mr W continued to chase the First Respondent over the next few days to get him to chase the bank. The First Respondent told Mr W he had taken to visiting the bank in person.

65. On 1 April 2011 Mr W spoke with the Firm's business manager at the bank who confirmed they had no record of any attempted BACS or CHAPS in connection with this transaction and the account had insufficient funds in any event. Mr W emailed this information to the First Respondent who replied an hour later to say that he was very angry with the bank and they were obviously mistaken.

66. On 4 April Mr W reviewed a client account bank statement which had just been delivered and realised that both the deposit money and the balance of funds in relation to M had been utilised for other clients and immediately contacted the SRA red alert section.

67. The FIO reviewed the client matter file for AC LLP – O and found no evidence of why client account withdrawals of £75,474 or £350,000 were properly required.

68. The date of completion in the M matter was stated to be 30 March 2011. At that date the Firm held only £6,742.47 in client account and was therefore unable to complete the transaction. On 1 April the vendor's solicitors issued the Firm with a notice to complete. On that date the Firm held only £102,086.97 in client account and was unable to complete the transaction, which completed instead on 5 April 2011.

69. On 6 April 2011 Mr W sent an email to the First Respondent to inform him that he was resigning from the Firm with immediate effect. The First Respondent replied the same day and admitted he had used the money received for the M matter for another transaction, having thought it was for his clients. He further stated that when he realised this was not the case he had panicked and was unable to tell Mr W the truth.

B – Sale of Flat 8 LB House

70. The Firm acted for Mr B in the sale of Flat 8, LB House for £63,450. The property was subject to a charge in favour of B&B. Diamond solicitors acted for the buyers. Contracts had been exchanged on 16 September 2010 with a completion date of 30 November 2010.

71. On 28 September the Firm completed replies to requisitions on title, including giving the standard undertaking to discharge existing charges on completion. The buyers were unable to raise the funds to complete and the sellers agreed to give them more time. Mr W took over dealing with the matter.

72. The client ledger account showed a receipt of £7,000 for the deposit from the purchaser but did not record a date when these funds were received. On 22 March 2011 the Firm received completion monies of £63,620.42 into client account which were posted as a receipt on the client ledger account for B. The First Respondent informed Mr W of the receipt of the money.

73. On 22 March 2011 Mr W wrote to Diamonds solicitors confirming the Firm had received the funds to complete the matter and stating, "We are now redeeming our client's mortgage and will let you have evidence of discharge of the charge in due course". Mr W requested an up to date redemption statement from the lender. The Poole office did not receive faxes, which were diverted to the London office. On 24 March 2011 B&B sent a redemption statement showing the amount required to redeem as at 25 March 2011 was £45,056.65. Mr W received a hard copy of this on 28 March and sent an email to the First Respondent setting out the amount to be transferred and the bank details of the mortgagee. He later sent a completion statement to the First Respondent with details of the amount due to the client. On 29 March 2011 the Firm made a payment of £29,267.54 by CHAPS to the client, leaving a client balance of £46,352.88.

74. Part of this balance was required to redeem the B&B charge. As at 30 March 2011 the Firm held only £6,742.47 in client account and was unable to redeem the charge against the property.

75. On 30 March 2011 the Firm incorrectly posted a debit entry of £30,570.03 on the client ledger account for B and posted a credit entry of £30,585.03 to the client ledger account of AC LLP – O. It was noted that the credit to the AC LLP – O account was £15 more than the debit from the B account. The AC LLP – O account showed a credit of £8,293.05 on 28 March 2011 with the narrative "incorrectly transferred from B". The same day that sum was transferred to the AC LLP – 2 ledger. The B ledger had no reference to this transfer.

76. The client account bank statement showed that on 30 March the Firm made a payment by CHAPS of £28,550.83 to a "Ss" and a transfer of costs of £2,020 from client account, reducing the balance on client account to £6,742.47.

77. On 1 April 2011 Mr W discovered that the cheque to pay off Mr B's mortgage had been returned by the bank since the number and words did not match. Mr W had instructed the First Respondent to make the payment by CHAPS. When he queried this, the First Respondent said he had been trying to save the CHAPS fee.

78. Mr W reviewed the bank statements on 4 April and saw that the mortgage had not been paid off. He also noted that at the time the cheque was drawn there were insufficient funds in client account to cover the payment, such that if the payment had been made by CHAPS that day the client account would have been overdrawn.

79. The FIO reviewed the client matter file for AC LLP – O and found no evidence of a bill of costs for £2,020 or any evidence of why a client account withdrawal of £28,550.03 was properly required. On 31 March 2011 the B ledger recorded a credit to client account of £30,570.03 from AC LLP – 3 but this ledger did not include a corresponding entry. On 4 April the AC LLP – 3 ledger recorded a transfer to the B ledger of £38,878.08 but the B ledger did not contain a corresponding entry.

80. On 6 April a payment of £45,089.77 was made by CHAPS on the B matter, the narrative of which stated "CHAPS out". The client account bank statement confirmed that this was a payment to B&B in redemption of Mr B's mortgage.

81. On 9 April Diamonds solicitors wrote to the Firm chasing for the discharge documentation. On 16 April B&B acknowledged receipt of the redemption payment.

<u>P – Purchase of 175 W</u>

82. In June 2010 the Firm was instructed to act by Mr and Mrs P on the purchase of 175 W. Dean Wilson LLP was instructed by the sellers. Mr and Mrs P's purchase was dependent on a related sale transaction. The transaction proceeded in the normal way, with enquiries being raised and the contract was engrossed. On 12 July 2010 the Second Respondent wrote to Mr and Mrs P with various comments about the transaction. On 3 August 2010 NBS, the proposed lenders, instructed the Firm to act for them in connection with the proposed loan to Mr and Mrs P of £366,396 to be secured on the property. The instructions incorporated the relevant Council of Mortgage Lenders ("CML") Handbook. On 2 September 2010 the Second Respondent wrote to Mr and Mrs P noting that the buyer had decided to withdraw from the purchase of the P's property and continued,

> "I assume this means that you are therefore not in a position to proceed with your purchase".

There was no further correspondence on file with the solicitors for the vendors and in particular contracts were not exchanged.

83. On 4 January 2011 NBS wrote to the Firm with a copy to Mr P pointing out that the mortgage offer was due to expire on 3 February 2011. It stated,

> "You are reminded that the offer cannot be extended and if the transaction has not completed by the expiry date your application will be cancelled".

84. On 11 January 2011 the First Respondent completed the Certificate of Title and faxed it to NBS. It was labelled "CHAPS urgent". It stated that the price was £465,000 and that the completion date was 11 January 2011. In giving the Certificate of Title the First Respondent confirmed that it contained the provisions set out in the annex to Rule 3 of the Code.

85. On 11 January 2011 the Firm received the mortgage advance of £365,000 into client account and this was posted as a credit on the client ledger account of P. The client bank statement showed that immediately before this receipt the balance had been £454.85. On 11 January 2011 the following withdrawals were made:

85.1	Internet transfer	£29,850
85.2	P	£6,666.66
85.3	B...l	£25,000
85.4	YI	£39,000
85.5	A Bank	£102,500
85.6	Internet transfer	£155,000
Total		£358,016.66

86. The FIO did not find evidence on the P file of any of the above payments. The client ledger account of P recorded a transfer of £365,500 to AC LLP on 11 January. It was understood that some of the payments detailed at paragraph 84 had been made for the benefit of the client AC LLP.

87. The FIO noted that Mr and Mrs P did not appear to have paid a deposit or any money on account to the Firm and so there were insufficient funds to complete. An attendance note on the file dated 11 January 2011 recorded a conversation with Mr P when he was informed:

> "...that there had been an administration error and that the mortgage had been inadvertently drawn down for his matter and utilised for the wrong client. I advised that we are dealing with returning the monies to NBS. I apologise and confirmed that should any interest be applicable for this intervening period then the Firm would pay for the same."

88. It was recorded that in a telephone call on 1 February 2011 Mr P had been charged interest in the sum of £2,984.85 and the First Respondent stated that he would send monies to compensate for the inconvenience. In a further telephone call on 7 March 2011 the First Respondent told Mr P that there had been an issue in getting the funds returned and he apologised for the inconvenience.

89. On 13 April 2011 the Firm notified its professional indemnity insurers of a potential claim.

90. On 18 April 2011 the SRA received an email from a senior manager at NBS Special Investigations Department which stated:

90.1 No charge had been secured against the title for 175 W;

90.2 No day list entry had been registered confirming the intended charge in favour of NBS;

90.3 NBS had spoken to Mr P who stated he had made initial enquiries to purchase the property in 2010, had made an offer but did not proceed with the transaction. He confirmed that he knew the First Respondent personally.

90.4 At that date, the mortgage was in arrears in the sum of £6,914.15;

90.5 NBS had obtained details of the payments made from the Firm's client account as set out at paragraph 84 above and had spoken to A Bank who had informed them that they had issued advance funds of £102,500 to the Firm in December 2010. The purchase did not complete and they had to chase the First Respondent for return of their funds. The payment of £102,500 made on 11 January was in respect of the return of their advance funds.

91. On 13 May 2011 the First Respondent wrote to NBS stating that an instruction set up to return funds to NBS had been unsuccessful. He went on to state that a shortfall had occurred, "as an amount of the funds have been incorrectly credited to another client and utilised upon their transaction".

S/C

92. On 23 September 2010 SGD solicitors wrote to the First Respondent informing him that they were instructed by the vendors of 7 VP and understood he was instructed by the buyers, Mr S and Ms C. On 24 September SGD forwarded a contract and copy documentation. Several further letters were sent to the First Respondent during October and on 9 November 2010 SGD wrote stating:

> "We refer to several earlier letters sent to you with draft contract and supporting documents and have heard nothing from you whatsoever. Please advise whether this matter is proceeding and if so what is happening?"

93. On 21 February 2011 NBS instructed the Firm to act for them in connection with a proposed loan to Mr S and Ms C to be secured over 7 VP. Those instructions incorporated the relevant CML Handbook.

94. On 15 March 2011 the Firm wrote to SGD stating the Firm had been re-instructed to complete the conveyance of the property. The file was found to contain a telephone note dated 21 March 2011 of a conversation with the client in which it was recorded:

> "...they were getting balance over to us for 25 March and want to attempt to complete that day..."

95. On 23 March 2011 the First Respondent signed the Certificate of Title and faxed it to NBS with a covering letter. This stated:

> "We would be grateful if you would CHAPS funds to our designated account today, we undertake to forward a cheque in the sum of £25 with respect to your administration charge for the same."

The Certificate of Title was labelled "CHAPS" and the price was left blank. It stated that the completion date was 23 March 2011. In completing the Certificate of Title the First Respondent confirmed that it included the annex to Rule 3 of the Code.

96. On 23 March 2011 the Firm received the mortgage advance of £272,000 into client account and it was recorded on the client ledger for Ms C. The same day a transfer was made to AC LLP – 3 and the ledger account for that matter records receipt of £272,000 with the narrative "transfer in client".

97. The FIO reviewed the S/C file and noted that he could not find a sale contract and there was a lack of correspondence between the Firm and the clients. It was also noted that the clients did not appear to have paid a deposit or any money on account to the Firm.

98. A review of the client bank account statement showed that on 23 March the Firm made a payment of £350,000 to De Cruz. This payment was posted on the client ledger account of AC LLP – O and was an improper withdrawal from client account as without the funds received in connection with S/C and M insufficient funds would have been held.

99. The FIO reviewed the file for AC LLP- O and found no evidence why a client account withdrawal of £350,000 was properly required in connection with that matter. Details of the De Cruz matter, which had no connection with AC LLP, are given below at paragraphs 102 to 105.

100. On 5 April 2011 SGD wrote to the Firm asking if the matter was proceeding as they had heard nothing from the Firm since 17 March. On 13 April the Firm notified their professional indemnity insurers of a potential claim.

101. On 18 April 2011 the SRA received an email from a senior manager of the NBS Special Investigations Department stating that:

101.1 No charge had been secured against the title for 7 VP;

101.2 No day list entry had been registered confirming the intended charge in favour of NBS;

101.3 NBS understood that S/C were the current tenants of the property and the current owners were Mr and Mrs D;

101.4 Two days after forwarding the mortgage advance of £272,000 to the Firm they found that a new charge had been registered against the property by C Bank, suggesting Mr

and Mrs D completed a re-mortgage about the same time as the mortgage advance by NBS;

101.5 C Bank had confirmed that their account was live and an amount of £210,000 was outstanding.

102. On 27 April the Firm wrote to SGD stating,

> "We are now instructed to proceed to completion as soon as practicable"

and asking for further information about the property. On 3 May 2011 NBS wrote to SGD informing them the funds were released on 23 March. The Firm wrote a further letter to SGD on 9 May stating that the Firm had made an administration error in its accounting, resulting in the early draw down of the client's mortgage. On 13 May the First Respondent wrote to NBS stating that an instruction set up to return the funds to NBS had been unsuccessful. He went on to state that a shortfall had occurred:

> "as an amount of the funds have been incorrectly credited to another client and utilised upon their transaction".

Undertaking to De Cruz solicitors

103. On 12 January 2011 the First Respondent gave an undertaking on behalf of his client, AC LLP, to De Cruz solicitors who acted for PSP Ltd stating,

> "We hereby irrevocably undertake to hold the said sum of £350,000 currently held in our firm's client account strictly to your order until 31st January 2011 ("the Term"). Immediately upon expiry of the Term we irrevocably undertake to forward this sum (£350,000) to your nominated client account together with an additional sum of £24,474 to represent your agreed interest and costs. The total sum of £374,474 shall be paid to reach this firm's account by 4pm on Tuesday 1 February 2011 at De Cruz solicitors...We further irrevocably undertake that upon receipt of funds to complete the assignment of the exclusive distribution rights of OB Vehicles for the GCC region and the sale of 50% equity in its holding company, we shall retain and pay within 24 hours of the completion and sale, the further sum of £200,000".

104. Successive variations were made to the undertaking to provide for payment on 4, 14 and 18 February 2011. On each occasion the undertaking was to pay £350,000 plus an increasing amount of interest and costs. On 10 March 2011 De Cruz wrote by email to the First Respondent stating that payment of £75,474 must be made by 11 March 2011. Payment was not made but the undertaking was further varied to provide that the £75,474 in interest and costs would be paid on Monday 14 March with the balance of £350,000 by Friday 18 March 2011. De Cruz wrote to the First Respondent to say that his client was not willing to extend the repayment period beyond 18 March so payment in full must be made by that date. On 15 March at 13.50 De Cruz emailed the First Respondent stating that the payment had not been made as promised. De Cruz stated he had called the Firm but was told the First Respondent was unable to talk to him. De Cruz asked for payment of £75,474 by the end of the day. The First Respondent replied by email at 14.19 to say he was

currently out of the office but would return in the afternoon and that he had personally instructed payment on 14 March and would forward the payment confirmation on his return to the office. De Cruz responded at 14.26 to state that the deadline still stood. At 14.41 the First Respondent emailed to say he was the only person authorised to access the bank information and he would be back in the office within the hour.

105. At 16.02 the First Respondent emailed De Cruz enclosing a copy of confirmation of payment and stating that the payment had incorrectly been made by BACS rather than CHAPS thus leading to the delay. On 16 March De Cruz wrote to the First Respondent asking for confirmation of the BACS payment from the Firm's bank to which the First Respondent replied that he would forward it on receipt.

106. On 18 March 2011 De Cruz contacted the SRA to inform them of the breach of undertaking as a BACS payment should have reached De Cruz by 17 March and had not arrived. De Cruz informed the First Respondent that he had done so. A payment of £75,474 was made on 22 March 2011 and £350,000 on 23 March from funds belonging to other clients, as set out above. De Cruz wrote to the SRA on 28 March 2011 to say that the Firm had agreed to pay De Cruz £5,000 in respect of costs incurred in dealing with the failure to comply with the undertaking, to be paid by 12 April. The First Respondent paid the sum of £5,000 on 13 April. De Cruz stated that his client had suffered further losses of interest amounting to £4,000.

Sale of 32 P Road

107. The First Respondent acted for Mr and Mrs CJM in sale of 32 P Road to Mr and Mrs DG who were represented by HK LLP. On 22 November 2010 the First Respondent signed requisitions on title, including giving an undertaking to redeem the charge in favour of B of I dated 28 July 2006 on completion. The transaction completed on 26 November 2010 but no evidence of discharge or payment had ever been received by HK. Mr and Mrs CJM informed HK LLP that post completion two mortgage payments were taken from them by the lender. On 11 May 2011 HK LLP complained to the SRA.

D-P – sale of Flat 12, 5 T Avenue

108. The Firm acted for Mrs D-P in sale of her property to Dr DB. On 25 May 2011 Dr DB's lender, HSBC, paid £260,000 to the Firm's client account. On 25 May Mrs D-P received a letter and completion statement from the First Respondent dated 20 May 2011 showing a balance due to her of £349,438.53 and advising that this amount had been transferred by electronic transfer to her account. The historical transaction report confirmed that this payment was made.

109. On 27 May Dr DB contacted HSBC as the funds had not been forwarded to the vendor. HSBC contacted Barclays and discovered the funds had been credited to Mr and Mrs D-P's HSBC account. HSBC believed this to be an error and returned the funds to the Firm on 31 May. On 27 May, Mrs D-P checked her account and found the funds had gone. On 28 May 2011 Mrs D-P received a letter from HSBC dated 25 May 2011 advising her that on 25 May her account had been credited with £349,438.53 from the Firm's account with Barclays. Mrs D-P contacted her bank and was told that the solicitors had retracted the transfer. Mrs D-P received documents

from her bank to show that a recall request had been received from Barclays stating the wrong amount had been sent. On 20 June 2011 HSBC reimbursed Mrs D-P the full amount plus interest on the basis that they had returned the money to the Firm under a mistake of fact. On 28 June HSBC's solicitors, DG, made a formal request to the Firm for return of the funds, but despite promises to return the funds payment was not made. On 6 July 2011 DG reported the matter to the SRA.

Mr S

110. The Firm acted for Mr S in his purchase of Flat 18, T Road which completed on 21 July 2010. £8,970 was due in SDLT for which the Firm was placed in funds on 13 July 2010; a copy of Mr S's bank statement showed a payment of £10,000 to the Firm on 13 July 2010. Mr S received a notice from HMRC dated 7 September 2010 stating that the SDLT had not been paid. Mr S delivered a copy of the letter to the Firm with instructions asking for the First Respondent to resolve the matter. He heard nothing from the First Respondent and presumed the SDLT had been paid.

111. Mr S received a further reminder notice from HMRC dated 13 October 2010. Mr S called the First Respondent who apologised and said he would contact HMRC personally to make payment and then inform Mr S when this had been done. Mr S did not hear further from the First Respondent but believed the matter would have been resolved. Mr S received a further reminder letter dated 24 November 2010, which stated that proceedings would be commenced against him. Mr S contacted HMRC who told him no communication had been recorded from the Firm about this matter. On 7 December 2010 Mr S wrote to the First Respondent asking him to phone HMRC to make payment directly, to write to them and to contact Mr S to confirm the payment had been made. Mr S also stated that HMRC had added interest and further charges might be applied. Further reminder notices were received by Mr S on 6 and 12 January 2011 stating the SDLT ad still not been paid.

112. A copy of the client ledger for the S matter showed that £8,970 was apparently paid to HMRC on 22 July 2010 by cheque.

113. The SRA raised this matter with the First Respondent by email on 15 February 2011 and he replied by letter dated 22 February 2011 stating that the SDLT was initially paid by way of cheque:

> "although it is apparent that his was not received by the revenue".

The First Respondent provided documentary evidence to show that payment of £9,038 was made by way of personal debit card on 11 January 2011, which sum included an amount for penalty interest. The First Respondent wrote to Mr S on 28 February 2011 to confirm receipt of the SDLT payment by HMRC.

Undertaking to Thakrar & Co dated 1 April 2011

114. In about March 2011 ML agreed to make a short term loan to AC LLP of £450,000. The loan was to be for a period of 12 weeks and interest of £50,000 would be paid, making a total repayment of £500,000. ML was prepared to proceed provided the

loan was secured by a solicitor's undertaking. ML instructed Thakrar & Co to act for him and the Firm acted for AC LLP.

115. On 1 April 2011 the Firm wrote to Thakrar & Co in the following terms:

> "Accordingly, in consideration for your forwarding to our client account...the sum of £450,000 we undertake to pay to Thakrar & Co the sum of £500,000 by 5.30 on 6 June 2011".

116. It was agreed between Thakrar & Co and the Firm that fees of £250 plus VAT plus the telegraphic transfer fee could be deducted from the £450,000. On 4 April Thakrar & Co wrote to the Firm confirming the sum of £450,000 was being advanced:

> "strictly on the understanding that your firm has provided that in consideration of the payment of the sum of £450,000 less the agreed costs etc you unequivocally undertake to pay our firm a sum of £500,000 by 5.30 on 6 June".

The First Respondent acknowledged receipt of the letter by email and enquired if Thakrar & Co were yet in receipt of their client's funds. In a further exchange of emails on 4 April 2011 the First Respondent confirmed that,

> "you have our unequivocal undertaking in respect of repayment of the facility together with the agreed interest (£500,000 cumulatively) on or before 5.30 on 6 June 2011".

ML then gave authority for the money to be sent to the Firm and the money was sent to the Firm's client account.

117. On 5 April 2011 the First Respondent emailed Thakrar & Co and confirmed receipt of the funds.

118. On 6 June 2011 the Firm wrote to Thakrar & Co stating:

> "As you are aware it was agreed by our client that we should be in funds to close their facility on or before 6 June 2011 as per the given undertaking. In accordance with these instructions we were anticipating receipt of the sum of £500,000 into our client account on 1 June 2011; unfortunately we are yet to receive the same".

After explaining the steps he was taking to try to resolve the situation, the First Respondent concluded:

> "With the above borne in mind, we write to advise you that this firm may be placed in the difficult and embarrassing situation of potentially being in breach of our undertaking at 5.30pm on 6 June 2011. We of course hope that this is not the case and shall endeavour to resolve the matter".

119. On 7 June 2011 Thakrar & Co wrote to the Firm confirming they were in breach of their undertaking and informing them that they had instructions to make an

application to the High Court for enforcement of the undertaking. Proceedings were issued on 14 June 2011 together with an application for summary enforcement of the undertaking, supported by a witness statement of ML. Kennedys were instructed to act for the Firm by their insurers.

120. On 4 July 2011 the court ordered that the matter be adjourned for 21 days. On 21 July Kennedys informed Thakrar & Co that they were no longer instructed. On 24 July the First Respondent sent an email to Thakrar & Co in which he offered to pay the sum of £521,790.20 in full and final settlement before 5pm on 1 August 2011. There was a further hearing on 25 July which the First Respondent did not attend and was not represented. On 28 July Thakrar & Co rejected the First Respondent's offer but indicated that if £529,790.20 was received by 1 August his client would accept that sum in full and final settlement and would discontinue the action. The First Respondent did not pay and on 2 August Thakrar & Co complained to the SRA and wrote to the Firm with a copy of their letter to the SRA. On 23 November 2011 the SRA wrote to the First Respondent requesting his response to allegations of failing to fulfil an undertaking of 1 April 2011 and failing to attend court. The First Respondent did not respond.

Failure to provide insurance details

121. In or about December 2010 the First Respondent was acting for AC LLP in connection with the purchase of the assets of a company called OB Vehicles Limited, which was in administration. On 7 December 2010 the Firm gave an undertaking to Clarion to forward to them the purchase price within 72 hours of exchange of contracts. Contracts were exchanged on 7 December and the Firm failed to comply with the undertaking. Clarion reported the matter to the SRA on 22 December and commenced proceedings against the Firm.

122. On 26 April 2011 judgment was obtained against the Firm for an amount to be assessed. On 18 May 2011 the Administrators wrote to the SRA requesting details of the Firm's professional indemnity insurers. The Administrators stated that they had not been provided with details of the insurers by the Firm and had received no notice that the insurers had been put on notice of the claim.

123. On 19 May 2011 the Court granted judgment against the Firm in the sum of £639,004.89 together with interest. On the same date Clarion wrote to the Firm requesting details of the Firm's professional indemnity insurers. On 23 May the SRA replied to the email from the Administrators stating that in the first instance they should address their enquiries to the Firm. On the same date Clarion wrote to the Firm serving a copy of the court order and requesting details of the Firm's insurers. No reply was received and on 7 June 2011 Clarion wrote again, requesting the same information.

124. On 15 June 2011 Clarion wrote to the SRA and enclosed copies of correspondence concerning the request for details of the insurers. On 1 July 2011 the SRA wrote to the Firm requesting confirmation it had supplied details of the insurers to Clarion by 15 July. On 19 July Clarion wrote to the SRA informing them that they had not heard from the Firm and on 31 August the SRA wrote to Clarion giving details of the Firm's insurers.

125. On 26 October 2011 the SRA wrote to the First Respondent addressing the letter to his home and business addresses and requesting his explanation for failing to provide his professional indemnity insurance details. The First Respondent did not respond.

Correspondence with the SRA

126. On 3 June 2011 the FIO asked the First Respondent why he had been utilising other clients' funds for the benefit of AC LLP. The First Respondent's response was:

126.1 A previous forensic investigation in October/November 2010 had identified a deficit on client account caused by a company called O Ltd who subsequently went into administration;

126.2 At that time he had worked for AC LLP for a little while and they offered to assist by providing monies to rectify the shortage;

126.3 This was a client/solicitor relationship and the funds provided were subject to an agreement;

126.4 When he received the P advance from NBS into client account on 11 January 2011 he thought the monies were from AC LLP and that from 11 January he got everything in a "bit of a muddle".

127. On 9 June 2011 Mr W wrote to the SRA addressing various issues with the Firm.

128. The SRA wrote to the First Respondent on 9 June 2011 with a copy of the second report and asking for an explanation for the alleged breaches within 7 days. On 16 June 2011 the First Respondent requested an extension of time to respond.

129. By letter dated 20 June 2011 the First Respondent agreed that the second report correctly detailed the occurrences which resulted in the client cash shortage and that the rectification of the previous problem noted in the first report had continued to affect the client account balanced. This coupled with a further accounting error reported on 5 April 2011 had resulted in the matters identified in the second report.

130. The First Respondent stated that the deficit occurred due to his inexperience in running a small two office practice and inadequate accounting procedures. The First Respondent set out a list of preventative measures he had put in place to prevent this occurring again.

131. The SRA wrote to the First Respondent again on 27 June 2011 asking for further information as to the steps taken to rectify the current cash shortage. The First Respondent replied on 11 July 2011 stating that he had taken out a number of small personal loans but had not been able to replace the entire shortfall. The First Respondent also stated he was expecting replacement of monies from AC LLP on 12 July 2011. On 20 July 2011 the First Respondent confirmed that the shortfall in the client account remained outstanding.

Witnesses

132. Mr Sean Grehan, FIO, gave evidence in relation to the second report, which dealt with allegations against the First Respondent only.

133. The Second Respondent gave oral evidence including confirming her witness statement dated 25 September 2012.

Findings of Fact and Law

134. **Allegation 1.1: They failed to keep accounting records properly written up at all times and/or to appropriately record dealings with client money contrary to Rules 32(1) and (2) of the Solicitors' Accounts Rules 1998 ("SAR")**

134.1 This allegation was admitted by both the First and Second Respondents.

134.2 The fact that bank accounts had not been established for the Firm until May 2010 meant that there was a confusing impression of the true nature of the practice. The matters recorded at paragraphs 17- 22 above clearly showed that the books of account had not been properly written up and had failed properly to record dealings with client money. Debit balances on client account had exceeded £268,000. It had been inadequate practice for transactions to be recorded only when processed through the bank account. The Tribunal noted that the errors in the books of account were so extensive that it had not been possible for the FIO to establish the correct position with certainty.

134.3 The Tribunal was satisfied on the admissions and on the papers that this allegation had been proved to the highest standard.

135. **Allegation 1.2: They failed to carry out client reconciliations at least once every five weeks in the manner required under Rule 32(7) of the SAR**

135.1 This allegation was admitted by both the First and Second Respondents.

135.2 The factual background to this allegation is set out at paragraphs 20-22 above. The Firm's reconciliation statements were clearly inadequate. The Tribunal was satisfied on the admissions and on the papers that this allegation had been proved to the highest standard.

136. **Allegation 1.3: They withdrew money from the general client account in relation to particular clients in excess of the amounts held on behalf of the particular client in breach of Rule 22(5) of the SAR**

136.1 This allegation was admitted by both the First and Second Respondents.

136.2 In the matter of OI plc (paragraphs 23-25 above) the error made was not entirely the fault of the First Respondent. It appeared that his bank had transferred money when it should not have done. However, money had clearly been withdrawn from the general client account in excess of the amounts held for OI plc. In relation to the matter of F (paragraphs 26-32 above) a payment of over £162,000 had been made from client

account to office account for the benefit of Mr F when there were no longer any funds belonging to him held on the general client account. The funds received to redeem the mortgages on 35 A Road and Flat 5, 4 F Road (paragraphs 33-41 above) did not remain in the client account and were not used to redeem the mortgages. There was a minimum cash shortage of over £236,000 as at 30 September 2010.

136.3 The Tribunal was satisfied on the facts and on the admissions that this allegation had been proved to the highest standard.

137. **Allegation 1.4: They withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of the SAR and thereby created a cash shortage**

137.1 This allegation was admitted by both the First and Second Respondents.

137.2 The facts established were as for allegation 1.3. There had been a series of improper withdrawals and transfers from client account. The Tribunal was satisfied on the facts and on the admissions that this allegation had been proved to the highest standard.

138. **Allegation 1.5: They failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7(2) of the SAR**

138.1 This allegation was admitted by both the First and Second Respondents.

138.2 The inspection had begun on 5 October 2010 and the FIO had found the books of account were not compliant with the SAR. Even after the First Respondent had produced updated information on 1 November 2010 there were still significant shortcomings. Although steps were taken to rectify the cash shortage of over £14,000 which existed at 11 October 2010, this was not rectified until 6 December 2010, in that the debit balances were corrected. In relation to the transfer of £105,000 in November 2009, by November 2010 only £49,000 had been repaid (as set out at paragraphs 23-25 above). The shortage of over £162,000 created by the payment to Mr F when funds were not available was not replaced, or at the least there was no evidence provided to the FIO that it had been. The shortage of over £236,000 on client account which existed from at least 31 August 2010 had not been corrected as at 30 September 2010.

138.3 For all of the reasons set out above, the Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admissions.

139. **Allegation 1.6: They failed to make arrangements for effective management of the firm and the adequate direction of clients' matters contrary to Rule 5.01 (1) of the Code**

139.1 This allegation was admitted by both the First and Second Respondents.

139.2 As set out at paragraphs 13-16 above, the Poole office was unattended when the FIO attempted to begin the inspection and he was unable to contact the First Respondent by telephone. The Poole office was unattended also on the following day. The Second Respondent had attended the Poole office intermittently after 30 August 2010,

a period of about 5 weeks at the date of the inspection, and had not involved herself in the running of the practice. The First Respondent was overseas, so there was no effective management or supervision in place at either office of the Firm. Further, the shortcomings in the accounts records of the Firm showed a lack of proper management.

139.3 The Tribunal was satisfied to the highest standard, on the admissions and on the facts, that this allegation had been proved.

140. **Allegation 1.7: They failed to comply with undertakings given on behalf of the firm within a reasonable time in breach of Rule 10.05 of the Code including:**

1.7.1 In requisitions on title in the sale of 35 A Road

140.1 This allegation was admitted by both the First and Second Respondents.

140.2 In this matter (set out at paragraphs 33 to 38 above) an undertaking to redeem a charge in favour of B of S was given. Completion took place on 20 August 2010. Although the date of redemption of the mortgage was not clear the DS1 was not forwarded to the purchaser's solicitors until 4 February 2011, over 5 months later.

140.3 This clearly showed a failure to comply with the undertaking within a reasonable time and the Tribunal was satisfied on the facts and on the admissions that the allegation had been proved.

141. **Allegation 1.7.2: In requisitions on title in the sale of Flat 5, 4 F Road**

141.1 This allegation was admitted by the First Respondent and denied by the Second Respondent.

141.2 The facts of this matter are set out at paragraphs 38 to 41 above. It had been alleged that the undertaking had been signed by the Second Respondent and that she had written the letter dated 1 September 2010. In evidence, the Second Respondent had stated that she had been at home on the date the undertaking was signed (31 August 2010). Indeed, it appeared that it was on that date that the Second Respondent had made a report to the SRA about her concerns with the Firm's accounts. The Tribunal accepted that the undertaking had been signed by the First Respondent. However, the Second Respondent had been a member of the Firm both at the time the undertaking was given and for a period of time afterwards. The Tribunal accepted that her involvement in the Firm had been minimal after the end of August 2010 although she had not actually resigned until, at the earliest, November 2010 when it appeared she had signed some papers to resign from the LLP. However, no forms had been filed at Companies House until January 2011.

141.3 This was a matter of which the Second Respondent was aware. It was her file and the undertaking given by the Firm was a standard undertaking in a conveyancing transaction. On her own evidence, the Second Respondent had continued to undertake work on files for her own clients, to protect their interests, throughout September 2010. This was not a matter where she could be completely unaware of an undertaking given by the First Respondent. For that reason, and as she remained a

member of the Firm during the period when the undertaking should have been complied with, the Tribunal found the allegation proved against the Second Respondent.

141.4 The First Respondent had admitted the allegation and the Tribunal was satisfied on the documents and on the admission that the allegation had been proved to the highest standard.

142. **Allegation 1.8: They failed to act with integrity (First Respondent only), failed to act in the best interests of clients and acted in a way that is likely to diminish the trust the public places in them or in the legal profession contrary to Rules 1.02 (First Respondent only), 1.04 and 1.06 of the Code by virtue of:**

1.8.1 The matters set out above

142.1 This allegation was denied by the Second Respondent. It was noted that the allegation concerning a failure to act with integrity was withdrawn against the Second Respondent but the allegation was pursued in its entirety against the First Respondent. The First Respondent initially indicated that he denied the allegation, but in the course of his submissions admitted the allegation in its entirety.

142.2 The allegation concerned all of the matters set out with more particularity under allegations 1.1 to 1.7. In particular, in relation to the failures to manage the Firm's client account, such that significant shortages arose and in failing to comply promptly with undertakings it was alleged that the Respondents had been in breach of some of their core duties as solicitors.

142.3 So far as the First Respondent was concerned, the Tribunal was satisfied that he had had a greater role than the Second Respondent in the management of the Firm's accounts. In particular, he had been responsible for making the payment on behalf of Mr C which led to the cheque to Mr F being dishonoured, had delayed in dealing with the undertakings in respect of both 35 A Road and Flat 5, 4 F Road. The breaches of the SAR had put client monies at risk and the failure to comply with undertakings undermined both the system of conveyancing and the reputation of the profession. The First Respondent had admitted that he had been responsible for the failures to use client monies for the purposes for which they had been intended.

142.4 The Tribunal was satisfied to the highest standard that the allegation had been proved against the First Respondent on the admissions and on the facts.

142.5 The Second Respondent had denied the allegation. The Tribunal noted that she had been a member of the Firm from November 2009 until at least November 2010 although her active involvement had come to an end from about the end of August 2010. The Second Respondent had been a salaried partner, with a basic salary of £20,000 per annum plus a share of profits generated by the files she handled if the profits on those exceeded £30,000 per annum. The Tribunal was very concerned that throughout the period she was a member she had failed to exercise any proper control of the Firm's accounts; indeed the Firm had not established its own bank account until about May 2010. The Second Respondent, who had about six years experience as a conveyancing solicitor at the relevant time, had failed to look at any client ledgers in

relation to the matters she was handling. Whilst the Tribunal accepted that she had kept notes on her files about monies received and paid, this was not sufficient and in particular failed to provide any mechanism to check if money had been improperly disbursed or incorrectly posted. It seemed at least unconventional and perhaps even extraordinary that the Second Respondent had tried to conduct conveyancing without access to the client ledgers. She had clearly failed to exercise sufficient control of the Firm as would be expected of a principal in a firm and had not even demanded sight of ledgers in relation to the files with which she dealt. The Second Respondent had written a cheque on office account to Mr F, which cheque had been dishonoured and undertakings given in relation to two of her files had not been complied with promptly.

142.6 However, the Second Respondent had reported her concerns about the risk to client money to the SRA on 31 August 2010 and believed that in so doing she had done all that was required. The Tribunal was concerned that this was about three weeks after her initial contact with the professional ethics advice line. In the meantime, and indeed after the end of August, the Second Respondent had waited for responses from the First Respondent and had continued to rely on information he gave to her. The Second Respondent had remained with the Firm in order to complete various matters for clients, in the belief that this was acceptable after making the report to the SRA.

142.7 The Tribunal accepted that the Second Respondent had at no time intended to let down her clients. The Tribunal accepted that the Second Respondent had been ineffective and had been too reliant on the First Respondent, who was undoubtedly the driving force behind the Firm. She had been hampered by the physical separation between the Poole and Clapham offices.

142.8 Whilst the Tribunal had concerns about the Second Respondent's conduct and had found other allegations proved against her, it was not satisfied to the required standard that she had failed to act in the best interests of clients or had acted in a way which would diminish trust in her or the profession and accordingly the allegation had not been proved against her.

143. **Allegation 2.1: In respect of the period from October 2010 he failed to keep accounting records properly written up at all times and/or to appropriately record dealings with client money contrary to Rule 32(1) and (2) of the SAR**

143.1 This allegation was admitted by the First Respondent.

143.2 It was clear from all of the facts set out in paragraphs 48, 52, 53 and in relation to the matter of B (paragraphs 69-80) that the Firm's accounting records had not been properly written up. Cash shortages had occurred on client account, which in itself showed that dealings with client money were not appropriately carried out or recorded. At one point, the cash shortage had been in excess of £880,000. It was clear that the First Respondent was solely responsible for the accounting records of the Firm.

143.3 The Tribunal was satisfied beyond reasonable doubt that the allegation had been proved on the facts and on the admission.

144. **Allegation 2.2: He failed to carry out client account reconciliations at least once every five weeks in the manner required under Rule 32(7) of the SAR**

144.1 This allegation was admitted by the First Respondent.

144.2 The shortcomings in the Firm's reconciliation statements can be seen from the facts set out at paragraphs 52 and 53 above. Reconciliations are required in order to promptly identify any potential problems in dealings with client money so that those issues can be rectified. The reconciliation statements failed to record some of the most significant issues which the FIO had identified, in particular in relation to the M, P, B and S/C matters.

144.3 The Tribunal was satisfied beyond reasonable doubt that the allegation had been proved on the facts and on the admission.

145. **Allegation 2.3 He withdrew money from the general client account in relation to particular clients in excess of the amounts held on behalf of the particular client in breach of Rule 22(5) of the SAR**

145.1 This allegation was admitted by the First Respondent.

145.2 The FIO had identified a minimum cash shortage on client account of over £880,000 in respect of 4 client matters. Sums due in respect of M had been wrongly transferred to the AC LLP file when there was no connection between M and AC LLP and the First Respondent had then wrongly taken sums in respect of costs (paragraphs 58-68 above). In addition, in the same matter, funds had been withdrawn from client account in respect of the De Cruz matter. Again, there was no connection between the clients and the money was wrongfully transferred. In relation to the B matter (paragraphs 69-80) sums were wrongly withdrawn from client account and used to make a payment on the Ss matter in respect of costs where there was no connection between the clients and no evidence of a bill of costs being drawn and/or sent to the client. In relation to the P matter (paragraphs 81-90) funds received from NBS were wrongly withdrawn from client account and used for matters which were completely unconnected to this client and not for the purpose for which they had been provided by NBS. In relation to the S/C matter (paragraphs 91-101) funds received from NBS were wrongly withdrawn from client account and used to fund a payment to De Cruz when this matter was unconnected with the clients S/C.

145.3 The Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

146. **Allegation 2.4 He withdrew sums from client account in circumstances other than those permitted by Rule 22(1) of the SAR and thereby created a cash shortage**

146.1 This allegation was admitted by the First Respondent.

146.2 The facts and matters were as set out at paragraph 142.2 above. The series of transactions were clearly instances of improper withdrawals from client account. The

Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

147. **Allegation 2.5 He failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7(2) of the SAR**

147.1 This allegation was admitted by the First Respondent.

147.2 The First Respondent was aware of the shortage on client account caused by the misuse of client funds on the matters of M, B, P and S/C. As at 6 April 2011 a shortage of nearly £635,000 remained. He confirmed in his letter to the SRA on 20 July 2011 that the shortfall remained. It was clear on this fact alone that the First Respondent had failed to remedy breaches promptly although there were other breaches (such as compliance with the SAR requirements on keeping accounts records) which had not been rectified either promptly or at all. Accordingly the Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

148. **Allegation 2.6: He failed to comply with undertakings given on behalf of the firm within a reasonable time in breach of Rule 10.05 of the Code including:**

2.6.1 In requisitions on title in the sale of Flat 8 L B House

148.1 This allegation was admitted by the First Respondent.

148.2 The Firm gave an undertaking to discharge on completion the charge to B&B dated 14 December 2007. The transaction completed on 22 March 2011 but the charge was not redeemed on completion. A payment to redeem the charge was not made until 6 April 2011, over 2 weeks after completion.

148.3 The Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

149. **Allegation 2.6.2: In a certificate of title to the Nationwide Building Society in respect of the purchase of 175 W**

149.1 This allegation was admitted by the First Respondent.

149.2 The First Respondent completed the Certificate of Title in respect of the purchase of 175 W, in relation to client P and a loan by NBS, as set out in full at paragraphs 81-90. The First Respondent received the loan from NBS on 11 January 2011 but did not use the funds to complete the purchase of the property and redeem the charge over it. In breach of the terms of the undertaking, the First Respondent did not:

(i) obtain the execution of a form of mortgage deed;

(ii) make the necessary bankruptcy, Land Registry of Land Charges searches;

(iii) within the period of protection afforded by the searches complete the mortgage;

(iv) arrange for the issue of a SDLT Certificate;

(v) deliver to the Land Registry the documents necessary to register the mortgage in favour of NBS;

(vi) effect any other registrations necessary to protect NBS' interest as mortgagee.

Further, the First Respondent parted with the mortgage advance when he knew that the property would not be occupied by Mr P and would not be vested in him.

149.3 The Tribunal was satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

150. **Allegation 2.6.3: In a certificate of title to the Nationwide Building Society in respect of the purchase of 7 V Place**

150.1 This allegation was admitted by the First Respondent.

150.2 As set out at paragraphs 91-101, the First Respondent completed a Certificate of Title in respect of the purchase of 7 V Place and a loan by NBS in the matter of S/C. He received the loan from NBS on 11 January 2011 but did not use the funds to complete the purchase and redeem the charge over the property. The breaches of undertaking in this matter were as for the matter of P, as set out at paragraph 146.2 above. Further, the First Respondent parted with the mortgage advance when he knew that the leasehold interest in the property was not vested in S/C.

150.3 Again, the Tribunal was satisfied that this allegation had been proved to the highest standard on the facts and on the admission.

151. **Allegation 2.6.4: To De Cruz solicitors on 12 January 2011 as subsequently varied**

151.1 This allegation was admitted by the First Respondent.

151.2 The original undertaking, to forward £374,474 to De Cruz by 4pm on 1 February was varied on four occasions. The final version of the undertaking was that £75,474 was to be paid by 14 March and the balance of £350,000 by 18 March 2011. Payment was not made in accordance with the undertaking but £74,474 was paid on 22 March and £350,000 on 23 March 2011 from funds belonging to other clients. Further details are set out under paragraphs 102 to 105 above.

151.3 The Tribunal was satisfied beyond reasonable doubt that this allegation had been proved on the facts and on the admission.

152. **Allegation 2.6.5: In requisitions on title in the sale of 32 P Road;**

152.1 This allegation was admitted by the First Respondent.

152.2 As set out at paragraph 106, the First Respondent gave an undertaking to discharge on completion the charge to B of I and to forward evidence of discharge. The transaction completed on 26 November 2010 but the charge was not redeemed and no evidence of discharge or payment was ever received by the buyer's solicitors.

152.3 The Tribunal was satisfied beyond reasonable doubt that this allegation had been proved on the facts and on the admission.

153. A**llegation 2.6.5: To Thakrar & Co on 1 April 2011.**

153.1 This allegation was admitted by the First Respondent.

153.2 As set out at paragraphs 113 to 119 the First Respondent gave an undertaking to pay £500,000 to Thakrar & Co by 6 June 2011 and the First Respondent failed to do so. The sum remained outstanding.

153.3 Again, the Tribunal was satisfied to the required standard that this allegation had been proved on the facts and on the admission.

154. **Allegation 2.7: He failed to provide Clarion Solicitors Limited with the name, address and policy number of his firm's qualifying professional indemnity insurer in breach of Rule 18 of the Solicitors Indemnity Insurance Rules ("SIIR") 2010 and 2011.**

154.1 This allegation was admitted by the First Respondent.

154.2 As set out at paragraphs 120 to 125, Clarion had a claim against the Firm arising initially from an undertaking and subsequently from a court judgment obtained by Clarion on 19 May 2011. Despite requests to the Firm, the First Respondent failed to provide details of his professional indemnity insurers, as required by the SIIR and Clarion were only able to obtain the details from the SRA.

154.3 The Tribunal was satisfied on the admission and on the facts that this allegation had been proved to the highest standard.

155. **Allegation 2.8: He failed to act with integrity, failed to act in the best interests of clients and acted in a way that is likely to diminish the trust the public places in him or in the legal profession contrary to Rules 1.02, 1.04 and 1.06 of the Code by virtue of:**

2.8.1: Misusing client money

155.1 This allegation was denied by the First Respondent at the beginning of the hearing but was admitted in the course of the hearing.

155.2 The Tribunal noted that the First Respondent did not dispute the facts set out in the second report. The Tribunal had heard the FIO, Mr Grehan, in evidence and was satisfied that his report was accurate and his evidence was clear and consistent. The Tribunal was therefore able to accept and rely on the contents of the second report and Mr Grehan's oral evidence.

155.3 The First Respondent had misused money belonging to his clients M, B, and NBS by using their money for purposes unconnected with the clients. The funds received in respect of 32 P Road were not used to redeem the mortgage over the property and were misused by the First Respondent as the funds did not remain in client account.

The First Respondent received in error a sum of nearly £350,000 belonging to Mrs D-P and failed to reimburse the bank. In the P and S/C matters the First Respondent completed Certificates of Title and applied for mortgage monies when he knew the transactions were not proceeding and he had taken none of the normal steps prior to completion.

155.4 In all of these respects, the First Respondent had failed to act with integrity, had failed to act in the best interests of his clients and had acted in a way likely to diminish the trust the public would place in him and the profession. The Tribunal was accordingly satisfied to the highest standard that the allegation had been proved on the facts and on the admission.

156. **Allegation 2.8.2: Delaying in paying SDLT in the matter of S**

156.1 This allegation was denied by the First Respondent at the beginning of the hearing but was admitted in the course of the hearing.

156.2 The First Respondent had been put in funds to pay SDLT on Mr S's transaction but delayed doing so for five months. This caused Mr S to have to chase the First Respondent on a number of occasions and Mr S faced the prospect of proceedings by HMRC. The Tribunal was satisfied that the First Respondent had failed to act with integrity, had failed to act in the best interests of his client and had acted in a way likely to diminish the trust the public would place in him and the profession. The Tribunal was accordingly satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

157. **Allegation 2.8.3: The matters set out above.**

157.1 This allegation was denied by the First Respondent at the beginning of the hearing but was admitted in the course of the hearing.

157.2 This allegation referred to all of the matters uncovered by the second report. The Tribunal noted a repeated pattern of misuse of client funds, failure to comply with undertakings and evasion when challenged about these issues e.g. in his explanations to Mr W, his lack of frankness with Mr S and his failure to provide insurance details when properly requested. Further, he had given the undertaking in the De Cruz matter in relation to £350,000 when he did not hold that sum in his client account, as stated in the undertaking. For all of the reasons set out in relation to the second report, the Tribunal was satisfied that the First Respondent had failed to act with integrity, had failed to act in the best interests of his clients and had acted in a way likely to diminish the trust the public would place in him and the profession. The Tribunal was accordingly satisfied to the highest standard that this allegation had been proved on the facts and on the admission.

158. **Allegation 2.9: It was alleged in respect of allegation 2.4 and 2.8.1 that the First Respondent acted dishonestly or in the alternative recklessly but it was not necessary to prove dishonesty or recklessness to prove the allegation**.

158.1 This allegation was denied by the First Respondent.

158.2 The Tribunal considered all of the facts, the statement and submissions of the First Respondent and the testimonials provided and the Twinsectra test was applied.

158.3 The First Respondent had admitted, and the Tribunal had found proved, the factual matters set out in relation to allegations 2.4 and 2.8.1. In relation to those matters the Applicant alleged that the First Respondent had acted dishonestly, or in the alternative recklessly. The First Respondent had clearly, on a number of occasions, misused client money. The matters of B, M, P and S/C were most notable. In relation to the latter two matters, the First Respondent had caused mortgage advances to be called down in circumstances where it was clear the transaction was not proceeding and the First Respondent was aware of this as he had not carried out any pre-completion work, nor had contracts been exchanged. Client money had been used in particular for the benefit of a client, AC LLP, which had no connection to any of the clients whose funds had been misused. The First Respondent had failed to reimburse HSBC almost £350,000 which had been sent to him in error. He had delayed paying SDLT for Mr S, which allowed him use of Mr S's money for five months.

158.4 The First Respondent had chosen not to give evidence, having been informed by the Tribunal that submissions may carry less weight than oral evidence. In his written statement, the First Respondent admitted that his actions had fallen below the standards expected and explained that he had not had adequate experience to run a practice. He believed he had been out of his depth. The First Respondent went on to state that he believed he had been the target of a professional conman, Mr NH who operated AC LLP. The First Respondent told the Tribunal that AC LLP was a trust based in the United Arab Emirates. He had been engaged by AC LLP to carry out a transaction involving option agreements and company acquisitions. The First Respondent had relied on documentation and banking confirmation receipts provided by Mr NH which the First Respondent now believed Mr NH knew at the time were not genuine. As a result of reliance on Mr NH, the money of other clients had been inadvertently jeopardised. The First Respondent had instructed counsel to draft injunction proceedings in relation to the assets of AC LLP and Mr NH (and another) and had informed his insurers of the circumstances. The First Respondent understood that Mr NH now resided in Dubai having been released on bail after his arrest in relation to a number of counts of fraud.

158.5 The Tribunal considered the bundle of four testimonials submitted by the First Respondent, three of which were from legal professionals and one person who had employed the First Respondent in legal capacity. The testimonials referred to the First Respondent's competence and honesty. Whilst the Tribunal did not doubt that the references were sincerely given, three were from friends within the legal profession. None of the references expressly stated that the makers were aware of the very serious allegations he faced and had admitted.

158.6 The Tribunal was satisfied beyond any doubt that, in particular, in: improperly moving money from one client ledger to another on numerous occasions; drawing down mortgage funds on transactions which were not proceeding and giving an undertaking to hold £350,000 when he did not hold that sum the First Respondent had been dishonest by the standards of reasonable and honest people. Further, the Tribunal was satisfied that at all material times the First Respondent knew that what he was doing was dishonest by those same standards. As a solicitor, he knew that

money belonging to one client could not be used for the benefit of another. He knew that it was dishonest to give an undertaking in relation to "...£350,000 currently held in our firm's client account..." when the client account did not hold that sum. Further, the First Respondent knew that in drawing down mortgages to obtain £272,000 in the matter of S/C and £365,000 in the matter of P when those monies were not properly needed for the lay clients and would not be secured against a property as required by the lender clients he was acting in a way which would be considered dishonest by any reasonable and honest person. Further, in the matter of P, the Tribunal was satisfied that in paying out the money drawn down for the benefit of another client the First Respondent knew that what he was doing was dishonest by the standards of reasonable and honest people.

158.7 The Tribunal had no doubts on any of these matters. Neither the testimonials provided nor the First Respondent's limited explanation of the difficulties he said had been created by AC LLP raised any doubts and the Tribunal was satisfied to the criminal standard of proof that the allegation of dishonesty had been proved.

Previous Disciplinary Matters

159. There was one previous disciplinary matter in which findings had been made against the First Respondent. In case 10667/2010, heard on 29 March 2011 the First Respondent had admitted an allegation of breach of an undertaking and had been reprimanded and ordered to pay costs of £4,000.

160. There were no previous disciplinary matters in which findings had been made against the Second Respondent.

Mitigation

<u>First Respondent</u>

161. The First Respondent reminded the Tribunal that he had admitted all of the allegations, save for that of dishonesty. He disagreed with the Tribunal's finding on that matter.

162. In relation to the previous finding, the First Respondent explained that it had concerned breach of an undertaking given whilst he was employed where the redemption statement he had obtained had not shown all of the charges, which had led to difficulties in registering the charge in favour of the new mortgagees.

163. The First Respondent told the Tribunal that he had lacked experience and had been naive. He had given his professional history in his written statement. He had been the target of a professional conman connected with AC LLP, who had later been arrested. The First Respondent was assisting the police with their enquiries.

164. Whilst the First Respondent accepted the standard of his practice had fallen below the standard required, he did not believe he had been dishonest. The First Respondent had confirmed in his witness statement and in the course of the hearing that he had been solely responsible for the accounts records of the Firm and that the errors which had occurred were due to his administrative inadequacies and not those of the Second

Respondent. He was deeply embarrassed and remorseful that his actions had resulted in the Second Respondent being brought before the Tribunal. The First Respondent's written statement also referred to personal issues which had added to the pressure he felt and had affected his fitness to run the practice.

Second Respondent

165. The Tribunal had heard from the Second Respondent in evidence and had read her witness statement.

166. It was submitted that the Second Respondent had been naive and had placed too much reliance on the First Respondent, whom she had regarded as a friend. It was accepted that she should have made more enquiries, in particular in relation to the Firm's accounts, but had failed to carry out due diligence. The Second Respondent had not previously had experience of accounts matters but accepted that when she became a member of the Firm she took responsibility for the Firm's accounting practices.

167. By August 2010 the Second Respondent had become frustrated with the position. She had reported her concerns to the SRA on 31 August 2010 and it was unfortunate that their inspection did not begin until October 2010.

168. It was submitted that the Second Respondent was an honest and decent solicitor who had remained with the Firm after the end of August 2010 because of loyalty to her clients, in whose best interests she had always tried to act.

169. A bundle of three testimonials for the Second Respondent from colleagues, including her present employer was submitted. These spoke of her integrity, the professional way in which she conducts her conveyancing work and stated that she was well-liked by clients and colleagues.

Sanction

170. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

First Respondent

171. The First Respondent had admitted a number of very serious breaches of the SAR and of his core duties as a solicitor and the Tribunal had found all of those allegations proved. The shortages on client account had been very large, being in excess of £883,000 at one point, and client money had been placed at great risk. The First Respondent had failed to exercise anything approaching proper stewardship of client monies. In two matters (S/C and P) the First Respondent had drawn down money by way of mortgage advances where it was clear that the transaction was not to proceed and had improperly transferred the sums received to the account of AC LLP or by way of payments made to others unconnected with S/C and/or P. The First Respondent had been in breach of a number of undertakings. . The First Respondent did not appear to have real insight into the extremely serious breaches for which he was responsible. Even without the finding of dishonesty the Tribunal would have been justified in striking the First Respondent off the Roll as the breaches were so serious

172. As it was, the First Respondent had denied dishonesty but the Tribunal had found it proved. There were no exceptional circumstances in this matter. A finding by the Tribunal that a solicitor had been dishonest in the course of professional work must almost inevitably result in an order to strike off the solicitor. In this case a striking off order was the only reasonable and proportionate sanction.

Second Respondent

173. The Second Respondent had been found to be in breach of a number of requirements of the SAR, which was designed to protect the public, and client money in particular, and of failing to comply with undertakings, which were the bedrock of the conveyancing system.

174. The Second Respondent had not intended to cause any harm and had not profited in any way from the breaches. It was clear to the Tribunal that the Second Respondent had been very much the junior partner in the Firm and her appearance at the Tribunal was due primarily to the First Respondent's misconduct. The First Respondent had been responsible for the Firm's accounting system and the Second Respondent had relied on him. However, she had been a member of the Firm from November 2009 and had failed to insist on seeing the Firm's accounts, even the ledgers relating to the matters of which she had conduct. The Second Respondent had made the transfer to office account in the matter of Mr F when she should not. It was correct that she had been motivated simply by the intention to deliver to her client the money to which he was entitled, but the cheque had been dishonoured.

175. The Tribunal noted that the Second Respondent had made a report to the SRA at the end of August 2010 which was probably one of the main factors which led to the inspection from October 2010. However, the Second Respondent had waited for about three weeks from the time of her first contact with the SRA, on 5 August 2010, to make the report. Her decision to stay on at the Firm thereafter had been wrong, but having heard her in evidence the Tribunal was satisfied that she had done so to look after her clients as best she could and that she had believed that having made the report there was nothing more she ought reasonably to have done.

176. The Tribunal considered that whilst the Second Respondent's culpability was significantly less than that of the First Respondent, she had been a member of the Firm and had allowed the First Respondent to act as he did. The Second Respondent had not demonstrated the necessary control of the Firm and had allowed the First Respondent to fob her off in relation to a number of accounts matters. The Firm's clients were exposed to significant risk of harm. The Second Respondent had shown genuine insight into her conduct and the Tribunal was satisfied that she posed no risk to the public in future. That said, the breaches were serious and only a fine could properly reflect the seriousness of those breaches. However, the Second Respondent's lack of personal culpability, her insight and the testimonials she produced which spoke of her general approach to work and her competence satisfied the Tribunal that a fine towards the lower end of the normal range would be sufficient. Accordingly, the Tribunal determined that a fine of £1,000.00 would be proportionate.

Costs

177. The Applicant applied for a costs order against both Respondents in the total sum of £54,838.32, including SRA investigation costs of £6,582.40. The costs were acknowledged to be large but had been properly incurred in carrying out all of the necessary enquiries and preparing the lengthy Rule 5 Statement and exhibit.

178. It was proposed by the Applicant that the costs could be apportioned between the Respondents on the basis of their respective culpability and the allegations brought against them. In particular, the Second Respondent was involved only in the matters detailed in the first forensic investigation report and was not involved in matters contained in the second forensic report. It was submitted that approximately 25% of the Applicant's work in preparing the Rule 5 Statement had been in relation to the first forensic investigation report and the costs of that report were approximately £7,000 so the overall costs of the part of the case involving the Second Respondent were approximately £17,000 with the remainder of the costs being linked solely to the matters brought against the First Respondent. The Tribunal was asked to consider how to apportion the costs between the Respondents.

179. The Applicant further submitted that there was no information before the Tribunal concerning the First Respondent's financial position so there was no basis on which to consider reducing costs payable by him on the grounds of his means. The Second Respondent had submitted a financial statement from which it was clear that she was working. It may well be the case that she was not able to pay any costs order at once but the SRA would always be willing to negotiate payment by instalments.

180. The First Respondent told the Tribunal that he was prepared to accept the responsibility to pay all of the costs the Tribunal ordered. He told the Tribunal that he was currently employed with a regular income. He had also received a small inheritance which would be enough to cover all of the costs of the case.

181. On behalf of the Second Respondent the Tribunal noted the submission in mitigation that she had trusted and relied on the First Respondent and had acted as she did believing it was in the best interest of her clients. The Tribunal was referred to her financial statement.

182. The Tribunal considered carefully the representations of the parties and carried out a summary assessment of the costs claimed.

183. The Tribunal was satisfied that the overall costs claimed were generally reasonable, with the rates claimed and time spent being proportionate to the nature of the case. However, to reflect the possibility that there had been some small degree of duplication of work or that slightly too much time had been spent, the overall costs would be reduced to £54,000. Although the SRA had not succeeded on all of the allegations against the Second Respondent and had had to withdraw one part of an allegation, this was not a good reason in this case to reduce the costs payable. The case had been properly brought and the SRA should be entitled to its reasonable costs.

184. The Tribunal noted that the First Respondent had offered to pay all of the costs and that he had volunteered that he had the means to do so. Accordingly, the Tribunal did

not need to apply any reduction in the costs ordered against him by reference to the principles set out in either Merrick v The Law Society [2007] EWHC 2997 (Admin) or D'Souza v The Law Society [2009] EWHC 2193 (Admin).

185. The Tribunal considered that despite the First Respondent's offer to pay all of the costs, it was appropriate to make an order against the Second Respondent. Whilst she was less culpable than the First Respondent, she had been a principal in the Firm and had allowed the First Respondent to carry on the business in an inappropriate way. Bearing in mind the submissions as to how the costs had been incurred and noting that the total cost of all matters involving the Second Respondent was of the order of £17,000 the Tribunal determined that the reasonable and proportionate costs order against the Second Respondent was £4,000. That order would be a "joint and several" order with the First Respondent. This would not prevent the First Respondent from making good on his indication to the Tribunal that he would pay all of the costs. In the circumstances of the case, it would be a decent act on his part to do so. However, it was appropriate that the Tribunal should make an order which could be enforced against the Second Respondent if required to reflect the degree of her culpability in this matter. Accordingly, the First Respondent would be ordered to pay £50,000 and the remaining £4,000 in costs was payable on a joint and several basis by the Respondents.

Statement of Full Order

186. The Tribunal Ordered that the Respondent, Miles Roderick Cox, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution of £50,000.00 towards the costs of and incidental to this application and enquiry fixed in the sum of £54,000.00. The Tribunal further ordered that the First Respondent be jointly and severally liable with the Second Respondent to pay the remaining contribution of £4,000.00.

187. The Tribunal Ordered that the Respondent, [RESPONDENT 2], solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she be jointly and severally liable with the First Respondent to pay a contribution of £4,000.00 towards the costs of and incidental to this application and enquiry fixed in the sum of £54,000.00.

Dated this 5th day of November 2012
On behalf of the Tribunal

R. Nicholas
Chairman