SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Cases No. 11063-2012, 11067-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

[NAME REDACTED] — First Respondent

MUHAMMAD ALI SHAH — Second Respondent

RIAZ AHMED — Third Respondent

and

[NAME REDACTED] — First Respondent

MUHAMMAD ALI SHAH — Second Respondent

Before:

Mr J C Chesterton (in the chair)
Ms A E Banks
Mr M R Hallam

Date of Hearing: 7-9 January 2014

Appearances

Mr Geoffrey Williams QC of Farrar's Building, Temple, London EC4Y 7BD for the Applicant.

The First Respondent appeared on 7 January 2014 and represented himself. He did not appear on 8 and 9 January 2014 and was not represented.

Mr Muhammad Ali Shah did not appear and was not represented.

Mr Riaz Ahmed did not appear and was not represented.

[NAME REDACTED] appeared on 8 and 9 January 2014 and was represented by Ms Susanna Heley of Radcliffes Le Brasseur, 5 Great College Street, Westminster, London SW1P 3SJ.

JUDGMENT

Hearing

Case number 11063/12 ("the First Case") and case number 11067/12 ("the Second Case") were heard consecutively, following a direction made by the Tribunal at a Case Management Hearing on 26 June 2013. Judgment in the First Case was made after both cases had been heard by the Tribunal.

The First Case

Allegations

1. The allegations against the First Respondent, and the Second Respondent Muhammad Ali Shah contained in a Rule 5 Statement dated 24 September 2012 were that they:-

1.1 Established the firm of Dowgate Solicitors without there being in place adequate arrangements for the effective management of the firm contrary to Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code");

1.2 Failed to supervise Riaz Ahmed in his activities in relation to Dowgate Solicitors contrary to Rules 1.06 and 5.01 (i) (a) of the Code;

1.3 Improperly permitted Riaz Ahmed to operate the client bank account of Dowgate Solicitors contrary to Rule 1.06 of the Code;

1.4 failed to maintain the books of account contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR").

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

2.1 Permitted improper withdrawals to be made from client account contrary to Rule 22 SAR;

2.2 Permitted Dowgate Solicitors to practice as an unauthorised sole practice contrary to Rule 14.04 (4) of the Code.

3. The allegation against the Third Respondent, Riaz Ahmed alone was that he:-

3.1 Having been involved in a legal practice but not being a Solicitor has in the opinion of the SRA occasioned or been a party to, with or without the connivance of a Solicitor, acts or defaults in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in S43 (1A) Solicitors Act 1974.

In acting as he did he behaved dishonestly. He knew that he was so behaving when he misappropriated purchase funds by paying them away to parties not entitled to them, including himself.

Documents

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

Applicant:

- Applications dated 24 September 2012;
- Rule 5 Statement dated 24 September 2012;
- Applicant's Exhibit "GW1";
- Civil Evidence Act Notice dated 29 May 2013 to the Second Respondent;
- Copy notice of proceedings against the Third Respondent in The Times 27 November 2013;
- Applicant's Schedule of Costs dated 23 December 2013.

First Respondent:

- The First Respondent's Response to the Rule 5 Statement dated 15 June 2013, signed on 7 January 2014;
- The First Respondent's "Letter to the Chairman" and associated exhibits, signed on 7 January 2014;
- Email of 6 January 2014 from the First Respondent setting out his financial means;
- Email of 8 January 2014 from the First Respondent indicating that he would not be attending the remainder of the hearing.

Second Respondent:

- Email dated 21 June 2013 from the Second Respondent to the Tribunal requesting an adjournment of the hearing on 3 July 2013;
- Email dated 6 January 2014 from the Second Respondent to the Tribunal requesting reconsideration of the Chairman's decision not to adjourn the hearing on 7-9 January 2014.

Third Respondent

- None.

Tribunal

- Memorandum of a Case Management Hearing ("CMH") on 26 June 2013 adjourning the substantive hearing and making directions;
- Email of 18 December 2013 to the Second Respondent refusing his application for an adjournment of the hearing on 7-9 January 2014.

Preliminary Matter (1)

5. Mr Williams noted that there was a repeated application for an adjournment by the Second Respondent contained in his email dated 6 January 2014. He told the Tribunal that the Second Respondent had not engaged in the proceedings in any meaningful way and in particular had not replied to the allegations nor attended the CMHs. The Rule 5 Statement in this case had been issued in September 2012 and there were two other Respondents involved whose position should be considered by the Tribunal. The First Respondent was present and wanted the case to proceed. Mr Williams therefore opposed the Second Respondent's application for an adjournment.

The Tribunal's Decision on Preliminary Matter (1)

6. The Tribunal had listened carefully to what Mr Williams had had to say and observed that the Second Respondent had made an earlier application for an adjournment of the hearing today which had been refused by the Chairman. His latest application took the matter no further and gave no substantive additional grounds upon which the Tribunal could grant any further adjournment. The Tribunal had examined the principles laid down in the Tribunal's Policy/Practice Note on Adjournments and had concluded that none of the criteria for an adjournment was met in this case. The Tribunal had also considered the position of the two other Respondents in the case and the interests of justice. The Second Respondent's application for an adjournment was therefore refused.

Preliminary Matter (2)

7. Mr Williams asked the Tribunal to proceed in the absence of the Second and the Third Respondents. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 gave the Tribunal power it to proceed in the absence of a Respondent if it was satisfied that proper notice had been served upon the Respondent. The Tribunal needed to exercise care in such cases but in Mr Williams submission there was no unfairness in proceeding in the absence of the Second Respondent as he was aware of the hearing and had clearly elected not to be present. In so far as the Third Respondent was concerned the Tribunal had before them a notice that had been placed in The Times on 27 November 2013 to which there had been no response of any kind. In Mr Williams submission the requirements laid down by the Tribunal for substituted service had been complied with and the notice constituted good service under Rule 10 (1)(c) of the Solicitors (Disciplinary Proceedings) Rules 2007. The hearing should proceed in the absence of the Second and Third Respondents.

The Tribunal's Decision on Preliminary Matter (2)

8. The Tribunal was satisfied that the Second Respondent was aware of the proceedings and had elected not to be present. It was also satisfied that there had been good service of notice of the proceedings on the Third Respondent. The Tribunal had applied the principles laid down in R v Hayward, Jones and Purvis [2001] EWCA Crim 168 as adopted in disciplinary cases (Tait –v- the Royal College of Veterinary Surgeons [2003] UKPC 34). The Tribunal was fully aware that the discretion as to whether the hearing should take place in the absence of the Second and Third Respondents should be exercised with great care. However, the Tribunal did not believe, based upon the documentation before it, that any further adjournment would result in the attendance of either of the Respondents and whilst fairness to these

Respondents was of importance, fairness to the Applicant must also be taken into account. An early disposal was in the interests of the public and the First Respondent. The Tribunal would therefore proceed in the absence of both the Second and Third Respondents.

Factual Background

9. The First Respondent was born on 31 March 1965. He was admitted as a Solicitor on 17 January 2005 and his name remained on the Roll of Solicitors.

10. The Second Respondent was born on 7 January 1969. He was registered as a Foreign Lawyer on 8 December 2009 and his name remained on the Register of Foreign Lawyers.

11. The Third Respondent was neither a Solicitor nor a Registered Foreign Lawyer ("RFL").

12. At the material times the First Respondent and the Second Respondent carried on practice in partnership in the style of Dowgate Solicitors ("the firm") at E1 Business Centre, 7 Whitechapel Road, London E1 1DU.

13. On 6 October 2011 there commenced an inspection of the books of account and other documents of the firm by Ms Alice Evans, a Forensic Investigation Officer ("FIO") of the SRA. The inspection culminated in a Forensic Investigation Report ("the Report") dated 10 November 2011. The SRA intervened into the firm on 14 November 2011.

<u>The Establishment of the Firm</u>

13. The Second Respondent had carried on practice as an RFL under the style of Alison Law. In 2010 the First Respondent applied for a post as a salaried partner with Alison Law. He was not successful but the Second Respondent retained his CV.

14. In May 2011 the Second Respondent approached the First Respondent with respect to a new partnership, the firm. The First Respondent agreed to become involved in the new venture and on 12 August 2011 the SRA granted the firm recognition. In preparation for the Respondents to commence practice, business premises were acquired and steps were taken to arrange for the production of professional stationery. An office bank account and a client bank account were opened with Lloyds Bank plc on 22 September 2011 and closed on 25 November 2011, consequent upon the intervention.

15. In a letter to the SRA dated 23 January 2012 the First Respondent acknowledged that he and the Second Respondent were to have an equal input into the management of the firm. He also accepted that he was aware of the liabilities flowing from partnership. The Second Respondent wrote to the SRA on 29 December 2011 answering the points raised by the FIO and indicating that he had resigned from the firm on 12 September 2011.

<u>The Involvement of the Third Respondent</u>

16. Shortly after the firm achieved SRA recognition the Second Respondent decided that he wished to leave the partnership.

17. The Third Respondent was a Punjab Advocate. On 1 September 2011 the First and Second Respondents submitted an application to the SRA for registration of the Third Respondent as an RFL and the plan was for the Third Respondent to achieve RFL status, whereupon he would replace the Second Respondent as the First Respondent's partner. The application was ultimately refused.

18. When the Lloyds Bank accounts were opened, the First and Second Respondents mandated themselves as individually able to operate the client and office bank accounts and enabled the Third Respondent to do likewise.

19. The First Respondent, in a witness statement dated 17 October 2011, stated that the Second Respondent had introduced the Third Respondent to the firm and insisted that the Third Respondent should be a signatory on the firm's bank accounts. The Second Respondent stated in his letter to the SRA dated 29 December 2011 that the Third Respondent had visited the office and asked for a job and that the First Respondent had placed the Third Respondent on the bank mandate as he had received a financial reward from him.

20. The First Respondent also said in his witness statement that he approached the Third Respondent for the payment of wages.

Resignations

21. The Second Respondent resigned from the firm in September 2011. In an email to the SRA dated 23 September 2011 and in his letter to the SRA dated 29 December 2011 he stated that he had given the First Respondent fourteen days' notice of resignation on 12 September 2011. However, in his witness statement the First Respondent said that the Second Respondent had offered his resignation on 26 September 2011.

22. Once the Second Respondent had resigned from the firm the First Respondent was left as a sole practitioner but he did not obtain authorisation from the SRA to practice as such. The First Respondent informed the SRA that he was resigning from the firm on 18 October 2011.

The Fraudulent Transaction

23. The only completed transaction conducted by the firm was a conveyancing transaction dealt with by the Third Respondent. In the course of that transaction on 4 October 2011, the firm received the sum of £233,074.69 into its client bank account. The Third Respondent improperly paid the total sum of £233,034.00 out of client account to parties unconnected with the transaction as follows:–

    (a) £4,074.00 to himself;
    (b) £128,980 to Mr "FNC";
    (c) £99,980 to Mr "RCM"

    by 10 October 2011 only £1.21 was held in the firm's client bank account.

24. The Solicitors acting for the purchasers reported the matter to the FIO on 18 October 2011.

25. By the date of this transaction the Second Respondent had left the firm. He was however still being held out as a partner as was the Third Respondent. The First Respondent was by this time effectively an unauthorised sole practitioner.

26. When this matter came to the attention of the First Respondent he attended at the firm's office to discover correspondence which established that the Third Respondent had involved himself in other conveyancing transactions which did not proceed to completion, partly due to the intervention of the First Respondent.

27. The First Respondent reported this matter to the Police and discussed it with the FIO.

Witnesses

27. The following witnesses gave sworn oral evidence:

- Ms Alice Evans, the FIO;
- The First Respondent

<u>The Submissions of the Applicant</u>

28. Mr Williams said that neither the Second nor the Third Respondent had complied with the directions made by the Tribunal. The First Respondent had done so and his Response, denying all the allegations, was before the Tribunal. Following some discussions with the First Respondent he was now prepared to admit allegations 1.2, and 1.3. He would also admit allegations 1.4 and 2.1 on the basis of strict liability. Allegations 1.1 and 2.2 were denied.

29. There were no admissions from the Second or Third Respondent. Civil Evidence Act Notices had been served on the First and Second Respondents on 29 May 2013 and no counter-notices had been served, meaning that the content of the Rule 5 Statement and exhibit "GW1" was in evidence.

30. Mr Williams took the Tribunal through the facts of the case by reference to pages in "GW1". He noted in particular that "Alison" was the name of the firm in the Second Case. He told the Tribunal that it was clear that the First Respondent and the Second Respondent had hardly known each other when they had gone into business together and the same had been true of the relationship between the First and the Third Respondent. The firm had been a shambles and the First Respondent had been absent most of the time, which had proved catastrophic. In his submission the Second Respondent had needed a solicitor to establish the firm and the First Respondent had needed a job. The First Respondent had been an outsider at the firm and he had not even possessed a set of keys to the office, this was not an option for any principal. Mr Williams said that there could be no effective management when a principal was unable to enter the office premises independently.

31. The Third Respondent had assumed control when the Second Respondent had left and the First Respondent had allowed that to happen, but it was the Third Respondent who

had needed the First Respondent in order to operate. In fact the Third Respondent was on a student visa which only allowed him to work 20 hours a week. The application for him to become a RFL was never granted by the SRA. By this point, the First Respondent still could not independently enter the office premises and indeed he had admitted that he only went into the office a couple of times a week.

32. There had been no books of account but client work was being carried out and a fraudulent transaction had been completed. Bank accounts were opened and the First and Second Respondents took the gravely improper course of action of mandating the unqualified Third Respondent to operate the client bank account with Lloyds Bank. Mr Williams noted that Barclays Bank had refused to mandate the Third Respondent. In Mr Williams' submission the First Respondent knew about the mandate on the bank account but was relying on the Third Respondent not to do anything.

33. When the Second Respondent had left the firm, the First Respondent had been left as a sole practitioner and had not obtained any authorisation to practice as such; at that point he had had no right whatsoever to practice as the firm.

34. In Mr Williams' submission there had been one effective fraudulent transaction which had been facilitated by the First and Second Respondents giving access to the Lloyds Bank account to the Third Respondent. The allegation against the Third Respondent was put as one of dishonesty and the burden of proof was on the Applicant. The test for dishonesty was the dual one set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and the standard of proof was beyond a reasonable doubt; if conclusions were reached by inference then that inference must be irresistible. Mr Williams said that there was no other plausible explanation other than dishonesty for what the Third Respondent had done and that both the objective and the subjective tests in Twinsectra were satisfied. He did not allege that the First Respondent had been aware of what was going on and could make no comment on the Second Respondent.

35. Mr Williams said that the case was put at the top end of the scale of offending and that in that he did not distinguish between the First and Second Respondents. He asked the Tribunal to take due note of the appropriate authorities, in particular Twinsectra and Bolton v The Law Society [1994] 1 WLR 512, Weston v The Law Society [1998] the Times July 15 1998 and paragraph 23 of Iqbal v The Solicitors Regulation Authority [2012] EWHC 23251 (Admin.), which related to professional incompetence.

The evidence of Ms Alice Evans, the FIO

36. In her evidence in chief Ms Evans said that the Report dated 18 October 2011 was true and accurate in every detail and that the exhibits to that Report were true copies of the originals; she went through the contents of the Report by reference to the exhibits.

37. In cross-examination the First Respondent asked Ms Evans whether she had contacted another partner at the firm named "Georgina". The witness responded that she had had no contact details and that this person had not been registered as a partner or employee so it had been impossible to make any enquiries. Neither had she been able

to look at any details on any Professional Indemnity Insurance ("PII") forms, as whilst these had been requested they had not been provided. However, Ms Evans confirmed that the First Respondent had answered all of her questions and provided any information requested.

38. Ms Evans also confirmed that the First Respondent had told her that there had always been somebody available to let him into the premises and that the First Respondent had made enquiries with the SRA concerning the progress of the Third Respondent's RFL application.

The Evidence of the First Respondent

39. The First Respondent referred to his initial witness statement dated 17 October 2011 and his response to the Report dated 23 January 2012, both of which were contained in the exhibit "GW1", to his Response to the Rule 5 Statement dated 15 June 2013 and to his Letter to the Chairman. He wished all of these documents to be taken into evidence by the Tribunal.

40. The First Respondent said that he had originally applied for a position at Alison Law and had carried out some investigations into that firm but had been unable to find out about it, but had understood that the Second Respondent worked for Alfa Solicitors LLP. He had later discovered that his name was registered as one of the directors of Alfa Solicitors LLP but he had no knowledge as to how it had come to be so registered, the only person who could have done that was the Second Respondent.

41. The First Respondent told the Tribunal of his employment background and the background to the firm and of how the Second Respondent, in an initial meeting with him in May 2011, had told him that he needed someone with a Practising Certificate, that he had had a disagreement with his partner at Alison and had disbanded the firm. At a second meeting a person called Georgina had been present and the Second Respondent had presented a good case for the new firm. Eventually Georgina had been reticent to continue with the venture but the Second Respondent had asked him to keep her "onside" as the firm needed her expertise in Immigration work and her years of experience; without her it would be difficult to get any PII. He had tried to do so but eventually Georgina had left the firm.

42. It was simply not true that the move to different offices had been pursued by him as had been said in correspondence with the SRA by the Second Respondent, the new office had not been anywhere near his home. Throughout the period in question he had never been supplied keys, these were never denied to him it was just that he never made the request as he could always access the office; someone called "TJ", who was related to the Second Respondent and who provided security at the office was always present.

43. The First Respondent said that he was fully aware that the new firm needed to be compliant and he had drafted partnership agreements which the Second Respondent had always found some fault with and had never agreed. He said that it was all quite stressful and that the Second Respondent was something of a "Robert Maxwell" figure. The Second Respondent had delayed administrative matters and in the opinion

of the First Respondent he was lazy, complacent and needed prompting. The First Respondent said that he had had to press him on various aspects of setting up the firm.

44. When the Second Respondent had said at the end of August 2011 that he wanted to resign the First Respondent was taken aback and upset but the Second Respondent had assured him that he had a suitable replacement in the Third Respondent. However the Third Respondent's English was not good and the First Respondent said that he had accepted that he would be taking over the management responsibilities himself.

45. Insofar as the Third Respondent's RFL application was concerned, the First Respondent had expected a reply from the SRA within two weeks but it was delayed. In this period it was the Second Respondent who had insisted that the Third Respondent be mandated on the Lloyds Bank account, whilst he himself had said that the Third Respondent should be registered as a RFL with the SRA first, but the Second Respondent had convinced him that the Third Respondent might withdraw if there were difficult issues. The First Respondent said that he had thought in his naïve way that, as there were no clients, the Third Respondent was not yet registered as an RFL and the office was still not set up, no harm could come about. He had believed that everything would eventually fall into place.

46. The Second Respondent had not resigned on the day he had said (12 September 2011) but on 26 September 2011. At that point the Third Respondent was in place and the First Respondent was away from the office on paternity leave. He had always been contactable by the Third Respondent and also had his contact details. The First Respondent had not seen any risk and he had made it clear that there would be no clients until everything was in place. The first time he had become aware that there were any dealings with client matters by the Third Respondent was when the FIO had told him. At that point he had contacted the Third Respondent who had asked him to meet with him, however the Third Respondent failed to attend that meeting and neither had he contacted the First Respondent again. The First Respondent had immediately spoken to the Bank, the SRA and the other parties to the conveyancing transactions when he had discovered what had occurred and so prevented any other conveyancing transactions from completing with the firm. He had wanted to close the business immediately and had written to the SRA to do so and it was at that stage that they had intervened into his practice.

47. The First Respondent said that he had had no management experience in any of his previous employment but had been on a management course paid for by the Second Respondent and had observed practice management in his previous employment.

48. In cross-examination by Mr Williams he was asked whether the firm was not a complete disaster. The First Respondent said that he had answered this point in his Letter to the Chairman. The firm had not progressed properly and he admitted that it was a shambles in the sense that anything he suggested never occurred. When asked whether he was suggesting that the Second Respondent was to blame, he replied that the Second Respondent was responsible. There had been delay in properly setting up the firm and the First Respondent acknowledged that he had been used by the Second Respondent. He agreed that he had entered into partnership with somebody that he had hardly known; he had not known his exact address but at the time had known where he lived.

49. The First Respondent said that he agreed that in hindsight it was strange that he did not have independent access to the office. He also agreed that the Second Respondent had paid all the bills and had paid his wages. He had been upset and confused when the Second Respondent had indicated that he wished to resign and had been concerned at the arrival of the Third Respondent, but had not thought that anyone could be worse than the Second Respondent. He had known that he, the First Respondent, could take the firm forward and could make it legally compliant.

50. The First Respondent admitted that he had not read the SAR. He said that this sounded naive in hindsight. He had also felt that when the Third Respondent obtained his RFL status then everything would be regularised. It was put to the First Respondent that the fact that Barclays Bank had refused to put the Third Respondent on the bank mandate should have told him something. He said that he had been content about that decision and that later on he had spoken to the Barclays manager who had told him that the Second Respondent had approached him and tried to pressurise him into placing the Third Respondent on the mandate. He admitted that he had taken no steps to remove the Third Respondent as a signatory on the Lloyds bank account as he had been 100% certain that there were no clients, no client account money and that the Third Respondent understood the position. The Third Respondent had presented himself as an Immigration law specialist and the First Respondent had thought that he himself would be taking charge of the office.

51. It was put to the First Respondent that there was never any purpose for him being in the office and that his sole function had been to provide a Practising Certificate. He agreed that in hindsight this was correct, however the Second Respondent had been elusive and he had been uneasy when the other Respondents often spoke to each other in their mother tongue, in his presence, and he had been unable to understand what was being said.

52. Mr Williams asked the First Respondent whether it was true that if he had done his duty and had been in the office and in charge of client account then the fraud would not have happened. The First Respondent said that he disputed that, in that the Third Respondent could have carried out the fraud anywhere, however he acknowledged his failing with regard to the bank account.

Submissions made by the First Respondent

53. The First Respondent said that in respect of allegation 1.1 in hindsight he acknowledged that there were not adequate arrangements. His intention was always that there should be effective management if the Third Respondent's application was accepted. He had expressed his concerns to the Second Respondent and had pressed him on matters; he himself had had no funds and was reliant on the Second Respondent to fund the venture. The Second Respondent had been difficult to pin down but he had paid for a management course for the First Respondent and had appeared to want him to be more skilled. Matters had just not progressed at the speed he had expected but he had tried his best to push them forward. When the Second Respondent had resigned the First Respondent had thought that he would take control and had hoped the firm would be recognised and respected.

54. In respect of allegation 2.2 the First Respondent said that when the Second Respondent resigned on 26 September 2011 he made contact with the SRA and requested expedition of the Third Respondent's application. He had told the SRA at that stage that the matter was very urgent and needed to be done quickly. There was no intention on his part to operate as a sole practitioner. If the SRA had not accepted the Third Respondent's application then he would have set in motion whatever was necessary to close the firm. He had made everything clear to the SRA at the time and the SRA should have been more proactive. At no time had he been told to make an interim application to be a sole practitioner and he had thought that the firm was just in limbo.

The Second Case

Allegations

55. The allegation against the First Respondent, *[NAME REDACTED]* was that she:-

Contained in a Rule 5 Statement dated 27 September 2012 (as amended)

55.1 Allegation 4.1 - [as amended] improperly permitted herself to be held out as practising in partnership under the style of Alison Solicitors when not having obtained the appropriate recognition from the SRA and/or the Office of the Immigration Services Commissioner contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

55.2 Allegation 4.2 - [withdrawn]

Contained in a Rule 7 Statement dated 30 April 2013

55.3 Allegation 4.3 - [withdrawn]

55.4 Allegation 4.4 - [withdrawn]

56. The allegations against the Second Respondent Muhammad Ali Shah were that he: –

Contained in a Rule 5 Statement dated 27 September 2012

56.1 Allegation 5.1 - practised and/or permitted themselves to be held out as practising under the style of Alison Solicitors when not having been granted the requisite recognition by the SRA contrary to Rules 1.06 and 12.01 of the Solicitors Code of Conduct 2007;

56.2 Allegation 5.2 - accepted instructions to act in an immigration matter when not authorised to do so contrary to Rules 1.06 and 12.01 of the Solicitors Code of Conduct 2007.

Contained in a Rule 7 Statement dated 30 April 2013

56.3 Allegation 5.3 - improperly obtained funds from an immigration client ("TM") contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007;

56.4 Allegation 5.4 - failed to account funds received from TM in the course of an immigration matter contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007.

Dishonesty was alleged in respect of allegations 5.3 and 5.4, however dishonesty was not an essential ingredient required for the allegation to be proved.

Documents

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

Applicant:

- Applications dated 27 September 2012;
- Rule 5 Statement dated 27 September 2012;
- Applicant's Exhibit "GW1" (a different exhibit from that in the First Case);
- Rule 7 Statement dated 30 April 2013;
- Applicant's Exhibit "GW2";
- Witness statement of Mrs Tetyana Melnychuk dated 17 December 2013;
- Applicant's Schedule of Costs dated 23 December 2013.

First Respondent:

- Undated witness statement of the First Respondent together with exhibits;
- Second witness statement of the First Respondent dated 3 January 2014 together with exhibits;
- Testimonial letters and completed Client Satisfaction Questionnaires concerning the First Respondent.

Second Respondent:

- Email dated 21 June 2013 from the Second Respondent to the Tribunal requesting an adjournment of the hearing on 3 July 2013;
- Email dated 6 January 2014 from the Second Respondent to the Tribunal requesting reconsideration of the Chairman's decision not to adjourn the hearing on 7-9 January 2014.

Tribunal

- Memorandum of Case Management Hearing on 3 December 2012;
- Email of 18 December 2013 to the Second Respondent refusing his application for an adjournment of the hearing on 7-9 January 2014.

Preliminary Matter (1)

58. Mr Williams made the same submissions on the Second Respondent's request for an adjournment as he had made in the First Case.

The Tribunal's Decision on Preliminary Matter (1)

59. The Second Respondent's application for an adjournment was refused on the same grounds as in the First Case. The First Respondent in this case had attended the hearing, with representation, and was ready to proceed.

Preliminary Matter (2)

60. Mr Williams again asked the Tribunal to proceed in the absence of the Second Respondent for the same reasons as he had given in the First Case. The hearing should proceed in the absence of the Second Respondent.

The Tribunal's Decision on Preliminary Matter (2)

61. The Tribunal considered their decision in the First Case and concluded that the same principles and conclusions applied in this case. The hearing would proceed in the absence of the Second Respondent.

Preliminary Matter (3)

62. Mr Williams told the Tribunal that today was the first occasion upon which the witness Ms Melnychuk had been asked to identify the First Respondent. Ms Melnychuk had been unable to do so and could not be sure that the First Respondent was the person she had met in the office. The First Respondent had said someone had impersonated her at the office. It was not possible for the Applicant to prove the allegations concerning Ms Melnychuk as originally drafted and Mr Williams asked that allegations 5.2 – 5.4 against the First Respondent be withdrawn.

63. Mr Williams also asked that allegation 5.1 be amended to reflect the fact that the First Respondent's conduct had enabled the Second Respondent to conduct business. If that amendment was to be permitted then the First Respondent was prepared to admit it on that basis.

The Tribunal's Decision on Preliminary Matter (3)

64. The Tribunal had listened carefully to what Mr Williams had had to say and permitted allegations 5.2 to 5.4 against the First Respondent to be withdrawn and allegation 5.1 against the First Respondent to be amended in the manner suggested.

Factual Background

65. The First Respondent was born on 12 May 1974 and was admitted as a solicitor on 10 July 2008. Her name remained on the Roll of Solicitors.

66. The Second Respondent was born on 7 January 1969 and was registered as a Foreign Lawyer on 8 December 2009 and his name remained on the Register of Foreign Lawyers.

67. At the material times the First and Second Respondents practiced together under the style of Alison Solicitors or under various styles involving the use of the word "Alison" at Marble Arch Tower, 55 Bryanston Street, London W1H 7AT.

68. The company Alison Law Ltd was incorporated on 10 November 2010 and the Respondents were the directors. The company was subsequently dissolved. The SRA never granted Alison Law Ltd recognised body status.

69. In September/October 2010 an application was made to the Office of the Immigration Services Commissioner ("OISC") to register Alison Law so as to enable it to carry out immigration work. Both of the Respondents were named in that application. The application was withdrawn between June and September 2011.

70. On 30 June 2010 the First Respondent applied to the SRA for approval to practice as a recognised sole practitioner under the style of Alison Solicitors. The proposed start date for the First Respondent's sole practice was 1 July 2010. As at the date of the application no PII was in place. The application was not complete and the SRA requested further information on 17 July 2010. The First Respondent supplied further information on 19 July 2010.

71. On 4 August 2010 the First Respondent sent an email to the Assigned Risks Pool under the name of Alison Solicitors.

72. On 26 August 2010 the SRA wrote to the First Respondent seeking further information and on 16 September 2010 the First Respondent pressed the SRA for progress with the application. On 30 September 2010 an Adjudicator of the SRA refused the First Respondent's application on the basis that she had failed to demonstrate her suitability to run and manage a sole practice. The First Respondent was informed of this decision on 30 September 2010 and did not appeal.

73. In July 2010 the First Respondent prepared a Business Plan for Alison with a business commencement date of 1 July 2010 being given. This Business Plan was used in attempts to obtain PII in the marketplace all of which attempts failed.

74. On 7 November 2010 the First Respondent informed the SRA that she was not currently at work.

75. At no time were either of the Respondents authorised by the SRA to practice under the style of Alison, or under any style including the word "Alison".

Mrs Tetyana Melnychuk

76. In September 2010 Alison Solicitors took instructions from Ms Melnychuk with respect to an immigration matter. Ms Melnychuk wished to regularise her position so as to enable her to remain in the United Kingdom. Alison Solicitors issued a client care letter to Ms Melnychuk dated 7 September 2010 and a costs figure of £2,600 was confirmed. Three receipts were issued to Ms Melnychuk for monies paid on account of costs. The receipts were dated 5, 7 and 28 October 2010 and were for £80, £1,000 and £1,600 (which should have read £1,000) respectively. All bore the name of Alison Solicitors.

77. Ms Melnychuk did not receive any fee notes and Alison Solicitors never completed their instructions. Ms Melnychuk's funds have never been returned to her either in whole or in part.

78. The OISC became involved and referred the matter to the SRA. The SRA wrote to both of the Respondents and it was confirmed that the Second Respondent was associated with Alison Solicitors at the relevant time. The Second Respondent did not reply and the First Respondent replied denying culpability or responsibility. On 17 July 2012 the First Respondent telephoned the SRA to discuss the matter and stated that:-

    a) she had been the victim of identity fraud with respect to the receipts given to Ms Melnychuk;

    b) the Second Respondent had approached her about a partnership under the style of Alison Solicitors;

    c) the Second Respondent had instructed the First Respondent to make the application for recognition of Alison Solicitors by the SRA;

    d) the Second Respondent had made all relevant payments including payments to the First Respondent in the region of £1,000 per month, sometimes in cash (as in November and December 2010);

    e) the Second Respondent owed the First Respondent two months' money.

79. Ms Melnychuk made a witness statement on 17 December 2012, confirming the payments on account. In that statement, the office of Alison Solicitors was identified and Ms Melnychuk also said that she was given advice.

80. The Second Respondent had stated that he established Alison Solicitors with the First Respondent in April 2010 but left to go abroad in August 2010. However, the application to OISC was signed by both of the Respondents on 20 September 2010 and reference was made to a client account being in existence at that time. Subsequently and from the same premises in February 2011 the Second Respondent applied to the OISC to register Alison Law Ltd; reference was made to a client account to be opened. Neither application to OISC was granted.

Witnesses

81. The following witnesses gave sworn oral evidence:

- Mrs Tetyana Melnychuk;
- The First Respondent. (Her oral evidence was limited to a description of the Second Respondent and the offices and to her financial circumstances).

The Submissions of the Applicant

82. Mr Williams told the Tribunal that the Second Respondent had not complied with any directions made by the Tribunal, neither had he made any admissions. The First Respondent had made two statements and would admit the one remaining amended allegation made against her. The usual statutory notices had been served and therefore all of the documentation submitted by the Applicant was in evidence.

83. Mr Williams took the Tribunal through the facts of the case by reference to the Rule 5 and Rule 7 statements and GW1 and GW2 respectively. In his submission it was incumbent upon the First Respondent not to permit the firm of Alison Solicitors to practice when it was not registered to do so. However Alison Solicitors had practised and had taken Immigration work and money from Mrs Melnychuk, although it was now accepted that the First Respondent had had no personal involvement in those dealings. The First Respondent had provided her status to the Second Respondent and had been paid £1,000 pounds a month for doing nothing at all; it was £1,000 pounds a month for her services in attempting to legitimise the operation for the Second Respondent.

84. The Second Respondent had signed the application of Alison Law Chamber to the OICS dated 28 September 2010 as had the First Respondent, as could be seen from pages 92 and 93 of GW1, and in that application it was said that "I have enclosed evidence of my client account". The Applicant did not accept the Second Respondent's assertion, which could be seen at page 80 of GW1, that he had left Alison Solicitors and "refused my services to her [the First Respondent]" when he had gone to Pakistan on 1 August 2010 and had not been an active part of the company afterwards.

85. In Mr Williams' submission the Second Respondent had known he had no right to practise and no right to receive client funds. Shortly after the SRA had refused the application to register Alison he had taken client money. An irresistible inference could be drawn that the Respondent had been dishonest and the dual test to be applied was that in Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

The Evidence of Mrs Tetyana Melnychuk

86. Ms Melnychuk said that her statement of 17 December 2013 was true, as was the evidence that she had provided along with it. She was a person of clean character but her immigration status was a problem and needed to be regularised. Alison Solicitors had been recommended to her and she had attended the offices in Marble Arch which had been impressive. A person called Victoria had come down to the reception area to pick her up and she had seen another lady called "Ismat". She said all of the meetings that she had attended had been with Victoria and the person called "Ismat" and that

she believed that she had met with the Second Respondent on one occasion but he had not introduced himself and was referred to as "the boss" by Victoria.

87. Ms Melnychuk confirmed that she had given instructions and paid the specified cash amounts on account but had received neither an account nor a bill. It had been quite a lot of money and she had had to save in order to fund the matter but she had never had any of the money returned. She had eventually had to go to another firm of solicitors.

The Further Submissions of the Applicant

88. Mr Williams invited the Tribunal to find Ms Melnychuk a frank and cogent witness. This was the Second Respondent's firm and Ms Melnychuk had paid £2,000 to it. All attempts to set up the firm had failed and it was incumbent on the First Respondent as a solicitor, once the firm had been refused recognition, to ensure that no unlawful practice was carried out. The First Respondent had done nothing, which was thoroughly unacceptable, and being naive was not a quality that a client would expect of a solicitor. Further, in Mr Williams' submission the Second Respondent was irredeemably dishonest.

Submissions made on behalf of the First Respondent

89. Ms Heley told the Tribunal that the First Respondent had actually been a director of Alison Law Limited for around two months as there was an error in her second statement, the date of incorporation should have read 10 November 2010.

90. The remaining amended allegation against the First Respondent was admitted. However, it was not improper to set up a firm nor was it improper to apply for recognition; any impropriety started if that firm practised before recognition had been granted. The First Respondent had been attending at the firm for limited hours and had failed to make proper enquiries; she had not been actively practising. The definition of what constituted practising was contained in Rule 24 of the Code and essentially involved working as a solicitor. However this had not been what the First Respondent had been doing but she should have been more wary. What had happened was as a result of her inexperience and naiveté; she failed to make adequate enquiries about the comings and goings at the practice. On that basis she had admitted the allegation and that was to her credit.

91. The Tribunal had heard from Ms Melnychuk that she had met someone claiming to be "Ismat" but this had been at a time when the First Respondent was already working for another firm of solicitors and so she definitely could not have met with Ms Melnychuk. The First Respondent had said that she was a victim of identity fraud.

92. The First Respondent had knowingly been a director of Alison Law Ltd but she had also discovered that she had been made a director of Alfa Solicitors LLP on 29 December 2010 without her knowledge. When she had discovered what had been done she had resigned immediately.

93. In Ms Healy's submission the Second Respondent was a plausible rogue who seemed to have made a practice out of persuading relatively inexperienced solicitors to get involved in dishonest enterprises. It was notable that the presence of the First

Respondent had not been required for the Second Respondent to practice without recognition.

94. There may well not have been a client account at Alison and the letter at page 176 of GW1 which discussed an application for a client account post-dated the occasions on which Ms Melnychuk had made her payments to the firm.

95. Ms Healy said that the public should have complete confidence in the profession and that solicitors ought to make proper enquiries in order not to lend credence to bad practices, but that this involved a sense of judgement which developed over time. The SRA wanted reasonable experience before a solicitor was permitted to manage a practice and so the First Respondent's applications had ultimately been refused by the regulator. However the First Respondent's name was associated with the firm and she had made efforts for it to be recognised. She had been naive and had been told that the persons coming into the office in Marble Arch were clients of another company. It was admitted that her failure to make further enquiries inevitably damaged the public perception of the profession.

Findings of Fact and Law in the First Case

96. The burden was on the Applicant to prove each and every disputed allegation beyond reasonable doubt.

97. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

98. **The allegations against the First Respondent in the First Case, and the Second Respondent in the First Case Muhammad Ali Shah were that they:-**

Allegation1.1 Established the firm of Dowgate Solicitors without there being in place adequate arrangements for the effective management of the firm contrary to Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code");

98.1 This allegation was denied by the First Respondent and treated as having been denied by the Second Respondent.

98.2 Where there was a conflict between the evidence of the First Respondent and what the Second Respondent had said to the SRA in his letter of 29 December 2011, then the Tribunal believed the First Respondent and indeed had found him to be a credible and compelling witness. However, all of the evidence before the Tribunal was that the firm was not effectively managed and as a result the Third Respondent was able to appropriate monies which did not belong to him. An unqualified person had been appointed as a signatory to the client bank account by the First and Second Respondents and work was being done in an area for which the firm had not been established. The First Respondent was not aware of this conveyancing work at the relevant time and he should have been so aware. He did not have independent access to the offices and whilst the evidence was that he was able to get into the office on every occasion save the last, he did not appear to understand the importance of

unrestricted access and its relation to having adequate and effective control of the firm. Further, the First Respondent did not appear to understand the implications of partnership or his responsibilities, although he had clearly made some efforts to establish a Partnership Deed with the Second Respondent. This allegation was accordingly found to have been proved beyond a reasonable doubt against the First Respondent based upon the facts and evidence before the Tribunal.

98.3 The Tribunal was satisfied on the evidence before it that the Second Respondent ceased to be a partner in Dowgate Solicitors no earlier than 26 September 2011. The Second Respondent was certainly aware that an unqualified person had been appointed as the signatory to the client bank account (apparently at his urging) and should have been aware that he was carrying out conveyancing work. The First Respondent's unchallenged evidence was that he had made repeated efforts to engage the Second Respondent in the proper establishment of the firm but that the Second Respondent had been evasive and seemed to lack motivation. Whilst the Tribunal had considered carefully the Second Respondent's explanations at pages 57 to 61 of GW1 it did not find them to be credible and it noted that there was no statement of truth attached to them. The Tribunal accordingly found this allegation to have been proved beyond a reasonable doubt against the Second Respondent on the facts and evidence before it.

Allegation 1.2 Failed to supervise Riaz Ahmed in his activities in relation to Dowgate Solicitors contrary to Rules 1.06 and 5.01 (i) (a) of the Code;

98.4 This allegation was admitted by the First Respondent and treated as having been denied by the Second Respondent.

98.5 The Tribunal was concerned to note that the Third Respondent had had conduct of a conveyancing case for nearly a month when he was not supposed to be doing any conveyancing work; he was an Immigration Law specialist. It therefore followed that neither the First nor the Second Respondent was supervising him properly or at all. The conveyancing transaction in question was already progressing before the Second Respondent had left the firm and the First Respondent should have been aware of it. The failure to supervise the Third Respondent had directly led to the misappropriation of the monies by him. The facts spoke for themselves and this allegation was found to have been proved beyond a reasonable doubt against both of the Respondents on the facts and evidence before the Tribunal.

Allegation 1.3 Improperly permitted Riaz Ahmed to operate the client bank account of Dowgate Solicitors contrary to Rule 1.06 of the Code;

98.6 This allegation was admitted by the First Respondent and treated as having been denied by the Second Respondent.

98.7 The client bank account was opened on 22 September 2011 and the evidence of the First Respondent was that the Second Respondent had ensured that the Third Respondent, although not a Registered Foreign Lawyer, was placed on the bank mandate as a signatory. In his letter to the SRA the Second Respondent said that he

had done no such thing; it was the First Respondent who had placed the Third Respondent's name on the bank mandate as he had been paid money by the Third Respondent. The Tribunal believed the First Respondent. The Tribunal had heard from the First Respondent that the Second Respondent was most insistent that this happened and it was clear that both the First and Second Respondent were aware of the position. The Tribunal again found that the facts spoke for themselves and this allegation was found to have been proved beyond reasonable doubt against both of the Respondents.

Allegation 1.4 failed to maintain the books of account contrary to Rule 32 Solicitors Accounts Rules 1998 ("SAR").

98.8 This allegation was admitted by the First Respondent on the basis of strict liability and treated as having been denied in its entirety by the Second Respondent.

98.9 The Tribunal had read in the FIO's Report and from the FIO in evidence that there were no books of account at the firm and that transactions had been carried out. However, there was no evidence before the Tribunal that either of the Respondents were aware of the transactions. The Tribunal found this allegation to have been proved beyond reasonable doubt on the basis there had been client account activity and yet no Books of Account. Because there was no evidence that they were aware of the transactions the finding was on the basis of strict liability only against both of the Respondents.

99. **The allegations against the First Respondent in the First Case alone were that he:-**

Allegation 2.1 Permitted improper withdrawals to be made from client account contrary to Rule 22 SAR;

99.1 This allegation was admitted by the First Respondent on the basis of strict liability.

99.2 The Tribunal fully accepted that the First Respondent knew nothing about the activities of the Third Respondent and as soon as he realised what had occurred he contacted the relevant authorities and the Police; in particular it accepted the evidence of the First Respondent that he believed that the firm had no clients.

99.3 The Tribunal found this allegation to have been proved beyond reasonable doubt against the First Respondent on the facts and evidence before it, on the basis of strict liability.

Allegation 2.2 Permitted Dowgate Solicitors to practice as an unauthorised sole practice contrary to Rule 14.04 (4) of the Code.

99.4 This allegation was denied by the First Respondent.

99.5 The Tribunal had evidence before it that in the period after the Second Respondent had resigned from the firm, the practice had continued as a sole practice. The First Respondent should have applied to the SRA for authorisation but he did not do so. This was a matter for him and it was not for the SRA to remind of his obligations.

99.6 The Tribunal found this allegation to have been proved beyond reasonable doubt against the First Respondent on the facts and evidence before it.

100. **The allegations against the Second Respondent in the Second Case, Muhammad Ali Shah alone were that he:-**

Allegation 5.1 **practised and/or permitted themselves to be held out as practising under the style of Alison Solicitors when not having been granted the requisite recognition by the SRA contrary to Rules 1.06 and 12.01 of the Solicitors Code of Conduct 2007;**

Allegation 5.2 **accepted instructions to act in an immigration matter when not authorised to do so contrary to Rules 1.06 and 12.01 of the Solicitors Code of Conduct 2007.**

Allegation 5.3 **improperly obtained funds from an immigration client ("TM") contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007;**

Allegation 5.4 **failed to account for funds received from TM in the course of an immigration matter contrary to Rule 1.02 and 1.06 of the Solicitors Code of Conduct 2007.**

Dishonesty was alleged in respect of allegations 5.3 and 5.4, however dishonesty was not an essential ingredient required for the allegation to be proved.

100.1 These allegations, including that of dishonesty, were treated by the Tribunal as having been denied by the Second Respondent.

100.2 In her evidence, Ms Melnychuk had described an Asian male whom she had met in the offices of Alison Solicitors on one occasion around October 2010; this male had been referred to as "the boss" by Victoria. In addition the First Respondent in the First Case had said in his written evidence that he had met the Second Respondent on 2 December 2010 when he applied for a salaried partner position at Alison Law, the First Respondent in the Second Case had not been at the firm at the time. The Tribunal found as a matter of fact that the title "Alison" was used interchangeably throughout a number of entities. The Second Respondent had also signed the OICS application on 20 September 2010 and it was clear to the Tribunal from the evidence before it that Alison existed in some form until at least late February 2011 and during that time the Second Respondent was holding both himself and the First Respondent out as an authorised firm of solicitors. The Tribunal therefore rejected the Second Respondent's assertion shown at page 80 of GW1:

> "regarding Alison Solicitors I started this company with *[Name Redacted]* in April 2010 and then I refused my services to her before going to Pakistan on 1 August 2010 and I have never been an active part of this company after that."

100.3 The Tribunal noted its own Practice Direction No. 5. A professional man was expected to give an account of his actions to the Tribunal. The Respondent had failed to do so and the Tribunal would draw an adverse inference from that omission.

100.4 The Tribunal found allegation 5.1 to have been proved beyond a reasonable doubt on the evidence before it.

100.5 However, the Tribunal was not satisfied beyond reasonable doubt that the Second Respondent had himself accepted instructions from Ms Melnychuk and accordingly it found allegation 5.2 not proved.

100.6 In regard to allegations 5.3 and 5.4 the Tribunal found that Ms Melnychuk's money in respect of professional fees had been taken at the offices of Alison Solicitors. The evidence of Ms Melnychuk had been that she had gone to those offices for immigration advice and had been seen by Victoria and an Asian woman calling herself "Ismat" and that the monies had been paid in cash and a receipt for professional fees had been given. Ms Melnychuk had neither received any advice nor had she been reimbursed for the monies paid. Whilst receipts had been given there was no evidence that the monies had been lodged in any account with the firm, which firm was not approved by the SRA at the relevant time. The Tribunal found these allegations to have been proved beyond reasonable doubt against the Second Respondent on the evidence before it.

100.7 The Tribunal applied the dual tests for dishonesty in Twinsectra. The Tribunal found that the Second Respondent had no intention of using the monies for the purposes for which they had been given and that this was dishonest by the standards of reasonable and honest people. Whether directly or indirectly he would have known that the firm was not in a position to do the work and all of the receipts predated the OICS application. The Tribunal therefore found that the Second Respondent must have known by the standards of reasonable and honest people that his actions were dishonest.

101. **The allegation against the Third Respondent in the First Case, Riaz Ahmed alone was that he:-**

Allegation 3.1 **Having been involved in a legal practice but not being a Solicitor has in the opinion of the SRA occasioned or been a party to, with or without the connivance of a Solicitor, acts or defaults in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in S43 (1A) Solicitors Act 1974.**

In acting as he did he behaved dishonestly. He knew that he was so behaving when he misappropriated purchase funds by paying them away to parties not entitled to them, including himself.

101.1 This allegation, including that of dishonesty, was treated by the Tribunal as having been denied by the Third Respondent.

101.2 The Tribunal had heard that the Third Respondent was a foreign lawyer who was yet to be registered. He had permitted his name to be put on the firm's client account as a signatory and had held himself out as a partner in the firm when he was not a Registered Foreign Lawyer. He had undertaken conveyancing work when he had no experience and had commenced the fraudulent transaction on 2 September 2011, two days after his arrival at the firm, and by 5 October 2011 had dispersed the completion monies to persons not entitled to the monies, including himself. He had subsequently disappeared. The Tribunal found this allegation to be proved beyond a reasonable doubt on the facts and documents before it.

101.3 The Tribunal had applied the dual tests in Twinsectra and was satisfied beyond a reasonable doubt that in acting as he had the Respondent was dishonest by the standards of reasonable and honest people and that by those same standards that he himself knew that his actions were dishonest.

102. **The allegation against the First Respondent in the Second Case alone was that she:-**

Allegation 4.1 improperly permitted herself to be held out as practising in partnership under the style of Alison Solicitors when not having obtained the appropriate recognition from the SRA and/or the Office of the Immigration Services Commissioner contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

102.1 This allegation was admitted by the First Respondent.

102.2 The Tribunal found this allegation to be proved beyond a reasonable doubt on the facts and evidence before it.

Previous Disciplinary Matters

103. None against any of the Respondents.

Mitigation

104. The Tribunal fully considered any mitigation put forward by the First Respondent in the First Case, in his documentation before the Tribunal and his sworn oral evidence.

105. On behalf of the First Respondent in the Second Case, Mrs Bint-E-Ahmad, Ms Heley told the Tribunal that the background to this case was surprisingly similar to another case that had been before the Tribunal, case number 10892 – 2011, Astons Solicitors Limited. In this case the Second Respondent had been involved but was not a Respondent. The Tribunal was invited to read the background to the case at paragraphs 12 – 26 in order to assist it in understanding that the Second Respondent was a plausible individual who took in inexperienced solicitors. In fact he made a habit of targeting such solicitors, using them and then abandoning them to deal with the fallout. Her client had been the victim of identity fraud and when she had been applying for recognition her experience had been limited, she was very naive at the time and she had had no management experience. Ms Heley invited the Tribunal to look at the character references and client satisfaction questionnaires that she placed

before it. Her client had now been working for "E" solicitors for some 2 ½ years and her colleagues and clients there held her in some esteem. In this case her personal conduct had been a sin of omission rather than commission; it could be seen from the evidence of Ms Melnychuk that her presence had not been required for the misconduct to continue.

106. Ms Heley went on to say that her client was of otherwise good character and that all of the problems that she had experienced had arisen from the activities of the Second Respondent; she had been taken in in the same way as the First Respondent in the First Case. She had engaged with the SRA and attended at the CMHs for this case. She had responded to the SRA's queries and her conduct had not been repeated. When she had discovered her name had been used as a director of Alfa Solicitors without her knowledge she had immediately terminated her relationship with the Second Respondent.

107. Ms Heley referred to the Sanctions Guidance and asked the Tribunal to note that the First Respondent's conduct was not deliberate and calculated or repeated. In fact it had been contained over a short period of time between September 2010 and January 2011. She had not taken any advantage of anyone, neither had she concealed anything; in fact she had been too inexperienced to recognise the warning signs. In Ms Healy's submission what had occurred had resulted from the deception of the Second Respondent. The only loss arising from her misconduct was the damage to the profession. There was significant mitigation in this case and Ms Healy urged the Tribunal to consider a Reprimand. The First Respondent had suffered over a period of years and it was now more than a year since the proceedings had been issued; the Tribunal could legitimately find that this distressing experience was punishment enough. If the Tribunal was minded to impose restrictions upon her practice then Ms Healy asked that it bear in mind that such conditions were expensive to lift and the Tribunal would be aware that the SRA always looked carefully at potential partners and therefore in Ms Healy's submission any restrictions were unnecessary.

108. No mitigation was advanced by the Second Respondent in both cases, Mr Shah, or by the Third Respondent in the First Case, Mr Ahmed.

Sanction

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

<u>The First Respondent in the First Case</u>

110. The Tribunal had found each and every allegation against the First Respondent proved and credited him with admitting most of the allegations, albeit late in day. The Tribunal accepted the First Respondent's version of events but it also found that he had been naive and credulous, although he had apparently been targeted by the Second Respondent. The Tribunal had believed him when he had said that he thought that the firm had no clients. It was to his credit that he had acted immediately when he became aware of the fraudulent conveyancing transactions.

111. However the First Respondent had been a partner in Dowgate Solicitors and with partnership came responsibility. Whilst the Tribunal believed his explanation that the

Third Respondent had been introduced to the firm by the Second Respondent, he should have carried out due diligence on the Third Respondent but he failed to do. It was a serious matter that he had allowed the Third Respondent, an unqualified individual, to become a signatory on the client bank and in doing so he had given the Third Respondent the opportunity to carry out the fraudulent transaction. He did not have complete or, indeed, any significant control of the business. If he had carried out his duties he would have prevented the activities of the Third Respondent.

112. The Tribunal had taken careful note of the appropriate case law referred to by Mr Williams. The Respondent's failings were serious and had indirectly caused the loss of client money, although he had acted swiftly to prevent further loss. The Tribunal considered that the case of Weston v The Law Society [1998] the Times July 15 1998 was relevant to the issues before it in relation to stewardship of client monies. However, whilst strike off had been held to sometimes be an appropriate penalty in the absence of dishonesty, particularly where loss of client money was concerned, on a consideration of all the circumstances of this case the Tribunal did not view the Respondent's actions and inactions as being of such a serious nature or that they could be regarded as manifestly incompetent (following Iqbal v The Solicitors Regulation Authority [2012] EWHC 23251 (Admin.)). The Tribunal also considered Bolton v The Law Society [1994] 1 WLR 512 but came to the conclusion that it did not apply to the First Respondent because his honesty and integrity were not in doubt. The Tribunal did however regard the matter as serious (following Weston) and considered that a period of suspension would be appropriate. The Tribunal assessed the period of suspension as being one of six months; by the expiry of the suspension the Respondent would have been out of practice for a total period of around two and a half years. The Tribunal was also concerned that, due to his lack of suitable experience, the Respondent should not become a sole practitioner in the foreseeable future. It also therefore imposed a condition to that effect.

The Second Respondent in both the First and Second Cases

113. The Tribunal had found each allegation against the Respondent to have been proved, including an allegation of dishonesty. The Tribunal was of the view, taking all of the evidence into account, that the Respondent was a predator, seeking out inexperienced solicitors who were placed in positions of vulnerability where he could manipulate them. The finding of dishonesty alone in the absence of exceptional circumstances would lead the Tribunal to conclude that the Respondent should be struck off and there were no exceptional circumstances in this case. However, even without a finding of dishonesty the Tribunal had determined that the Respondent should be struck off; he had displayed none of the characteristics and qualities required of a solicitor or a Registered Foreign Lawyer and was decidedly not a person who could be "trusted to the ends of the Earth" (Bolton). There had been a thread running throughout the two cases in which the Respondent had displayed an actively dishonest intent. In the First Case he had made a number of assertions in his letter to the SRA that were designed to prove his innocence and yet all of the evidence pointed the other way. In the Second Case he had sought to blame the First Respondent; the Tribunal did not believe him. The Tribunal had heard from two other Respondents who had said that they had been registered as directors of Alfa Solicitors LLP without their permission; all the evidence indicated that the Second Respondent was the instigator

of those registrations. The Respondent would be struck off the Register of Foreign Lawyers

The Third Respondent in the First Case

114. The Tribunal had found the allegation against the Respondent proved and that he had been dishonest. The only sanction available to it was the imposition of the section 43 Order requested by the Applicant. The Tribunal had no difficulty in imposing a section 43 order on the Third Respondent in the First Case.

The First Respondent in the Second Case

115. The Tribunal had before it one admitted and proved allegation. It accepted that the Respondent had been relatively inexperienced at the time of these events and that she had been unfortunate to come across the Second Respondent, whose pattern of behaviour was very clear to the Tribunal. In this case her culpability had been limited to her lack of experience, there had been no client account involved and she had been unaware that any business was being conducted. The Tribunal had applied the principles concerning competence referred to by Mr Williams in Iqbal but also noted that her legal work appeared to be competent, as she had worked at E solicitors without incident for some two and a half years and she was well regarded there. However, her management and administration skills were lacking.

116. In all of the circumstances the Tribunal would impose a Reprimand on the Respondent and in addition it would also impose a condition that she must not practice as a sole practitioner. It had listened carefully to what Ms Heley had said concerning such a condition but considered that it was in the public interest that one be imposed immediately.

Costs

117. Costs were requested in the sum of £28,427.35 in relation to the First Case and £23,302.80 in relation to the Second Case. Mr Williams asked for summary assessment of the costs in both cases with immediate payment orders, as in his submission there was no or insufficient evidence of any impecuniosity of any of the Respondents; however the SRA would necessarily look to the realities of the situation when attempting enforcement. Mr Williams sought orders apportioned as the Tribunal thought right but in his submission joint and several orders would not be appropriate.

The Tribunal's Decision as to Costs

118. The Tribunal had given careful attention to the financial information contained within the First Respondent in the First Case's email dated 6 January 2014, although it was noted that this was not in the form of a sworn document, and to the First Respondent in the Second Case's financial information contained within her witness statement dated 3 January 2014 and verified by her as being true and accurate in her evidence. The Tribunal accepted this information. In the judgement of the Tribunal neither of these Respondents had been deprived of their livelihoods nor was impecunious to the extent that the principles in D'Souza v The Law Society [2009] EWHC 2193 (Admin)

needed to be applied. There was no financial information before the Tribunal concerning the other two Respondents.

119. The Tribunal had carefully examined the costs requested by the Applicant and found them to be reasonable; it accordingly summarily assessed costs in the amounts requested. The Tribunal decided that costs should be apportioned between the Respondents in proportion to their culpability for what had occurred and the damage caused by their actions. In the First Case it was appropriate that the First Respondent should pay £7,107.08 and the remainder of £21,320.27 be paid by the Second and Third Respondents with their liability for payment to be joint and several. It was appropriate that the First Respondent in the Second Case pay a small proportion of the costs assessed by the Tribunal at £2,330.28, with the remainder to be paid by the Second Respondent.

Statement of Full Orders

120. 1. The Tribunal Ordered that the Respondent *[NAME REDACTED]*, solicitor, be suspended from practice as a solicitor for the period of six months to commence on 9th day of January 2014 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,107.08.

2. The Respondent should also be subject to a condition imposed by the Tribunal as follows: –

2.1 the Respondent may not practice as a sole practitioner.

3. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 2 above.

121. The Tribunal Ordered that the Respondent, Muhammad Ali Shah, Registered Foreign Lawyer be struck off the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to application and enquiry number 11067 – 2012 fixed in the sum of £20,972.52 and application and enquiry number 11063 – 2012 fixed in the sum of £21,320.27 (liability for £21,320.27 to be joint and several with Riaz Ahmed).

122. The Tribunal Ordered that as from 9th day of January 2014 except in accordance with Law Society permission:

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Riaz Ahmed;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitors practice the said Riaz Ahmed;

(iii) no recognised body shall employ or remunerate the said Riaz Ahmed;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Riaz Ahmed in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Riaz Ahmed to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Riaz Ahmed to have an interest in the body;

and the Tribunal further Ordered that the said Riaz Ahmed do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,320.27 (such liability to be joint and several with Muhammad Ali Shah).

123. 1. The Tribunal Ordered that the Respondent *[NAME REDACTED]*, solicitor, be Reprimanded and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,330.28.

2. The Respondent shall also be subject to a condition imposed by the Tribunal as follows: –

2.1 the Respondent may not practice as a sole practitioner.

3. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 2 above.

Dated this 21st day of February 2014
On behalf of the Tribunal

J. C. Chesterton
Chairman