# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11320-2014

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY Applicant

and

KANWAR BHAN, First Respondent

*[NAME REDACTED]* Second Respondent

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Before:

Mr A. Ghosh (in the chair)
Mr R. Nicholas
Mr R. Slack

Date of Hearing: 9 September 2015

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**Appearances**

Mr Peter Steel, solicitor, of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4Y 7RF for the Applicant.

The First Respondent was not present or represented.

Mr Dirk van Heck, counsel, of Counsel's Chambers, 7A, High Street Mews, Leighton Buzzard LU7 1EA, for the Second Respondent, who was present.

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# JUDGMENT

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**Allegations**

1. The allegations made against the First Respondent, Mr Kanwar Bhan, and Second Respondent, in a Rule 5 Statement dated 19 December 2014 (as amended on 9 September 2015), were that:

1.1 They breached Rules 1.1 and 1.2 of the Solicitors Accounts Rules 2011 ("SAR 2011") and/or alternatively any of Principles 2, 6, 8 and 10 of the SRA Principles 2011 ("the Principles") and/or alternatively failed to achieve outcomes O7.04 and O10.3 of the SRA Code of Conduct 2011 ("the 2011 Code") by:

1.1.1 Failing to keep properly written up accounting records and/or appropriate records of all dealings with client money, in breach of Rule 29(1) and 29(2) of the SAR 2011; and/or

1.1.2 Failing to carry out client reconciliations at five weekly intervals, in breach of Rule 32(7) of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or Rules 29.12 and 29.13 SAR 2011 where such conduct occurred after 6 October 2011; and/or

1.1.3 Withdrawing and/or permitting the withdrawal of client money from client account in circumstances other than those permitted, leading to a cash shortage on client account in breach of Rules 20.1, 20.3 and 20.9 of the SAR 2011; and/or

1.1.4 Failing promptly to remedy breaches of the rules on discovery by replacing money improperly withdrawn from client account, in breach of Rule 7.1 of SAR 2011.

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

2.1 He made a misleading statement or caused or allowed a misleading statement to be made on a professional indemnity insurance form, in breach of Principles 2 and/or 6 of the Principles;

2.2 He permitted or allowed the firm to become involved in, or acquiesced in the firm's involvement in, a conveyancing transaction that bore the hallmarks of fraud, in breach of Principles 2, 6 and 8 of the Principles; and further or alternatively failed to achieve outcome O(7.5) of the 2011 Code;

2.3 He permitted the appointment of the Second Respondent as Compliance Office for Finance and Administration ("COFA") in circumstances where she was unsuitable for this role and/or failed to have suitable arrangements in place to ensure she was able to discharge her duties properly, in breach of Principles 7 and 8 of the Principles and further or alternatively failed to achieve all or any of the outcomes O7.2, O7.4, O10.2, O10.5 of the 2011 Code; and further or alternatively breached Rule 8.5(a) and (d) of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 ("the Authorisation Rules").

3. The further allegation, made against the Second Respondent alone was that:

3.1 She accepted the position of COFA without understanding what the role meant and/or failed to take the appropriate steps to comply with the requirements of the role, in breach of Principles 2, 7 and 8 of the Principles and further or alternatively failed to achieve all or any of the outcomes O10.1 and O10.4 of the 2011 Code and further or alternatively breached Rule 8.5(e) of the Authorisation Rules.

4. Allegation 1.1.3 was made on the basis that the First Respondent was dishonest, but it was not necessary to establish dishonesty for this allegation to be made out against the First Respondent.

**Documents**

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

Applicant:-

- Application dated 19 December 2014
- Rule 5 Statement, with exhibit "PS1", dated 19 December 2014
- Copy Mortgage Fraud Practice Note (as at 6 October 2011)
- Statement of costs at the date of issue
- Statement of costs dated 2 September 2015
- Service and response bundle

Second Respondent:-

- Second Respondent's Answer, dated 9 March 2015
- Second Respondent's witness statement dated 9 September 2015
- Second Respondent's personal financial statement dated 8 September 2015

There were no documents submitted by the First Respondent.

**Preliminary Matter (1) – Proceeding in the absence of the First Respondent**

6. Mr Steel, the Applicant's solicitor informed the Tribunal that he knew Mr Slack, the lay member, through work both of them had carried out for the General Medical Council some years before. No objection to Mr Slack hearing the case was made by the Second Respondent and the Tribunal was satisfied that there was no reason for Mr Slack to recuse himself.

7. As the First Respondent was neither present nor represented, and as no communication from him had been received by the Tribunal, the Tribunal considered as a preliminary matter whether the substantive hearing should proceed in the First Respondent's absence.

*Applicant's Submissions*

8. Mr Steel submitted that the substantive hearing should proceed notwithstanding the absence of the First Respondent and he referred the Tribunal to the service bundle which he had prepared, having anticipated that the First Respondent would not attend the hearing.

9. Mr Steel submitted that it was clear that the Respondent had been served with the proceedings. He had been represented by counsel at a Case Management Hearing ("CMH") on 10 March 2015, at which counsel had told the Tribunal that the First Respondent had been served with the application and Rule 5 Statement. Counsel had also told the Tribunal on that occasion that the First Respondent was in India but intended to return to the UK. Counsel had also told the Tribunal that she was able to contact the First Respondent by email.

10. Mr Steel stated that notice of a hearing to take place on 22 and 23 September 2015 was sent by the Tribunal in April 2015. On 19 August 2015 the Tribunal sent a notice of re-listed hearing, giving the date for this hearing as 9 September 2015. Mr Steel told the Tribunal that this notice was given less than 42 days before the date of the hearing; Rule 12(1) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") provides that:

> "… The hearing shall not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the expiry of a period of 42 days beginning with the date of service of the notice appointing the date of hearing."

Whilst the Second Respondent wished to proceed with the hearing, it could not be said that all parties had agreed to shorter notice of the hearing. However, the Tribunal had power to abridge the time for any step in the proceedings, under Rule 21(2) of the Rules.

11. Mr Steel told the Tribunal that the First Respondent had instructed counsel at an earlier stage in the proceedings, but had fallen out of contact with her. Mr Steel told the Tribunal that he had two telephone numbers for the First Respondent; he had tried to call both but neither number worked.

12. Since the CMH in March 2015, the following communications (or attempts at communication) with the First Respondent had taken place:

12.1 Email Mr Steel to counsel, Ms Aly, on 16 April 2015 noting that the First Respondent had been due to serve his response and supporting documents by 7 April 2015 and enquiring about the current position;

12.2 Email Ms Aly to Mr Steel on 16 April 2015 indicating that the First Respondent was still abroad and that she was attempting to seek his instructions;

12.3 Email Mr Steel to Ms Aly, seeking an update, on 10 June 2015;

12.4 Email Ms Aly to Mr Steel on 15 July 2015 indicating that she had attempted to chase her client and continued to be without instructions;

12.5 Email Mr Steel to Ms Aly on 14 August 2015, enquiring if she had informed the First Respondent of the hearing listed for 22 and 23 September 2015;

12.6 Email Ms Aly to Mr Steel on 14 August, stating that she was without any instructions and that she had attempted to contact the First Respondent about Mr Steel's correspondence;

12.7 Email Mr Steel to the First Respondent on 1 September 2015, informing him of the hearing date of Wednesday 9 September 2015.

13. It was noted that the Applicant did not have an effective address for the First Respondent but had asked him to supply one at about the time the proceedings were served.

14. Mr Steel outlined the nature of the Tribunal's discretion to proceed in the absence of a Respondent. He pointed out that that discretion must be exercised judicially and with extreme caution. The Tribunal was referred to the factors to be considered, as set out in R v Hayward and others [2001] EWCA Crim 168 ("Hayward"), R v Jones [2002] UKHL 5 (House of Lords) and [2001] EWCA 168 (Court of Appeal) ("Jones") and Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 ("Tait").

15. Mr Steel submitted that the First Respondent knew of the proceedings. He argued that it was unlikely that an adjournment would lead to the First Respondent choosing to appear at a later hearing. The First Respondent had been represented at the CMH and could have arranged representation for this hearing if he had chosen to participate. Normally, allegations should be heard as promptly as possible. There was a disadvantage to the First Respondent in proceeding at this hearing, in that he was not present to give his account of events; however, that was the First Respondent's choice. Further, the Second Respondent was anxious for the proceedings against her to be concluded promptly; she had made full and prompt admissions. The parties would be disadvantaged in costs if the proceedings were put off to another day. Further, the First Respondent could ask for a re-hearing, under Rule 19 of the Rules if there were good reason to do so; this gave him an additional protection. Mr Steel submitted that there were in this case compelling reasons to proceed in the First Respondent's absence.

16. Mr Steel submitted that if the Tribunal did not decide to proceed with the hearing against the First Respondent, the allegations against the Second Respondent could be severed.

*Second Respondent's Submissions*

17. Mr van Heck for the Second Respondent submitted that that the Second Respondent wanted to proceed with the hearing today. The Second Respondent was keen that the proceedings should be concluded and wished to avoid the costs of representation at an adjourned hearing. The Second Respondent, who had a young baby, had travelled to the hearing from the West Midlands,

*The Tribunal's Decision*

18. The Tribunal had due regard to the First Respondent's right to a fair trial and right to respect for private and family life under section 1(1) of the Human Rights Act 1998 and Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. The Tribunal considered very carefully the submissions of the parties and the contents of the service bundle. The Tribunal noted from this, and the submissions of Mr Steel about his attempts to contact the First Respondent by telephone, that the Applicant had tried to contact the First Respondent both directly and through counsel who represented him in March 2015.

20. The Tribunal noted that Rule 16(2) of the Rules 2007 provides:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the respondent fails to attend in person or is not represented at the hearing."

21. The Tribunal was satisfied that the First Respondent had been served with the proceedings. It noted that notice of this hearing date had not been sent to the First Respondent until 19 August 2015. This had given a shorter notice period than provided for in the Rules. However, the Tribunal had the power to abridge time where appropriate, under Rule 21(2) of its Rules. In this case, that decision had to be considered alongside the application to proceed in the absence of the First Respondent, with all the circumstances being weighed carefully.

22. The Tribunal noted that the case law made it clear that there was a general right for an individual to be present and/or represented at the hearing of a case against the individual However, that right could be waived if the Respondent deliberately absented himself from the proceedings. The Tribunal was mindful of the dicta of Rose LJ in Jones that the discretion to proceed with a trial in the absence of a Defendant "must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented….in exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account".. Factors to be considered, as set out in Rose LJ's judgment in the Jones case at paragraph 22, included: the nature and circumstances of the defendant's behaviour in absenting himself from the trial and in particular whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; whether an adjournment might result in the defendant attending voluntarily; the likely length of the adjournment; the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him; and the general public interest that a trial should take place within a reasonable time of the events to which it relates. The Tait case also referred to considering the seriousness of the case.

23. The Tribunal was satisfied that the First Respondent had voluntarily absented himself from either engagement in the proceedings or attendance. He had had numerous opportunities during the year, since the proceedings were issued, in which he could have contacted the Tribunal and/or the Applicant to indicate that he wished to take part; there had been no such indication. The First Respondent was undoubtedly aware of the proceedings and the allegations against him, but had not sought to submit any sort of explanation or account of what had happened. In these circumstances, the Tribunal was satisfied that the First Respondent had voluntarily absented himself from both the engagement in and attendance at the proceedings. Further, there was nothing to suggest that adjourning the hearing would result in the First Respondent either attending or instructing a representative. There was some disadvantage to the First Respondent, as he would not have the chance to give his account of events, but he could have put forward an account at any time since the proceedings began; indeed, the Tribunal's usual procedure required and encouraged parties to set out their position before the substantive hearing. It was in the interests of the Second Respondent to dispose of the proceedings against her at this hearing. Further, the public interest required that proceedings should be heard promptly.

24. The Tribunal was satisfied that the position would have been no different had the First Respondent had longer notice of the hearing date. The Tribunal was therefore satisfied that the time for service of the (amended) notice of hearing should be abridged.

25. As the Tribunal was satisfied that the First Respondent had waived his right to attend the hearing and/or be represented at it, the Tribunal directed that the hearing should proceed against both Respondents, notwithstanding the absence of the First Respondent.

**Preliminary Matter (2) – Amendment to an allegation**

26. Mr Steel applied to amend allegation 1.1.2 to refer to Rule 29.12 of the SAR 2011, rather than Rule 29.11. Mr Steel submitted that this would correct the reference to the Rule; there would be no prejudice to either Respondent as the alleged breaches were clearly specified. Mr van Heck told the Tribunal that his client had no objection to that amendment.

27. The Tribunal was satisfied that it was reasonable and just to permit the amendment.

**Factual Background**

28. The First Respondent was born in 1967 and was admitted as a solicitor in 2007. His name remained on the Roll of Solicitors at the date of the hearing.

29. The Second Respondent was born in 1977 and was admitted as a solicitor in 2008. Her name remained on the Roll of Solicitors at the date of the hearing.

30. At all material times, both Respondents practiced as members of GS Law LLP (formerly known as PHD Law LLP) ("the Firm") from offices at 31 A South Road, Southall, Middlesex UB1 1SW ("the Southall office") and 37 Cartwright Street, Wolverhampton, West Midlands WV2 3BT ("the Wolverhampton office").

31. The SRA resolved to intervene into the Firm on 23 July 2013.

32. The allegations arose following an inspection undertaken by Mr Jason Connell, a Forensic Investigation Officer of the SRA ("the FI Officer"), which began on 10 July 2013 and resulted in a Forensic Investigation Report dated 19 July 2013 ("the FI Report"). The contents of the FI Report were relied on by the Applicant. Unless otherwise stated, the factual matters set out below are matters reported in the FI Report.

33. The contents of the FI Report were raised with the Respondents in letters dated 7 February 2014. Resolve Consultancy Limited ("Resolve Consultancy") responded to this letter on behalf of both Respondents on 28 February 2014.

***Accounting Records/Reconciliation***

34. The inspection of the Firm began on 10 July 2013 at the Firm's Wolverhampton office. The FI Officer conducted an initial interview with the First Respondent; the FI Officer made notes of that meeting. The FI Officer reported that the books of account were not compliant with the SAR 2011.

35. At the date of inspection, the First Respondent could not provide a list of liabilities to clients as at 10 July 2013, nor any client account reconciliations nor a cash book. As a result, the FI Officer was unable to calculate whether the funds held on the client bank account were sufficient to meet total liabilities to clients.

36. During the course of the interview, the First Respondent told the FI Officer that he operated a manual bookkeeping system and that he was responsible for the day to day maintenance of the books and records.

37. When asked about the account reconciliations, the First Respondent was recorded as telling the FI Officer:

> "He did not know what a client account reconciliation was and that the Firm had never completed a reconciliation since its inception in 2011".

The First Respondent was also recorded as telling the FI Officer that the Second Respondent was the Firm's COFA, "but has no knowledge of finance or administration".

38. During the course of the interview, the First Respondent was asked if he maintained any client ledgers to which he said, "No". When asked how he knew how to attribute client funds and costs he said, "We normally make some notes on the file". A review of the conveyancing file in relation to the sale of 55 S Road (referred to below) revealed that there were no ledgers or manual notes maintained on the file, although there was a copy of a NatWest account transaction for the period 1 June 2013 to 6 June 2013.

39. Following the intervention (23 July 2013) two bundles of papers were located amongst the non-client files, comprising 15 handwritten ledgers and 26 typed ledgers. Only two of those ledgers included a figure for costs.

40. In their representations on behalf of the First Respondent in a letter of 28 February 2014, Resolve Consultancy stated that:

> "… [The First Respondent] was not aware of the requirement to maintain bank account reconciliation statements"

and further that he was:

> "not au fait with the SRA Accounts Rules 2011; he considered his manual bookkeeping system satisfied the basic requirements and that he was in fact reconciling his accounts".

The letter from Resolve Consultancy also stated that when the SRA attended the Firm in July 2013, all accounts up to April 2013 had been prepared and finalised; only the last couple of months needed to be prepared and that the accountant was in the process of doing this at the time, although no supporting evidence was provided.

***Improper withdrawals from Client Account***

41. During the course of the investigation, the FI Officer identified that as at 9 July 2013 there was a minimum cash shortage on the Firm's client account of £104,753.

42. A review of the Firm's banking transactions between 10 April 2013 and 9 July 2013 showed that the First Respondent had made 55 round sum transfers ranging from £50 to £33,000, totalling £136,653 from client to office account. The Applicant alleged these were improper transfers.

43. During the same period, the FI Officer noted that the First Respondent had made five round sum credit transfers from office to client account, ranging from £900 to £15,000 and totalling £31,900. In the light of these figures, the FI Officer calculated there was a minimum cash shortage of £104,753 (being £136,653 minus £31,900).

44. During the interview on 10 July 2013, the FI Officer asked the First Respondent what the payments from client to office account were, to which he replied,

> "We did a bad mistake. When we had bills we used the money out of the client account. We put it back when we had funds available".

45. The FI Officer asked the First Respondent why £33,000 had been transferred out of the client account on 9 July 2013, to which he replied,

> "I made a mistake. I meant to take only £3,300 and I hit the wrong key. It was to pay bills".

When asked if they were for costs owing to the Firm, the First Respondent answered, "No".

46. During a telephone conversation between the FI Officer and the First Respondent on 12 July 2013, the First Respondent was asked if the £33,000 had been repaid into the client account, to which he responded that "some had". When requested to provide

further details of the withdrawals, the First Respondent was unable to do so but he denied that they were for his or his family's personal use.

47. The FI Officer conducted a review of the Firm's client account bank statement transaction details to identify how the transferred client funds had been used by the First Respondent. By way of example, the FI Report noted that £3,500 was transferred from client to office account on 1 July 2013 and the following withdrawals were made from office account that day:

| | | |
|---|---|---|
| 47.1 | Call ref 0883 [First Respondent] | £ 700.00 |
| 47.2 | Call ref 0883 [First Respondent] | £1,100.00 |
| 47.3 | 29 June 13 Dudley Road, Builders | £ 572.84 |
| 47.4 | ATM Infocash 29 June | £ 300.00 |
| 47.5 | DD Premium Credit Limited | £ 324.46 |
| 47.6 | DD Close Premium Finance | £ 358.79 |
| | **Total** | **£3,356.09** |

48. A review of the bank transactions on the Firm's office account for the period 12 February 2013 to 8 July 2013 showed that payments totalling £33,887 (£27,400 of which was withdrawn between 10 April and 9 July 2013) were made to the First Respondent and there were also ATM cash withdrawals totalling £2,870.

49. In the response from Resolve Consultancy on behalf of the First Respondent, it was accepted that client money was withdrawn for the benefit of the Firm but it was denied that it was for the First Respondent's own benefit. The First Respondent's position was that the money was utilised for the purpose of paying office expenses. The letter stated amongst other things:

> "He was aware that he was not permitted to use client money for his own benefit, but he believed it was permissible to use client money to pay debts incurred by the Firm, as long as the monies were replaced. He lacked sufficient understanding of the Accounts Rules and did not intentionally commit a breach".

50. A review by the FI Officer of the bank transactions on the Firm's office account showed payments what were unusual for a law firm to make as set out below:

| Date | Description | Amount |
|---|---|---|
| **22/5/13** | 167421 May 13, Jay Jewellers, Wolverhampton | £515 |
| **22/5/13** | 167421 May 13, H Samuel, Wolverhampton | £150 |
| **18/6/13** | Harvey & Thompson Pawnbrokers | £2,890.09 |
| **24/6/13** | 167422 June 13, JD Sports, Wolverhampton | £80 |
| **26/6/13** | 167425 June 13, JD Sports, Wolverhampton | £30 |

51. An analysis by the SRA's post intervention Accounts Analyst noted further unusual transactions on office account in the period March to June 2013, which included, in May 2013:

| Date | Description | Amount |
|---|---|---|
| **3 May 2013** | Peacock | £27 |
| **3 May 2013** | Iceland | £87.10 |
| **3 May 2013** | Next | £42 |
| **7 May 2013** | Cash | £300 |
| **7 May 2013** | Cash | £100 |
| **7 May 2013** | Cash | £200 |
| **13 May 2013** | Cash | £200 |
| **18 May 2013** | Zari – Indian Restaurant | £225 |
| **18 May 2013** | Style Mantra | £65 |
| **18 May 2013** | Laffaire Exclusive – fashion accessories | £115 |
| **18 May 2015** | Next | £297 |
| **18 May 2015** | Matalan | £117.50 |
| **22 May 2013** | BHS | £17 |

52. In response to questions raised in the Applicant's letter of 7 February 2014 about the First Respondent's failure to remedy the breach, both before and after it was identified by the FI Officer, Resolve Consultancy stated on behalf of the First Respondent that he was unable to raise sufficient funds to repay the cash shortage. The letter stated that the First Respondent had sought a loan of £100,000 from a personal friend, which "remained outstanding". The shortfall was not remedied.

53. Following the intervention, the Applicant's Accounts Analyst produced a "best list" in order to calculate the shortfall on client account. The "best list" totalled £387,105.06. The balance on client account at the date of intervention was £38,105.06, indicating a shortfall of £348,145.10. (This sum included the £279,750 comprising the residual balance on the 55 S Road transaction, set out below). It was not possible to verify the shortfall as the ledgers recovered did not reflect all of the transactions on the files.

***Misleading Statement on Insurance Proposal Form***

54. The FI Officer reviewed a copy of a Solicitors' Professional Indemnity Insurance Proposal Form 2012 for "solicitorsPI.com" ("the Proposal Form"). The First Respondent signed the form on 28 September 2012, below a declaration which stated:

> "I declare that to the best of my knowledge or belief the particulars and statements given in this application and other documentation and information provided in connection with this application are true and complete and this application declaration documentation and information will be the basis of the contract between my practice and the insurer".

55. Part 14 of the Proposal Form dealt with risk management issues and at question 8 asked, "How often is a bank reconciliation carried out?" The Respondent answered, "Monthly".

56. The FI Officer asked the First Respondent about this, given his acknowledgement in the interview on 10 July 2013 that reconciliations were not carried out. The FI Report recorded the following discussion:

> "FI Officer: "Part 14 questions 7 and 8 refer to bank recs and cheques. You have stated these are completed monthly – why?"
>
> First Respondent: "We just filled in the form"
>
> FI Officer: "But you haven't completed any monthly recs have you?"
>
> First Respondent: "No""

57. Resolve Consultancy on behalf of the First Respondent, in response to this issue, stated:

> "[The First Respondent] was not au fait with the SRA Accounts Rules 2011, he considered his manual bookkeeping system satisfied the basic requirements and that he was in fact reconciling his accounts. Furthermore, he believed that his accountant was adequately maintaining records of monthly reconciliations as required by the SRA and his professional indemnity insurers. [The First Respondent] stated that he did not intentionally mislead his insurers but was of the genuine belief that his accountant was sufficiently complying with the Accounts Rules".

***Conveyancing Transaction – sale of 55 S Road, London NW8***

58. On 26 March 2013 the Firm was instructed in the purported sale of 55 S Road, London NW8. The letter from Resolve Consultancy acknowledged that the First Respondent acted in this transaction. The Firm's references on the correspondence file included the First Respondent's initials, e.g. "KB.ALD".

59. During the interview with the FI Officer, the First Respondent told the FI Officer that he had never met the purported vendors, a Mr AA and Mrs SA. The First Respondent told the FI Officer that they were introduced to the Firm by a man named "Gee". Gee visited the Southall office in March 2013, stating that he was an agent for Hanover Residential and claiming to be a friend of the vendors. Gee further stated that he was looking for solicitors to represent the vendors in the sale of the property. The First Respondent told the FI Officer that Gee provided various identity documents, including copy passports, a utility bill, estate agents particulars for the property, a valuation report and an energy and efficiency report.

60. The First Respondent told the FI Officer that he informed Gee that he would need to meet Mr and Mrs A but Gee told him this was not possible as they were in dispute. The First Respondent then requested that Mr and Mrs A attend an independent solicitor to confirm their identity. The First Respondent told the FI Officer that two weeks later, Gee returned to the Southall office with two ID 1 Certificates of Identity form, certified by Jiva Solicitors of Cameo House, 13-17 Bear Street, London WC2H

7AS ("Jiva"). The First Respondent told the FI Officer that he checked that firm on the Law Society's website and also rang them to confirm their details. The First Respondent also stated that he contacted the solicitor representing the purchaser, Mr Martin Sander of Sanders Solicitors ("Sanders"). The First Respondent told the FI Officer that having satisfied himself of the veracity of the sale, he commenced acting for the vendors.

61. A review of the sale file indicated that:

61.1 In addition to the documentation referred to at paragraph 59 above, the file contained Certificates of Identity forms for Mr AA and Mrs SA, both signed by them and dated 26 March 2013. The address for both was stated to be 15 K Terrace, London NW1; no other contact details were provided on the form. The ID forms were also signed by Jiva Solicitors. On Mr AA's form, the date of Jiva's signature was initially written as 18.2.13 but this was crossed out and the date of 26.3.13 appeared. On Mrs SA's form, the dated 18.2.13 and 26.3.13 appeared above Jiva's signatures. The signatures of Mr and Mrs A on these forms did not resemble the signatures on their respective passports.

61.2 There were copies of documents on the file entitled "Find a Solicitor" in relation to Jiva and Chua Ching Hock ("CCH") although these were dated 30 May 2013.

61.3 There was a copy of a new client file opening checklist for the sale of S Road. However, under the section marked "Conflict" no details were completed and under the "Money Laundering" section, in relation to "proof of identity received" the form stated, "ID Passports".

61.4 The purchaser of the property was Mr EC. On 26 March 2013 the Firm wrote to Mr EC's solicitors, Sanders, enclosing the draft contract for approval, the property information form and the fixtures and fittings form.

61.5 There was no client care letter on the file.

61.6 Office copy entries dated 27 March 2013 in respect of the title of 55 S Road showed the registered proprietors as Mr AA and Mrs SAA of 15 K Terrace, London NW1.

61.7 Sanders wrote to the Firm on 20 May 2013 stating:

> "We now understand from our client that as yours is getting rather anxious at the amount of time this is taking, he has agreed with yours that we are to forward his personal cheque today for clearance and to be held to order pending exchange and thereafter completion… We would be grateful if you would kindly confirm as soon as your client advises that the cheque has cleared".

61.8 There were copies of two cheques on the file, one dated 20 May 2013 for £410,000 and the other dated 21 May 2013 for £1,655,000 made payable to Mr AA and signed by Mr EC for Mr EAC and Mr GDS T/A S&J.

61.9 The Firm wrote to Sanders on 21 May 2013 enclosing the completion information and undertakings and confirming that the Transfer was approved. The answers to arrangement in relation to handover of keys were stated to be "direct arrangement" and in relation to the exact amount payable on completion the answer given was £4,100,000. The completion information and undertakings were dated 21 May 2013.

61.10 The Firm wrote to Sanders on 22 May 2013 (although it appeared the letter may have been faxed to Sanders on 29 May 2013) stating:

> "We… would like to inform you that my clients have confirmed that both cheques received by my clients have now cleared and the balance of two million and thirty five thousand pounds (£2,035,000) remains balance due to be paid by your client on completion… I enclose copy of second cheque for your attention".

61.11 There was an email on the file dated 23 May 2013 from "AA" (the spelling omitted one vowel in the first name) from an email address which stated,

> "Dear [First Respondent],
> I am writing to confirm that both cheques passed onto me by your good self from the buyer's solicitors numbered 12 + 13 have been cleared and I can confirm receipt of payment to the amount of £2,065,000 on account of the selling price".

61.12 The First Respondent exchanged contracts on behalf of the (purported) vendors pursuant to Formula B at 4.30 on 29 May 2013. The purchase priced stated on the purchaser's contract was £4,100,000 endorsed, "Already held by vendor £2,065,000 (2 million and sixty-five thousand pounds)". The "balance due" was not completed. The vendor's contract stated the purchase price was "£410,000", the "deposit" was "£2,065,000" and the "balance due" was "£2,035,000". The signatures of Mr and Mrs S on the contract did not resemble the signatures on their passports.

61.13 An undated email on the file to the First Respondent from Mr AA stated:

> "As you are aware, once that we have completed we would instruct you to forward certain funds to TA Ltd and would kindly ask that you notify the said company as per the attachment provided".

The attachment referred to was not on the file. The Firm then wrote to Mr NF of TA Ltd on 29 May 2013 to state that Mr and Mrs A had instructed the Firm to forward proceeds of sale of £1,221,000 to TA Ltd. There was an email from Mr NF of TA Ltd acknowledging the fax.

61.14 The file contained copies of an Option Agreement and a Shareholder Agreement, both dated 30 May 2013 and made between Mr AA, Mrs SA, AD Ltd and KJH. The KJH Option Agreement provided that KJH was the legal and beneficial owner of the entire issued share capital of AD Ltd, and granted Mr and Mrs A an option to exercise to enable them to become the legal and beneficial owners of the share capital for the consideration of £1. There was also a copy of a loan agreement on the file dated

30 May 2013 between Mr and Mrs A, KJH and AD Ltd (as guarantor), whereby Mr and Mrs A agreed to lend £607,250 to KJH. The purpose of the loan was set out at paragraph 5.1 of the agreement and provided that the borrower use the money to discharge sums due in relation to three mortgages. Amongst the loose papers on the file was a separate piece of paper marked "page 9" which was dated 30 May 2013 and was apparently signed by KJH and Mr and Mrs A. Both Mr and Mrs A's signatures were witnessed, with a stamp appearing marked in the name of the First Respondent and the Firm. Mr and Mrs A's signatures on this document did not resemble their signatures on their passports.

61.15 On 5 June 2013 the Firm served a notice to complete on Sanders. A letter in reply dated 6 June 2013 stated,

> "We have omitted (sic) the balance of the purchase price of £2,035,000 by way of completion. We understand our respective clients have spoken and that the monies required to complete and your fees in respect thereof are being waived".

61.16 The Firm wrote to Mr KJH on 5 June 2013, stating:

> "Dear K,
> We are instructed by our clients that, provided the matters listed below are satisfied by you by 12 noon (5 June 2013), we are to transmit forthwith to the numbered account below the amount of £607,250 (six hundred and seven thousand pounds two hundred and fifty pounds)…"

The letter then set out details of Mr KKH's bank account at the Bank of East Asia Limited ("the Bank of EA"). The Firm also wrote to a Ms C at the Bank of EA, stating:

> "Our firm has completed an Asset Acquisition and transferred the sum of £607,250 (six hundred and seven thousand two hundred and fifty pounds) to the numbered account of Mr KJH… on behalf of our clients Mr AA and Mrs SAA. The providence of the funds is from a property sale completed by this firm. We trust this will satisfy your due diligence compliance".

61.17 A review of the Firm's client account bank transactions for the relevant period showed that £2,035,000 was credited to the Firm's client account on 6 June 2013, of which £1,148,000 was paid to TA Ltd, at an account at the RBS in St Albans in 6 June 2013. The individual controlling this account was Mr NF. A second payment of £607,250 was transferred to Mr KJH at an account at the Bank of EA on 6 June 2013. There was no evidence on the file that any steps had been taken by the First Respondent to identify either of these individuals/entities.

61.18 There was no client ledger on the file, but there was a handwritten ledger for this matter which was found after the intervention, amongst the papers referred to at paragraph 39 above. The ledger recorded the two payments to TA Ltd and Mr KJH.

61.19 The file also contained a letter to a Mrs IL of L Consulting Inc Ltd, another party not connected to the transaction, dated 3 June 2013. This letter substantially duplicated the letter to Mr KJH set out at paragraph 61.16 above. The letter referred to the transmission of £765,250 and appeared to have been sent prior to the transfer of £607,250 to Mr KJH. The file also contained a handwritten note relating to L Consulting Inc Ltd and the requested transfer of a lesser sum of £581,750. The note was written on the back of a fax transmission sheet for the letter to the Bank of EA dated 7 June 2013, confirming the transfer of the £607,250.

61.20 Under cover of a letter dated 10 June 2013 the Firm sent the executed transfer to Sanders. The consideration stated on the TR1 form was £4,100,000 and the vendors' signatures were stated to have been signed in the presence of the Firm and witnessed by Mr MH. Mr and Mrs A's signatures on the transfer did not resemble their signature on their respective passports.

61.21 There was also a copy of a Loan Note on the file dated 6 June 2013 between the Firm and Mr AA, providing for a loan to the Firm of £275,000. Although the Note was not signed by the Firm it was signed by Mrs SAA as a witness. However, the signature differed from Mrs SAA's signatures on the ID form, contract and transfer and the passport.

62. On 3 July 2013 Sanders notified the Firm that the sale of the property was fraudulent. A Land Registry search had revealed that an intended charge had been lodged in favour of City Bank International PLC, on the basis of a contract for sale and purchase of the property dated 13 June 2013.

63. Although the First Respondent was unable to produce a client ledger at the time of the FI Officer's inspection, the FI Officer was able to calculate that the total distribution of funds on the matter amounted to £1,755,250, leaving a balance of £279,750 as at 6 June 2013. There was no evidence on the file of any attempts to contact the purported clients about where to send the residual balance. Furthermore, a review of the client bank statement transaction details did not provide any further information about this money, although it was noted that the balance on client account as at 9 July 2013 amounted to only £38,020. The handwritten ledger subsequently located identified the residual balance on the client account of £279,750.

64. The issues in respect of the sale of 55 S Road were raised by the Applicant in their letter to the First Respondent dated 7 February 2014. Resolve Consultancy responded on his behalf, to the effect that the First Respondent knew the broker who introduced the client to him and that although he was not able to meet the clients, he relied on Jiva Solicitors' verification of the relevant ID documents. In relation to the direct payment between purchaser and vendor, the First Respondent said that he was advised that the vendor and purchaser were known to each other and,

> "… it was not therefore surprising to him that he was subsequently instructed that the Buyer has paid half of the purchase monies to the sellers directly. [The First Respondent] is aware that the full transaction value ought to have passed through his account. However, if the payment had been made directly between the parties without his prior knowledge or consent, there was little [the First Respondent] could do. Although [the First Respondent] was aware

> that bridging finance companies carry out detailed checks before providing funding and he therefore considered that the transaction was legitimate and he proceeded to receive the balance of the monies from the loan provider, having been provided with copies of the cheques that were already passed from the buyer to the seller directly".

65. The letter also stated that,

> "In hindsight, [the First Respondent] can see that this should have put him on alert and that he should have raised queries about the source of funds etc., particularly as the clients were not known to him and he had not seen them in person and also because it was a high value transaction".

66. In relation to the payment of the proceeds of sale to third parties, Resolve Consultancy wrote:

> "[The First Respondent] stated that following completion he received emails from his clients requesting that the sale proceeds be paid to specific accounts. In accordance with his client's instructions, the monies were duly transferred and approximately £279,000 held to the clients' order in a separate designated account."

67. In response to the Applicant's specific query as to why no steps had been taken to confirm the identity of the individuals to whom he was instructed to make payment on completion, Resolve Consultancy responded,

> "[The First Respondent] was acting in accordance with his client's instructions at all times. He states that he had no reason to suspect fraud or dishonesty and believed that the payments were legitimate and lawful. Had he had any concerns, he would have made further enquiries. He can see now that he may have been naïve in believing that the transaction was legitimate, but at the relevant time he had no doubts or concerns".

68. In a letter of 7 February 2014 the Applicant enquired whether any payment was made to L Consulting Inc Ltd and what, if any, steps were taken to confirm the identify of individuals who were not connected to the transaction. Resolve Consultancy on behalf of the First Respondent stated that a payment had been made to L Consulting Inc Ltd in accordance with the clients' instructions. Further, it was stated that the First Respondent had confirmed the identity of the parties to whom he was instructed to make payment:

> "They both personally attended his office with original forms of identification. Upon [the First Respondent] enquiring about their connection with his clients, he was advised that they deal with property portfolios on behalf of the clients and they were receiving the monies in their personal capacity. [The First Respondent] legitimately believed that L Consulting Inc Ltd was a business that dealt with Mr and Mrs A's property portfolio. He states that as they attended his firm as a group, along with the Agent and Mortgage broker, he had no reason to suspect dishonesty but can see now that he was duped and in

> fact unknowingly used in the commission of a well organised and sophisticated crime".

There was no documentation on the file which showed that these identity checks were carried out.

69. Notwithstanding the First Respondent's confirmation that monies were paid to L Consulting Inc Ltd, the Firm's client account bank transactions suggested that there was no such payment. Instead, the funds were distributed to TA Ltd and Mr KJH, as referred to at paragraph 61.17 above.

70. The Applicant also asked for an explanation as to the residual balance of £279,750 and the loan note for £275,000. In the initial part of the response, Resolve Consultancy stated:

> "… the monies were duly transferred and approximately £279,000 held to the clients' order in a separated designated account".

However, the First Respondent had informed the FI Officer during the initial interview on 10 July 2014 that there were no designated deposit accounts.

71. The letter from Resolve Consultancy later acknowledged that the £275,000 comprised the residual balance of the proceeds of sale, but asserted that the First Respondent did not take a loan from Mr and Mrs A. It continued:

> "Following completion of the sale… he was holding sale proceeds and awaiting client instructions. He subsequently received the loan note dated 6 June 2013. This was drafted and signed by the client without [the First Respondent's] knowledge or consent. He did not wish to accept the loan from his client and therefore advised him of the same. He states, however, that after this date he was unable to locate the client again and has had no contact with him since".

It was acknowledged that the monies were retained by the Firm and were owed to the client as at the time of intervention.

72. A claim was later made on the Compensation Fund by Mr YA, the purchaser's lender, in relation to the conveyancing fraud in the sum of £2,400,000.

***Appointment of the Second Respondent as COFA***

73. During the interview with the FI Officer, the First Respondent confirmed that the Firm had no finance staff, that he was responsible for the day to day maintenance of the books and records and that he had overall responsibility and control over the accounting records. The First Respondent also told the FI Officer that the Second Respondent was the COFA, "but has no knowledge of finance or administration". The First Respondent also indicated that the Second Respondent rarely visited the office.

74. In response to the allegation made in the Applicant's letter of 7 February 2014 that the First Respondent had permitted that appointment of a COFA who was not suitably qualified, nor in regular attendance at the office, Resolve Consultancy stated that:

> "[The First Respondent] did not appreciate at the time of submitting nominations that she needed to have knowledge and experience of the SRA Accounts Rules and on reflection he appreciates now that she was not suited to the role. He regrets the oversight and acknowledged that he did not sufficiently consider the SRA's requirements before nominating her as COFA".

It was, however, denied that the Second Respondent rarely visited the office.

***The Second Respondent's role as COFA***

75. The Applicant raised issues concerning the Second Respondent's role as COFA in correspondence. In response, Resolve Consultancy on her behalf confirmed that she had not had access to the banking accounts or banking information for the Firm and had no authorisation on those accounts.

76. Resolve Consultancy also stated on the Second Respondent's behalf that she:

> "denies that she had any involvement with any of the areas identified in the FI Report. Whilst she accepts that she was COFA at the Firm and thereby had an obligation to identify and report these breaches, she was unable to do so given that she did not have access to the Firm's financial information".

Further, it was stated:

> "Upon commencing the role of COFA she was assured by [the First Respondent] that relevant training and assistance would be provided to enable her to fulfil her role. Due to his illness, [the First Respondent] was unable to provide such support and she was therefore unable to fulfil her role diligently".

***General***

77. On 16 May 2014 a duly authorised officer of the Applicant considered the documents and decided to refer the conduct of the First and Second Respondents to the Tribunal.

**Witnesses**
*Applicant*

78. Mr Jason Connell, the FI Officer in the case, gave evidence on behalf of the Applicant. He confirmed that the contents of his FI Report, dated 19 July 2013 were true. It was noted that the Report was described on its face as an "interim" report. Mr Connell told the Tribunal that he would have carried out further work, and interviews with the First Respondent, if he had been available but it proved to be impossible to carry out that work. The intervention decision had been made on the basis of the Report.

79. Neither Mr van Heck for the Second Respondent nor the Tribunal had any questions for Mr Connell.

*Second Respondent*

80. The Second Respondent confirmed that the contents of her witness statement dated 9 September 2015 were true.

81. The Second Respondent told the Tribunal that she started working at the Firm as an assistant solicitor, on a voluntary basis. After a few months, the First Respondent had paid her some money. The Second Respondent told the Tribunal that the First Respondent had put forward her name as a member of the Firm, without an agreement, contract or partnership deed.

82. The Second Respondent told the Tribunal that the First Respondent had assured her that she would be able to fulfil the role of COFA. The Second Respondent told the Tribunal that she had told the First Respondent that she was not experienced enough, but he had assured her that he would help her to take on the responsibility properly and that she would be paid if she took the role, and persuaded her to accept the role. The Second Respondent told the Tribunal that the First Respondent had told her that he would send her on courses and provide her with relevant books so that she could fulfil the role, as well as telling her that he would help if she got stuck.

83. The Second Respondent told the Tribunal that the First Respondent was a family friend, known to her father-in-law, but she did not know him before she went to work in the Firm, in 2011. When he started the Firm, the First Respondent had said that the Second Respondent could come to the Firm for experience, on a voluntary basis. The Second Respondent told the Tribunal that she came to the UK in 2007, having qualified as a lawyer overseas, where the accounts rules were not the same. When she worked at the Firm, initially she had just done work on preparing files.

84. The Second Respondent told the Tribunal that since the intervention she had done some work, on a contract, but that job finished before she began her maternity leave. The Second Respondent told the Tribunal that she was presently unemployed, and had a young baby. The Second Respondent was not sure when she would be able to return to work. She had undertaken a role as a "community organiser", which was not related to the law but involved setting up courses.

**Findings of Fact and Law**

85. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 respectively of the European Convention for the Protection of Human Rights and Fundamental Freedoms and section 1(1) of the Human Rights Act 1998. It noted in particular that, in the absence of the First Respondent, it had a particular duty to test the evidence of the Applicant to ensure that the trial was conducted as fairly as possible for all concerned.

86. The Second Respondent had admitted all of the allegations made against her, in full, at an early stage. The First Respondent had not taken part in the proceedings and had not provided his formal answer to any of the allegations. However, the Tribunal was able to take into account a letter from Resolve Consultancy, written on behalf of both Respondents, on 28 February 2014. The First Respondent had not resiled from any of the representations and explanations given in that letter. The Tribunal therefore accepted the letter as setting out the First Respondent's position. The Tribunal was also able to take account of the First Respondent's explanations, as given to the FI Officer in interview. The Tribunal accepted that the FI Officer's evidence as to what was said in the interview was accurate. It also accepted his evidence as contained in the FI Report, which was appropriately supported by documentation.

87. **Allegation 1.1 - They breached Rules 1.1 and 1.2 of the Solicitors Accounts Rules 2011 ("SAR 2011") and/or alternatively any of Principles 2, 6, 8 and 10 of the SRA Principles 2011 ("the Principles") and/or alternatively failed to achieve outcomes O7.04 and O10.3 of the SRA Code of Conduct 2011 ("the 2011 Code") by:**

**1.1.1 Failing to keep properly written up accounting records and/or appropriate records of all dealings with client money, in breach of Rule 29(1) and 29(2) of the SAR 2011; and/or**

**1.1.2 Failing to carry out client reconciliations at five weekly intervals, in breach of Rule 32(7) of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or Rules 29.12 and 29.13 SAR 2011 where such conduct occurred after 6 October 2011; and/or**

**1.1.3 Withdrawing and/or permitting the withdrawal of client money from client account in circumstances other than those permitted, leading to a cash shortage on client account in breach of Rules 20.1, 20.3 and 20.9 of the SAR 2011; and/or**

**1.1.4 Failing promptly to remedy breaches of the rules on discovery by replacing money improperly withdrawn from client account, in breach of Rule 7.1 of SAR 2011.**

87.1 The factual background to this allegation is set out at paragraphs 34 to 57. The allegation was admitted by the Second Respondent. The Tribunal proceeded on the basis that the First Respondent denied the allegation and the Applicant was required to prove it.

87.2 The Tribunal noted that the case was put by the Applicant on the basis that there were serious problems with the Firm, including no proper accounts system, no list of liabilities to clients and no proper ledgers. It had been said on behalf of the Respondents, in the letter from Resolve Consulting, that they were not aware of the need to carry out reconciliations. It was also stated that "due to a lack of knowledge, the Firm were unaware that breaches had occurred". The Applicant submitted, and the Tribunal accepted, that all principals in a recognised body should be sufficiently au fait with the relevant Accounts Rules to enable them to protect client money.

87.3 The Tribunal was satisfied that as the First Respondent admitted in interview with the FI Officer that no ledgers were maintained, the ledgers discovered on intervention (which showed no signs of use) were created after the FI Officer's inspection began.

87.4 The Tribunal was satisfied that there had been a shortage on client account of at least £104,753, as calculated and set out at paragraph 39 to 51 above; the shortage could not be calculated accurately, due to the lack of proper records.

87.5 The Tribunal noted that it had been accepted on behalf of the First Respondent, in the letter from Resolve Consultancy, that, "… he needed to have tighter systems in place and concedes that the firm was in a difficult financial position, and that he did use client money in order to meet office bills".

87.6 The Tribunal accepted, on the evidence, that the First Respondent was the only person at the Firm who could operate the Firm's bank accounts. The Tribunal found that all of the improper transfers were carried out by the First Respondent, and was satisfied that the Second Respondent was unaware of those transfers until the inspection and Report.

87.7 The improper transfers set out in the FI Report, and as summarised at paragraphs 45 to 49 above, occurred largely in the period April to July 2013. The Tribunal was satisfied that the First Respondent had made 55 improper round sum payments from client to office account in that period, totalling £136,653; it noted that there had in the same period been 5 round sum transfers from office to credit account, totalling £31,900, which reduced the identified shortage on client account to £104,753.

87.8 The Tribunal noted that the First Respondent had submitted, through Resolve Consultancy, that he believed it was acceptable to use client money to pay the debts on behalf of the Firm. This was an implausible position for any solicitor to adopt. The Tribunal noted that the Second Respondent, who had indicated that she had little understanding or knowledge of solicitors' accounts, was well aware that client money could not be used for the Firm's benefit; the founding principal of a Firm could not be so ignorant of the most basic rules as to think client money could be used to pay expenses for the Firm. Client money was clearly money belonging to a client or clients; it could only be used for the purposes of that client. There was no basis for a solicitor to "borrow" client money to fund a Firm and this was even more clearly the case where the solicitor had not asked clients if he could use their money. Further, the Tribunal found that a number of transfers from client account had been for items which were unlikely to relate to expenses or debts of the Firm; this is discussed in more detail in relation to allegation 4 below.

87.9 The Tribunal was satisfied to the required standard that the Firm had failed to maintain any proper accounting records, had failed to carry out client account reconciliations and that there had been numerous improper transfers, which had resulted in a minimum shortage on client account of £104,753. Further, the Tribunal was satisfied that the Firm had failed to realise it was in breach, and the shortage had not been replaced. The Tribunal noted that the First Respondent had indicated, through his representatives, that he was trying to raise funds to rectify the shortage but had been unable to do so. The shortage had not been replaced as at the date of the hearing.

87.10 The Tribunal was satisfied that the First Respondent bore the greater culpability for the breaches; he was the person who operated the bank accounts, and was the sole owner of the Firm. However, as a member, the Second Respondent also bore some responsibility for the breaches.

87.11 The Tribunal was satisfied to the required standard that the Respondents were in breach of each and every one of the Accounts Rules and aspects of the 2011 Code, as alleged. The Tribunal was further satisfied that the failure properly to manage client money, on the facts of this case, demonstrated a lack of integrity; there had been no real attempt to safeguard client money and therefore to act in accordance with the high standards expected of solicitors. Further, their conduct of the accounts failed to maintain the confidence of the public in the Respondents and the provision of legal services. The Respondents had failed to run the business effectively and in accordance with proper governance and financial/risk-management principles. Further, they had failed to protect client money and assets. Accordingly, the Tribunal was satisfied to the required standard that the allegation had been proved against the First Respondent on the evidence heard, and against the Second Respondent on her admission and on the evidence.

88. **Allegation 2.1 – [The First Respondent] made a misleading statement or caused or allowed a misleading statement to be made on a professional indemnity insurance form, in breach of Principles 2 and/or 6 of the Principles;**

88.1 The factual background to this allegation is set out at paragraphs 54 to 57 above.

88.2 The First Respondent acknowledged in interview with the FI Officer on 10 July 2013 that bank reconciliations were not carried out; further, the FI Officer did not uncover any such reconciliations during his inspection. The First Respondent had indicated that he did not know what reconciliations were.

88.3 The First Respondent signed an application for professional indemnity insurance on 28 September 2012, which application form contained a declaration that "to the best of my knowledge or belief the particulars and statements given in this application and any other documentation and information provided in connection with this application are true and complete and this application, declaration, documentation and information will be the basis of the contract between my practice and the insurer". In answer to a question on the application form about how often a bank reconciliation was carried out, the First Respondent answered "monthly". He also stated that checks were carried out on entries in the cash book monthly; however, there was no cash book in the Firm.

88.4 There was no suggestion that the Second Respondent was aware of these statements when they were made or, indeed, until the inspection and Report.

88.5 These two statements were clearly misleading. To make such statements clearly showed a lack of integrity; the First Respondent either knew the statements were untrue or took no steps to ensure that he completed the form correctly. Further, completing an important document, such as an insurance application form, in a misleading way was conduct which would fail to maintain the trust the public would place in the First Respondent and the provision of legal services.

88.6 The Tribunal was satisfied to the required standard, on the evidence presented, that this allegation had been proved.

89. **Allegation 2.2 – [The First Respondent] permitted or allowed the firm to become involved in, or acquiesced in the firm's involvement in, a conveyancing transaction that bore the hallmarks of fraud, in breach of Principles 2, 6 and 8 of the Principles; and further or alternatively failed to achieve outcome O(7.5) of the 2011 Code;**

89.1 The factual background to this allegation is set out at paragraphs 58 to 72 above. There was no suggestion that the Second Respondent had any knowledge of or involvement in this transaction.

89.2 The Applicant submitted that the features of this conveyancing transaction bore the hallmarks of a fraud and that the First Respondent failed to apply the guidance set out in The Law Society's Anti-Money Laundering Practice Note, October 2012, in relation to client due diligence and /or the Law Society's Mortgage Fraud Practice Note dated 6 October 2011.

89.3 The relevant Mortgage Fraud Practice Note stated at Clause 4 that:

> "You should remain alert to warning signs in the information and documentation which are in your possession. You should pay particular attention to transactions which exhibit a number of warning signs".

89.4 The Note set out a non-exhaustive list of relevant warning signs, which included:

- Identity;
- Value of the property;
- Direct payments between seller and purchaser;
- private lenders; and
- accounting to someone you do not know.

89.5 The Note advised that a solicitor should ask questions if unusual instructions were received from the client or if any of the warning signs were present, or there were inconsistencies in the retainer.

89.6 The Applicant submitted that there were a number of warning signs present, which indicated this might be a dubious property transaction, as set out at paragraphs 58 to 61.21 above. The Applicant submitted that a review of the file showed that the First Respondent took few, if any, steps to establish the propriety of the transaction.

89.7 The Tribunal did not have to be satisfied that there had in fact been a fraud in the matter of the sale of 55 S Road. However, it was satisfied that a number of the hallmarks of mortgage fraud were present, in particular those set out at paragraph 89.4 above.

89.8 There was no doubt that the First Respondent had had conduct of the transaction and had failed to take any of the appropriate steps to satisfy himself that this was a legitimate transaction.

89.9 The Tribunal was informed that a claim on the Compensation Fund had been made arising from this matter, albeit the claim had not yet been granted whilst other remedies were pursued by the affected parties.

89.10 The Tribunal was satisfied that the First Respondent's conduct lacked integrity; he had been prepared to act in a matter for clients whose identity he did not properly verify, in a transaction involving large sums in which there were (allegedly) direct payments between the seller and purchaser, a private lender and where he was asked to send money to unknown entities. This conduct was also such as would fail to maintain the trust the public would place in the First Respondent and the provision of legal services. The failure to carry out proper checks showed that the Firm was not being run in accordance with good governance and risk management systems. The First Respondent had failed to comply with his anti-money laundering duties.

89.11 The Tribunal was satisfied to the required standard that this allegation had been proved.

90. **Allegation 2.3 - He permitted the appointment of the Second Respondent as Compliance Office for Finance and Administration ("COFA") in circumstances where she was unsuitable for this role and/or failed to have suitable arrangements in place to ensure she was able to discharge her duties properly, in breach of Principles 7 and 8 of the Principles and further or alternatively failed to achieve all or any of the outcomes O7.2, O7.4, O10.2, O10.5 of the 2011 Code; and further or alternatively breached Rule 8.5(a) and (d) of the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 ("the Authorisation Rules").**

90.1 The factual background to this allegation is set out at paragraphs 73 and 74 above.

90.2 The First Respondent had admitted to the FI Officer that the Second Respondent was not experienced in accounts and, indeed, that she had no access to banking information. Through Resolve Consultancy, the First Respondent had stated:

> "[The First Respondent] considered that as [the Second Respondent] was of sufficient seniority within the Firm, she was fit for the role. He did not appreciate at the time of submitting nominations that she needed to have knowledge and experience of the SRA Accounts Rules and on reflection, he appreciates now that she was not suitable for the role. He regrets the oversight and acknowledges that he did not sufficiently consider the SRA's requirements before nominating her as COFA".

90.3 The Tribunal also noted and accepted the Second Respondent's own admission that she was not suitable for the role of COFA, given her limited understanding of the Accounts Rules and the requirements of the role.

90.4 There could be no doubt that in nominating the Second Respondent as COFA when she was unsuitable for the role, and in failing to ensure that she received appropriate training and support to fulfil the role properly, the First Respondent had failed to comply with his regulatory obligations and had failed to run his business in

accordance with proper governance and risk management principles, and so was in breach of Principles 7 and 8 of the 2011 Principles.

90.5 The Tribunal was further satisfied that the First Respondent was in breach of the Authorisation Rules, as alleged. In addition, he had failed to achieve each and every one of the Outcomes referred to in the allegation. The Tribunal found this allegation proved, in its entirety, to the required standard.

91. **Allegation 3.1 - [The Second Respondent] accepted the position of COFA without understanding what the role meant and/or failed to take the appropriate steps to comply with the requirements of the role, in breach of Principles 2, 7 and 8 of the Principles and further or alternatively failed to achieve all or any of the outcomes O10.1 and O10.4 of the 2011 Code and further or alternatively breached Rule 8.5(e) of the Authorisation Rules.**

91.1 The factual background to this allegation is set out at paragraphs 75 to 76 above, and the Applicant further referred to paragraphs 34 to 57 above, concerning the Accounts Rules breaches which were found on the inspection. This allegation was admitted by the Second Respondent.

91.2 It was submitted by the Applicant that in her capacity as a member of the Firm and COFA of the Firm, the Second Respondent failed to take any steps and/or sufficient steps to ensure the Firm's compliance with its obligations pursuant to the AR 2011. It was also submitted that the Second Respondent failed to inform the Applicant that the Firm was in financial difficulties. Compliance with the AR 2011 was a matter of strict liability for both Respondents as principals in the practice.

91.3 It was further submitted that as a member of the Firm, the Second Respondent was responsible with the First Respondent for ensuring the necessary systems were in place: a) to allow the Firm to operate efficiently; b) to deliver the outcomes in the SRA Handbook; and c) to allow her as COFA to introduce appropriate procedures to ensure compliance and good risk management.

91.4 It was submitted that the Second Respondent failed to perform her role as COFA and appeared to have accepted the position without taking appropriate steps to ascertain what the role entailed. It was also submitted that the Second Respondent failed to carry out the duties of a COFA as set out in the SRA Authorisation Rules 2011.

91.5 The Tribunal was satisfied that, as admitted by the Second Respondent, she had been ill-equipped to take on the role of COFA and that she had not gained the necessary skills and knowledge to fulfil the role. The Tribunal was satisfied on the admission, and on the facts, that this allegation had been proved.

92. **Allegation 1.1.3 was made on the basis that the First Respondent was dishonest, but it was not necessary to establish dishonesty for this allegation to be made out against the First Respondent.**

92.1 The Applicant submitted that with regard to the improper withdrawals from client account, the Respondent was dishonest according to the combined test in Twinsectra v Yardley and others [2002] UK HL 12 ("Twinsectra"). This case requires that before a

finding of dishonesty can be made in the Tribunal, the Tribunal must be satisfied that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he was acting dishonestly.

92.2 The Applicant submitted that the First Respondent's explanation, that he knew he was not permitted to use client money for his own benefit but thought that it was permissible to do so to pay debts incurred by the Firm was incredible. There was no indication that the First Respondent sought permission from any of the affected clients to use their money in this way.

92.3 Further, client money was withdrawn as cash or used to make payments which seem unlikely to have been business expenses (e.g. Zari Indian Restaurant, Laffaire Exclusive, Next and Matalan, all on 18 May 2013 – a Saturday – set out at paragraph 49 above.)

92.4 When confronted with a list of round sum transfers from client to office account, the First Respondent told the FI Officer, "We did a bad mistake". He did not assert then that he had acted in accordance with his understanding of the Accounts Rules, which one would have expected in the light of his subsequent explanation. The Applicant submitted that all of these issues suggested that the First Respondent knew he was acting dishonestly by the ordinary standards of reasonable and honest people.

92.5 The Tribunal noted that the First Respondent had asserted that he believed he could use client money for expenses of the Firm, as he was unaware of the relevant Rules. This was an incredible explanation. As Mr Steel had succinctly submitted, where one was considering client account, "the clue is in the name – *client* account". There could be no possibility that a solicitor would understand that money belonging to clients could be used to run the office.

92.6 Even if the First Respondent had genuinely believed he could use client money to pay the Firm's debts and expenses, the Tribunal could not accept that he had any belief that he could use client money for items of a personal nature. The list of expenditure set out at paragraph 51 above, in particular including what appeared to be shopping for clothes and jewellery on Saturday 18 May 2013, clearly contained items which were unrelated to the Firm or its legitimate expenses. The Tribunal noted in particular the spending at Matalan, Style Mantra, Laffaire Exclusive and Next on 18 May 2015, totalling £594.50, together with £225 spent at a restaurant on the same day.

92.7 The Tribunal considered whether there was any explanation the First Respondent could have given which might have thrown light on this matter or his understanding of the Rules. The First Respondent had not participated in the proceedings and had not put forward his explanation. However, he had in February 2014, after consideration of the FI Report with his representatives, asserted that he had a belief that he could pay office expenses with client money.

92.8 The Tribunal did not have to go so far as to draw a specific adverse inference against the First Respondent for his failure to explain himself.

92.9 The Tribunal was satisfied that in making the improper transfers set out at paragraphs 41 to 51 above, the First Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people; he was using client money for purposes other than the purposes of his clients and this was clearly wrong. Further, in transferring client money and using it for his own purposes and/or to pay expenses for the Firm, the First Respondent realised that his conduct was dishonest by those same standards. Even if the First Respondent had held a genuine belief that he could pay office expenses with client money – and the Tribunal could not accept that he had such a belief – the use of client money for personal expenses was clearly wrong and the First Respondent knew it was wrong.

92.10 The Tribunal was satisfied to the required standard that the First Respondent's conduct was dishonest, as alleged.

**Previous Disciplinary Matters**

93. There were no previous disciplinary matters recorded against either Respondent.

**Mitigation**
*First Respondent*

94. The First Respondent was not present to offer any mitigation. However, the Tribunal was able to take account of the First Respondent's explanations to the FI Officer and as stated by Resolve Consultancy.

*Second Respondent*

95. Mr van Heck offered mitigation on behalf of the Second Respondent, with reference to the Tribunal's Guidance Note on Sanction.

96. Mr van Heck submitted that the Second Respondent was an inexperienced solicitor and had been inadequately supervised by the First Respondent. The Second Respondent had been an advocate in India, where there was no direct equivalent of the Accounts Rules.

97. Mr van Heck told the Tribunal that the Second Respondent had been paid a total of £4,800 by the First Respondent for her work in the Firm, over a period of about 2 years whilst she was a member of the Firm. The First Respondent had been a friend of the Second Respondent's family, and he had appeared to be mentor to her. The First Respondent had told the Second Respondent that he would train her to carry out the role of COFA, which she initially refused as she felt unsuited for that position. The First Respondent had not provided any training or assistance to the Second Respondent and had assured her that the Firm's accountants would keep the accounts properly.

98. Mr van Heck submitted that the Second Respondent's own client files had been in order, with no accounts problems. The Second Respondent had been unaware of the need for reconciliations and had relied on the Firm's accountants to ensure compliance with the relevant Rules.

99. The Second Respondent was aware that client money could not be used for anything but that client's purposes. She had been unaware of the improper transfers and shortages on client account and had no access to the Firm's bank accounts. The Second Respondent had had no reason to believe that any client money had gone missing or been misused.

100. Mr van Heck told the Tribunal that the Second Respondent had learned from her mistakes and would ensure that they were not repeated.

**Sanction**

101. The Tribunal had regard to its Guidance Note on Sanction (December 2014). It considered carefully all of the circumstances of the case and the submissions made on behalf of the Second Respondent.

*First Respondent*

102. The Tribunal had made a finding of dishonesty in relation to a series of improper transfers over a period of months. This was not a situation in which there had been, for example, one momentary lapse of judgement. The First Respondent's misconduct in this regard had led to a shortage on client account of over £104,000.

103. The normal and proportionate sanction where there was a finding of dishonesty was an order striking a solicitor off the Roll. There were no exceptional circumstances in this case which would suggest that any lesser sanction could be appropriate. The Tribunal therefore ordered the First Respondent to be struck off the Roll.

*Second Respondent*

104. In assessing the seriousness of the Second Respondent's misconduct, the Tribunal took into account that the Second Respondent had been a member of the Firm, albeit she had assumed that position without any proper agreement or understanding of what was involved. To the extent that she was a member of the Firm, the Second Respondent had to accept some responsibility and culpability for what had happened; in particular, if she had carried out her role as COFA properly, the First Respondent's misconduct may have come to light earlier. However, the Second Respondent had not had control of the circumstances in which the Firm operated, had had no motivation for the misconduct and had not planned any misconduct. The Second Respondent was an inexperienced solicitor; however, she had had a career overseas before qualifying in England and so was not a complete novice.

105. There had been harm to the reputation of the profession, in that the First Respondent's misconduct had not been brought to light earlier. That misconduct had been over a period of time, but the FI Report concentrated on the period from April to July 2013. There had been a risk of further harm, but this was prevented by the timing of the FI Officer's inspection.

106. The Tribunal took account of the Second Respondent's prompt admissions and the fact that she had shown genuine insight into the misconduct. She had relied – unwisely, as it transpired – on a family friend who had appeared to be a mentor. The First Respondent's culpability was much greater than that of the Second Respondent.

107. The Tribunal considered carefully what the appropriate and proportionate sanction was in this case, taking into account the Second Respondent's culpability, the harm caused and the aggravating and mitigating factors. This was clearly a case in which it was inappropriate to make no order, and nor was it a case in which any interference with the Second Respondent's right to practice would be appropriate. A fine may have been appropriate but, having taken into account all of the relevant circumstances, the Tribunal was satisfied that a reprimand would be sufficient to mark the level of the Second Respondent's misconduct and to protect the reputation of the profession.

**Costs**

108. Mr Steel made an application for costs on behalf of the Applicant and referred to the Applicant's schedule of costs, in the total sum of £20,453.50, which included forensic investigation costs of £5,527.30 and SRA supervision costs of £2,625.

109. Mr Steel submitted that the blame in this case was not shared equally between the Respondents and submitted that the Tribunal should apportion the assessed costs between the Respondents. Mr Steel invited the Tribunal to make an order for costs in the usual terms. The Second Respondent had submitted a statement of means which showed she was unemployed and although she did not own any property she had a sum of money in a bank account.

110. The Tribunal rose to allow Mr van Heck and his client to consider the application for costs.

111. On resuming, Mr van Heck told the Tribunal that the Second Respondent accepted that the costs should be apportioned, and suggested a 90/10 split, with the First Respondent to pay the larger part of the costs. Mr van Heck told the Tribunal that his client accepted that there should be an immediate costs order. Whilst she was of limited means, the Second Respondent may be able to make some contribution towards costs. Mr van Heck told the Tribunal that the sum shown in the bank account was, in effect, the total maternity allowance paid to the Second Respondent for the whole period of maternity leave; the Second Respondent would need that money to tide her over.

112. Mr van Heck told the Tribunal that he did not have any submissions on the quantum of costs claimed.

113. In response to a question from the Tribunal, Mr Steel was unable to confirm how much of the forensic investigation costs related to matters in the FI Report which had not featured in the case itself. The Applicant had been obliged to investigate and sought to recover its costs in full, even where not all matters of concern were pursued in the Tribunal.

114. It was noted that the investigation costs included a claim for 24 hours of travel. Mr Steel told the Tribunal that the FI Officer had had to travel from his home in East Anglia to both of the Firm's offices (Wolverhampton and Southall). In response to a further question, Mr Steel told the Tribunal that the SRA supervision costs item related to internal costs of the SRA, on top of the investigation costs, in dealing with this matter; there was a scale of charges for such work.

*The Tribunal's Decision*

115. The Tribunal first considered what the reasonable and proportionate costs of the case were.

116. The Tribunal accepted that the hourly charging rates applied for the work done by the Applicant's solicitors – which ranged from £200 per hour for a partner to £100 per hour for a trainee solicitor – were reasonable. Overall, the time charged by the solicitors appeared reasonable. However, it was noted that the hearing would in fact be shorter than the time estimated on the schedule, so there should be some deduction for attendance at the hearing.

117. The Tribunal determined that it had been proper for the FI Officer to consider and investigate a matter – relating to the First Respondent only – which had not resulted in any allegations before the Tribunal. There need be no reduction in the amount of costs claimed on that account. However, the Tribunal did not consider it reasonable in this case to fix either of the Respondent's with a substantial amount of travel time in the course of the investigation simply because the FI Officer did not live in the area where either office was located. The costs allowed for travel time should be reduced substantially.

118. The Tribunal summarily assessed the reasonable and proportionate costs of the proceedings at £19,000, all inclusive.

119. There was no doubt that the costs had been incurred primarily in relation to the First Respondent. He had not submitted any statement of means and so there was no reason to reduce the costs payable by him on the basis of his means. The Tribunal determined that the First Respondent should be ordered to pay £18,000 in costs.

120. The reasonable amount for the Second Respondent to pay was £1,000. She had not sought any order to prevent enforcement. Although her means were limited, the Second Respondent should be able to pay towards the costs when she was able to resume work. The Tribunal would expect the Applicant to proceed reasonably with regard to enforcement.

**Statement of Full Order**

119. The Tribunal Ordered that the Respondent, KANWAR BHAN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00.

120. The Tribunal Ordered that the Second Respondent, 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 £1,000.00.

DATED this 28th day of October 2015
On behalf of the Tribunal

A. Ghosh
Chairman