SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11322-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROBERT ANDREW SCHOFIELD Respondent

Before:

Mr D. Glass (in the chair)
Mr L. N. Gilford
Mr M. C. Baughan

Date of Hearing 20, 21 July and 9, 10 November 2015

Appearances

Mr Edward Levey, Counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH (instructed by Robin Havard of Blake Morgan LLP) for the Applicant

The Respondent attended the hearing on 20 and for part of 21 July 2015 and did not appear and was not represented on 9 and 10 November 2015

JUDGMENT

Allegations

1. The allegations against the Respondent were as follows:

1.1 The Respondent failed to honour undertakings provided to a third party in letters dated 30 January 2004 and 27 February 2004;

1.2 The Respondent failed to honour an undertaking provided to a third party in a letter dated 13 April 2004;

1.3 In failing to honour the undertakings to which allegations 1.1 and 1.2 refer, the Respondent acted in a way which was likely to compromise his integrity and/or the good repute of himself and the solicitors' profession contrary to Rules 1(a) and 1(d) of the Solicitors' Practice Rules 1990.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 22 December 2014 and Exhibit MRH1 (which included the Witness Statements of Daniel Becker and Fergus Anstock in High Court proceedings, both dated 21 September 2011);
- Applicant's undated Schedule of Costs.

Respondent:

- Respondent's Answer to Rule 5 Statement dated 30 January 2015;
- Respondent's Personal Financial Statement dated 25 January 2015;
- Email dated 15 June 2015 from the Respondent to the Tribunal updating Personal Financial Statement.

Preliminary Matter

3. The Respondent attended the hearing on 20 July 2015 and until lunchtime on 21 July when he informed the Tribunal that he did not wish to remain and he would not attend the adjourned hearing in November. He did not do so. He left the hearing on 21 July after the evidence had been heard in case no.11292-2014 but before this case was heard, it having been explained to him by the Tribunal Chairman that it was open to him to continue to attend throughout the proceedings if he wished to do so. The Respondent thanked the Tribunal.

4. Mr Levey submitted that the Tribunal could be satisfied that the proceedings had been properly served upon the Respondent; indeed he had filed an Answer and had attended at the Tribunal, leaving before this case was heard. The Tribunal could proceed to hear the case in the Respondent's absence as he had deliberately absented himself.

5. The Tribunal noted that this hearing had followed immediately on from the hearing in Case Number 11292-2014, during which the Respondent had been present and had participated. However, the Respondent had now absented himself in the full knowledge that the hearing in this case was about to proceed and in spite of the Tribunal's invitation to him to remain.

6. The Tribunal was completely satisfied that, in all of the circumstances, it could proceed to hear the matter in the Respondent's absence pursuant to the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), Rule 16(2).

Factual Background

7. The Respondent was born on 8 July 1963 and was admitted to the Roll on 15 February 1988. He was formerly a Partner of Firth Whitehead Solicitors of 121 Union Street, Oldham ("the Firm").

8. Following a merger between the Firm and Thompson and Cooke, in or around May 2004, he was subsequently in practice at Chartbridge Solicitors, Chartbridge Law LLP and/or Chartbridge Law Limited. However, the allegations principally concerned the Respondent's conduct whilst he was a Partner of the Firm and held himself out as such.

9. The Respondent was made bankrupt in June 2009 and subsequently discharged. He does not hold a current Practising Certificate.

<u>Introduction</u>

10. The Respondent provided undertakings whilst acting for one or more of FGCG, Mr F and Mr E in the course of various property and refinancing transactions.

11. The undertakings were given by the Respondent in writing on 30 January 2004, 27 February 2004 and 13 April 2004 ("the Undertakings") and were provided to Meridian Bank Limited, which subsequently changed its name by special resolution on 26 August 2004 to Newhaven Overseas Limited ("NOL").

12. Pursuant to the Undertakings, the Respondent had undertaken to pay to NOL:

12.1 £100,000 on or before 31 March 2004;

12.2 £12,000 per month for 12 months from 16 April 2004 and £200,000 on or before 15 April 2005.

13. No payments were made by the Respondent.

14. As a result of the Respondent's failure to comply with the Undertakings, NOL issued High Court proceedings against him ("the Claim") seeking, amongst other things, an order:

> "requiring [the Respondent] to perform [the Undertakings] by paying the ... sum of £444,000 to [NOL] or to pay damages in a like sum or in such sum as the Court deems fit."

15. Whilst the Firm's letter-headed paper on which the Undertakings were sent indicated that a Mr JM was also a partner in the Firm, the Respondent's Defence to the Claim dated 10 December 2010 ("the Defence") stated that Mr JM was not "at any material time a partner". Although it initially issued the Claim against both the Respondent and Mr JM, NOL accordingly amended the Claim and proceeded solely against the Respondent.

16. The Respondent did not appear at the trial. On 12 March 2012 judgment was given in favour of NOL ("the Judgment") pursuant to which the Respondent was required to pay £698,214.02.

17. Daniel Becker ("Mr Becker") was at the relevant time an Account Officer with the Newhaven Group of Companies and a Consultant with the Law firm of Haldanes Solicitors ("Haldanes"). Fergus Anstock ("Mr Anstock") was at the relevant time one of the principals of the Newhaven Group of Companies and a Director of Newhaven International Holdings Limited.

18. Both Mr Becker and Mr Anstock were involved in the various property and refinancing transactions and were aware of the provision of the Respondent's Undertakings.

19. Catlin Insurance Company (UK) Limited ("Catlin") was the professional indemnity insurer of Chartbridge Solicitors LLP, which may or may not have been the successor practice to the Firm. Following notification of the Claim to Catlin a policy coverage investigation was conducted, which concluded that the Respondent was not entitled to an indemnity. In essence it was considered that the Undertakings were not given in a "solicitorial capacity".

Burnham Court

20. In or around the end of December 2003/early January 2004 NOL was approached on behalf of Mr F who sought a short term bridging loan in relation to a proposed purchase of a property in London ("Burnham Court"). Mr F was represented by another firm of solicitors. The Respondent and the Firm were acting for FGCG.

21. The total loan amount required, representing the deposit and associated expenses, was £92,000 and an agreed fee of £8,000 was to be charged by NOL ("the First Loan").

22. The Respondent confirmed that this was the first matter in which he acted for FGCG. However, it would appear that there was an ongoing relationship between him, Mr F and Mr E. The Respondent became an officer of companies in which Mr F had an involvement on 8 March 2005 and 29 April 2005.

23. In relation to the purchase of Burnham Court, the Respondent stated:

> "... [Mr F] contacted me in relation to the back to back purchase and sale of [Burnham Court]. Burnham Court was to be bought by FGCG for £215,000 and sold on to Mr [F] himself for £325,000.

24. Prior to the monies being advanced, NOL required an undertaking from Mr F's solicitors to repay the First Loan.

25. Despite the fact that the Respondent was acting for FGCG and not Mr F, Mr Becker asserted that he had several telephone conversations with Respondent who "offered his firm's Undertaking to repay £100,000, being the amount of the Bridging Finance". No explanation had been put forward by the Respondent as to why he was prepared to give an undertaking in circumstances where he was not acting for Mr F who was represented by the other firm of solicitors.

26. Mr Becker stated in his Witness Statement that he:

> "... was surprised by this as I would not have given such an undertaking and I know that my firm would not have done so either. However, the [Respondent] was quite happy to do this and assured me that he had acted for Mr [F] on a number of occasions and that he would have funds in his Client Account to be able to honour the Undertaking."

27. On 30 January 2004 the Respondent provided an undertaking ("the First Undertaking") in the following terms:

> "Upon receipt of £92,000.00 from your client Meridian Bank Limited to my firms client account detailed below would you please accept this letter as my firms formal undertaking to repay to Meridian Bank Limited £100,000.00 on or before 29th February 2004 (sic).
>
> We trust the repayment date is one that has been agreed and please confirm. There will be no need for any further undertaking on the basis of this undertaking given that my practice will be in control of the funds to repay your client on the undertaking at the appropriate time."

28. On 6 February 2004, NOL sent £92,000.00 to the Firm's client account. The Respondent confirmed that the monies were received on or about this date.

29. Mr Anstock confirmed in his Witness Statement that: "Had [the Undertakings] have (sic) not been in the correct format and unconditional, [NOL] would not have advanced the funds relating to those undertakings."

Mr Anstock also stated:

> "At each turn I wanted to ensure that [NOL] held adequate security for the funds advanced and the [Undertakings] were an integral part of this security. As a solicitor myself I am aware of just how powerful a solicitors undertaking is and how serious the consequences are for breaching such an undertaking. That is the reason that [NOL] was so careful to negotiate the form of

> undertaking that would be acceptable to it and why I felt [NOL] was fully secured by … the Undertakings provided."

30. NOL subsequently agreed to an extension of the First Loan period and by letter dated 27 February 2004 the Respondent varied the First Undertaking in the following terms:

> "With regard to the existing facility please accept this letter as my firms (sic) undertaking to repay to Meridian Bank Limited £100,000.00 on or before 3lst March 2004 in replacement for the previous undertaking given. In consideration of the extension of time given our client has agreed a £8,000.00 fee and I enclose my client account cheque for that amount with the hardcopy of this letter. I will make the cheque payable to Haldanes Solicitors unless you advise to the contrary."

31. Mr F subsequently made a request of NOL for additional funds to complete the purchase of Burnham Court which NOL agreed to on the basis that a first charge would be secured over the property as an additional security. Mr Becker confirmed that: "the charge was in addition to and not in substitution for the [First Undertaking] given by the [Respondent]."

32. On 27 February 2004 NOL transferred £260,000.00 to the Firm's client account to enable the completion of the purchase of Burnham Court. No explanation had been provided as to why these funds were sent to the Firm in circumstances where the Respondent was not acting for Mr F.

33. The purchase of Burnham Court ultimately completed in the name of Mr E. Whilst no account was given by the Respondent as to his, and the Firm's, involvement in the transaction, he has confirmed that:

> "For reasons which I cannot now recall Burnham Court was, in fact, purchased by [Mr E] on 8 March 2004 for the sum of £215,000. There was no onward sale..."

34. FGCG, the company for whom the Respondent confirmed he was acting, appeared to play no part in the transaction. It was also not apparent that NOL was made aware at the time that Burnham Court was to be purchased by Mr E and not Mr F. No account had been given as to the purpose for and the manner in which the First Loan was released from the Firm's client account.

35. The First Undertaking was not honoured by the Respondent. No payments were made by him to NOL. This was confirmed in the Respondent's Statement: "I did not make any payment to Haldanes in accordance with the undertaking I gave on 27 February 2004." Paragraph 9 of the Defence also confirmed that the First Undertaking "was not complied with at the time when it could have been performed."

<u>Rufford Mews</u>

36. Mr Becker, on behalf of NOL, asserted that notwithstanding the failure by the Respondent to comply with the First Undertaking "relations with Mr [F] remained good and [NOL] expected to receive payment at any time"

37. NOL agreed to advance further bridging finance of £200,000.00 to Mr F ("the Second Loan") to assist in respect of the purchase of another property in London "Rufford Mews".

38. The agreed terms included the provision of a further undertaking by the Respondent to repay the Second Loan. Mr Becker confirmed:

> "Again, the Defendant assured me that he was happy to give the undertaking because of his relationship with his clients and because he held ample funds in his firm's client account to meet any calls on the undertaking."

39. The Respondent contended that he was acting for Mr F in this matter.

40. On 13 April 2004 the Respondent provided an undertaking to NOL in the following terms ("the Second Undertaking"):

> "I unconditionally and irrevocably Undertake that upon receipt of £200,000 into my firms (sic) Client Account in respect of a loan from Meridian Bank Limited to my client [Mr F] I will pay to Haldanes Solicitors client account the sum of £12,000 per month for a twelve (12) month period from the date of receipt of the funds (or until the facility is re-paid in full) representing the interest payable on the loan and I will repay to Haldanes Client Account the entire principal amount of £200,000 on or before twelve (12) months from the date of receipt of funds."

41. The Respondent did not provide any account of the circumstances in which he offered the Second Undertaking.

42. On 16 April 2004 the Second Loan was sent to the Firm's Client Account. This was confirmed by the Respondent in his Statement.

43. Notwithstanding the fact that the Respondent stated that he was acting for Mr F, he confirmed that:

> "Again, a loan facility made available to Mr [F] seems to have been used to purchase a property in Mr [E]'s name, this time [Rufford Mews]. The purchase was completed on 19 April 2004."

44. Completion took place in the name of Mr E, on the Respondent's account, only 3 days after the Second Loan was sent to the Firm, purportedly on behalf of Mr F. No account was given as to the purpose for and the manner in which the Second Loan was released or the Respondent's involvement in the purchase of Rufford Mews.

45. A facility letter was sent to Mr F on 15 April 2004 and the security for the Second Loan was confirmed as being the Second Undertaking.

46. In breach of the Second Undertaking, no payments were made. This was confirmed in the Respondent's Statement:

> "It would appear that no payments were, in fact, made and that the undertaking that I provided on 13 April 2001 was not complied with at the time when it could have been performed."

Further Advance

47. A further £335,000 was sent to the Firm's client account on 16 April 2004 in relation to a separate facility of £600,000 agreed between NOL and Messrs F and E ("the Further Advance"), secured by a charge over Rufford Mews.

48. The Respondent had not provided any account as to why this sum was received by the Firm, the purpose for and the manner in which this further advance was subsequently released nor his involvement in the charge being secured against Rufford Mews.

Attempts to Refinance the First Loan, the Second Loan and the Further Advance

49. Mr Becker confirmed that the Respondent contacted him in August 2004 in relation to the refinancing of the First Loan, the Second Loan and the Further Advance. It was unclear in what capacity, or for whom, the Respondent was acting at this time.

50. In his Statement to the High Court, the Respondent addressed the difficulties encountered by Messrs F and E in seeking to raise the funds to repay NOL and the various restructuring proposals considered and/or implemented between August 2004 and mid-2007.

51. Mr Becker confirmed that on or around 13 October 2004 the Respondent acted for Messrs F and E in relation to a refinancing arrangement and transferred £352,078.75 from the Firm's client account to NOL in partial repayment of the Further Advance. Mr Becker stated that:

> "The [Respondent] acted for Mr [F] and Mr [E] in this re-financing and knew that it would not involve him being released from his undertakings. Indeed this position was expressly confirmed in telephone conversations I had with him at the time. Furthermore at no point did the [Respondent] state either verbally or in writing that payment of this money represented any form of performance of either of his Undertakings."

52. Later, in 2005, a further refinancing proposal was advanced whereby NOL agreed to fund the purchase of a number of flats in London ("the Flats"). NOL agreed to finance the purchase of the Flats "in the hope of achieving a greater level of security for the money already advanced, whilst maintaining the existing security of the 2nd Legal charges and [the Undertakings]".

53. Mr Becker confirmed that the Respondent "was aware of all discussions and the agreements reached, and indeed he acted on the purchase of the Flats". He confirmed that the Respondent: "... did not at any stage ask to be released from his undertaking and I have no doubt from the conversations we had at the time and the previous course of dealings but also subsequent events that he knew [NOL] still held him to [the Undertakings] which is why he did not seek a release".

54. In the course of the Respondent acting in the purchase of the Flats a total amount of £1,863,900.35 was sent to the Respondent by NOL (then in practice at the successor practice to the Firm). Mr Becker stated that these funds were sent in separate tranches to enable the purchases of the Flats to complete in December 2005 and January 2006. Whilst it was not clear on whose behalf the Respondent was acting, Mr Becker confirmed that the monies were "remitted to the Defendant's firm to enable him to complete" and included the Respondent's "fees in acting on the purchase."

55. Subsequent attempts to refinance all of the various loans made by NOL, now including the advances made for the purchase of the Flats, were unsuccessful and in the absence of repayment, in or around mid-2007, NOL resolved to take action to enforce payment. This included taking possession of the Flats.

56. Mr Becker stated that he held a further discussion with the Respondent in or around this time in relation to the Undertakings. He stated:

> "...I raised the issue of the undertakings. The [Respondent] did not deny that they were still in force or that he was liable on them. However, he gave no indication of how or when they would be honoured. At that stage I did not press the point although the [Respondent] was in no doubt that [NOL] would take steps to enforce the undertakings if it had no alternative."

Correspondence with the SRA

57. By letter of 9 May 2014 the Applicant wrote to the Respondent and he replied by email dated 27 May 2014. By letter dated 20 June 2014 the Respondent was notified that this matter had been referred to the Tribunal.

Witnesses

58. No oral evidence.

59. Submissions on Behalf of the Applicant

59.1 The Respondent had no real response to the allegations as could be seen from his one-page Answer. However, he did not formally admit any of the allegations.

59.2 The Respondent had said that he did not require the attendance of either of the Applicant's witnesses, Mr Becker or Mr Anstock, at the hearing and in Mr Levey's submission it therefore followed that their evidence was accepted by him.

59.3 Mr Levey took the Tribunal through the Rule 5 Statement and referred to the Statements of Mr Becker and Mr Anstock, both dated 21 September 2011, which had been given in the High Court proceedings relating to the Claim. He also noted the Statement of the Respondent dated 20 September 2011 in those proceedings, which he said was not a document that the Applicant relied upon in the sense of it being true.

59.4 Mr Levey referred to the reasoning laid out in the Rule 5 Statement as to why the Respondent's behaviour met the allegations before the Tribunal. In particular it was said that:

"71. A solicitor who fails to honour an undertaking is *prima facie* guilty of professional misconduct. It is clear and indeed admitted that the Respondent did not comply with the First Undertaking at the time when it could have been performed.

72. In circumstances where:

72.1 the Respondent agreed to provide the First Undertaking to guarantee the borrowings of an individual who was not his client;
72.2 no explanation has been put forward by the Respondent as to why he offered the First Undertaking when his actual client, FGCG, had no direct involvement in the underlying transaction;
72.3 the terms of the First Undertaking were such that the Respondent was essentially stepping into the shoes of the borrower and guaranteeing the First Loan without any limitation on his part;
72.4 the First Loan was received into the Firm's client account and no account has been given as the Respondent's involvement in the underlying transaction or the circumstances in which the monies were subsequently released;
72.5 the First Undertaking was not complied with; and
72.6 there is no evidence that the Respondent took any steps to seek to comply with the First Undertaking,

it is alleged that the Respondent failed to honour the First Undertaking either by 31 March 2004 or subsequently.

73. As a consequence of such failure, the Respondent has acted in a way that was likely to compromise his integrity and in a way that would diminish the trust the public placed in him and in the solicitors' profession.

74. The Respondent contends that he was implicitly released from the First Undertaking; however this was not accepted by NOL.

75. I refer to rely upon Mr Becker's Witness Statement in which he concludes:

"62. At no point since the [Respondent] provided [the Undertakings] has he expressly stated to either me or [NOL] whether verbally or in writing that he considered himself released from [the Undertakings].
63. At no point since the [Respondent] provided [the Undertakings] has he requested from either myself or [NOL] either verbally or in writing a release of [the Undertakings].
64. At no point since the [Respondent] provided [the Undertakings] has [NOL] or I impliedly released the [Respondent] from [the Undertakings)."

> 76. … as a result of the Respondent's failure to repay the monies owed to NOL and onto the Undertakings, proceedings were commenced and Judgment ultimately obtained.
>
> 77. In any event, even on the Respondent's case, which is not accepted, he indicates that he only considered he was released from the First Undertaking having been shown a loan facility on or around 2 December 2005. The First Undertaking clearly required payment on or before 31 March 2004 and no explanation has been put forward by the Respondent as to why he failed to do so."

59.5 In the Rule 5 Statement, the Applicant made exactly the same points concerning the Second Undertaking, with the addition that by the time the Respondent considered that he was released from the Second Undertaking having been shown a loan facility agreement on or around 2 December 2005, "in accordance with the very clear terms of the Second Undertaking, 12 payments of £12,000 should have been made by the Respondent to NOL together with a payment of £200,000 to be made on or before 15 April 2005. No explanation has been put forward by the Respondent as to why he failed to do so."

59.6 The Respondent did not challenge the High Court judgment made against him.

60. Submissions on Behalf of the Respondent

60.1 In his Answer dated 22 December 2014, the Respondent said that for the reasons given in his Defence and his Witness Statement, he understood that by the conduct of Newhaven the undertakings were satisfied. He said that:

> "Newhaven continued to deal with my clients up to and including the purchase of the [Flats] and my understanding was that if my client was not able to raise finance against those properties to repay all borrowings from Newhaven that Newhaven would accept the properties in satisfaction of all the loans which is in fact what happened. The fact that I was not contacted by Newhaven for a number of years reinforced my view and it was only as a result of the notification of my bankruptcy that Newhaven took any action against me."

60.2 In his Witness Statement, the Respondent said in relation to the undertakings that:

> "40. I understand that there is no requirement for the performance of an undertaking where the maker has been explicitly or implicitly released from it. In light of the sequence of events set out above (and the fact that the undertakings in question were given some 6 years prior to the commencement of these proceedings: between March 2004 February 2005), I believed that the loan to [a special purpose vehicle] replaced all previous borrowings and that there was no reliance on the security of the undertakings subsequently. In any case, even if the undertakings are still extant, I do not consider that it would be right to require me to perform them when the Claimant has delayed for so long in bringing these proceedings.

41. Furthermore, I do not believe that the Claimant has suffered any loss as a result of my not performing the undertakings. If the Claimant or [a company connected to the Claimant] are out of pocket, it is because of the decision to lend to [the special purpose vehicle], which was made in the knowledge that the undertakings had not been performed."

Findings of Fact and Law

61. The Applicant was required to prove the allegations, which were denied by the Respondent, beyond reasonable doubt. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

62. **Allegation 1.1 - He failed to honour undertakings provided to a third party in letters dated 30 January 2004 and 27 February 2004;**

Allegation 1.2 - He failed to honour an undertaking provided to a third party in a letter dated 13 April 2004;

Allegation 1.3 - In failing to honour the undertakings to which allegations 1.1 and 1.2 refer, he acted in a way which was likely to compromise his integrity and/or the good repute of himself and the solicitors' profession contrary to Rules 1(a) and 1(d) of the Solicitors Practice Rules 1990.

62.1 For the avoidance of doubt, the Tribunal treated each of the allegations as having been denied by the Respondent. Being mindful of the ease of reference of the parties and others reading this Judgment, it was convenient to take the allegations together. Each allegation was considered independently by the Tribunal against the totality of the evidence.

62.2 The Tribunal read all the papers carefully, and noted that the Respondent had very little to say in explanation for why his solicitor's undertakings had not been satisfied by him by the specified dates or at all. A solicitor's undertaking was defined in "The Guide To The Professional Conduct of Solicitors 1999", Chapter 18 at 18.01 (the definition applicable to the undertakings in this case) as "any unequivocal declaration of intention addressed to someone who reasonably places reliance on it made by a solicitor". The undertaking is personally binding on the solicitor. Any solicitor failing to honour an undertaking was *prima facie* guilty of professional misconduct. There was no doubt that the Respondent accepted that he had given undertakings. Paragraph 4 of his very brief Answer in these proceedings is set out at paragraph 60.2, sub-paragraph 40, above, and makes this clear and seeks to explain why he considered himself no longer bound by them. The Tribunal was mindful that there was a High Court Judgment in respect of the undertakings, in favour of NOL, but those proceedings would have been decided on the civil standard as they were civil proceedings. The Tribunal applied the criminal standard, beyond reasonable doubt, to test the allegations against the Respondent. The SDPR Rule 15(4) provided that the findings of fact upon which the High Court Judgment was based were admissible as proof but not conclusive proof of those facts. The Tribunal had to make up its own collective mind based on the facts, and documentary evidence before it.

62.3 Was there any evidence before the Tribunal that the undertakings were no longer extant as suggested by the Respondent? The answer to that question was "no", and the evidenced adduced by the Applicant in the form of the witness statements from Mr Becker and Mr Anstock satisfied the Tribunal beyond reasonable doubt that the undertakings were still in existence and remained to be satisfied by the Respondent. Allegations 1.1 and 1.2, which were denied by the Respondent, were found proved by the Tribunal beyond reasonable doubt on the facts and the documents. Allegation 1.3 was also found proved beyond reasonable doubt; the Tribunal found that the Respondent had acted in a way that was likely to compromise his integrity and the good repute of himself and the solicitors' profession contrary to Rules 1(a) and 1(d) of the SPR 1990. Compliance with a solicitor's undertaking was a linchpin of conveyancing transactions and went to the core of a solicitor's integrity and reputation. The public and other members of the profession were rightly highly unlikely to trust solicitors who made solemn promises that they later failed to keep.

Previous Disciplinary Matters

63. The Respondent previously appeared before the Tribunal under case number 10801-2011 on 18 September 2013. On that occasion he was ordered to pay a fine of £6,000 and costs of £11,146.23. The allegations against the Second Respondent were that he failed to comply with the terms of an undertaking promptly or at all, and that by his actions he compromised or impaired or acted in a way which was likely to have compromised or impaired his independence or integrity and behaved in a way that was likely to have diminished the trust the public placed in him as a solicitor or the legal profession. The allegations were ultimately admitted and found proved. The facts underlying these allegations took place in 2010-2011 so post-dated by some distance the events forming the subject matter of these proceedings.

Mitigation

64. None.

Sanction

65. Please refer to the Judgment in SDT Case Number 11292-2014 with which this Judgment should be read for details of sanction with reasons.

Costs

66. Please refer to the Judgment in SDT Case Number 11292-2014 with which this Judgment should be read for details of costs with reasons.

Statement of Full Order

67. Please refer to the Judgment in SDT Case Number 11292-2014 with which this Judgment should be read for the Statement of Full Order. In addition to the sanction that the Respondent be STRUCK OFF the Roll of Solicitors, the Tribunal Ordered that the Respondent do pay the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £13,562.88.

Dated this 11th day of April 2016
On behalf of the Tribunal

D Glass
Chairman