SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11352-2015

AND

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KAMRAN ADIL, First Respondent

[SECOND RESPONDENT – NAME REDACTED] Second Respondent

Before:

Miss J. Devonish (in the chair)
Mr D. Glass
Mr R. Slack

Date of Hearing: 2 February 2016

Appearances

Mr Peter Steel, Solicitor, of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4M 7RF on behalf of the Applicant.

The First Respondent did not appear and was not represented.

Mr Simon Butler, Barrister, of 9 Gough Square, London EC4A 3D, instructed directly by the Second Respondent.

JUDGMENT

Allegations

1. The allegations made against the First Respondent, Mr Kamran Adil, on behalf of the Solicitors Regulation Authority ("SRA") were that:

1.1 He involved himself in, or permitted or acquiesced in the involvement of Tavistock Law Limited ("the Firm") in conveyancing transactions that bore the hallmarks of mortgage fraud in breach of Principles 2, 4, 5, 6, and 10 of the SRA Principles 2011 ("the Principles");

1.2 He failed to run the Firm in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles and/or failed to protect client money and assets in breach of Principle 10 in that:

1.2.1 He failed adequately, or at all, to supervise staff employed by the Firm;

1.2.2 He continued to practice without professional indemnity insurance ("PII");

1.2.3 He failed to effect an orderly closure of the Firm;

1.2.4 He facilitated or acquiesced in improper withdrawals from client account leaving a minimum shortage of £2,107,800 in breach of Rules 6 and 20(1) of the SRA Accounts Rules ("SAR") 2011.

1.3 He failed to deal with the SRA in an open, timely, and co-operative manner in breach of Principle 7 of the Principles.

2. Dishonesty was alleged against the Respondent in respect of allegation 1.1, however proof of dishonesty was not essential to sustain the allegation.

3. The allegation made against the Second Respondent, on behalf of the SRA was that he failed to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 and/or failed to protect client money and assets in breach of Principle 10 of the Principles in that:

3.1 He failed to ensure compliance with the SAR 2011 in breach of Rule 6 of the SAR 2011;

3.2 He failed adequately, or at all, to supervise staff employed by the Firm; and

3.3 He had no understanding of, or effective control over the finances of the Firm despite being a signatory on at least one of its bank accounts.

Documents

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

Applicant

- Application dated 17 February 2015
- Rule 5 Statement and Exhibit "PS1" dated17 February 2015
- Applicant's Schedule of Costs dated 25 January 2016
- Service Documents in relation to the First Respondent

Second Respondent

- Second Respondent's Witness Statement (undated)
- Second Respondent's Chronology of Events
- Second Respondent's Personal Financial Statement

Preliminary Matters

Preliminary Matter (1) - The First Respondent's Absence

5. The First Respondent did not attend the hearing and was not represented. There had been no contact from the First Respondent to any communications from the Applicant, nor had he communicated with the Tribunal in relation to the proceedings.

6. Mr Steel referred the Tribunal to the Memorandum of a former division dated 30 June 2015, where the Tribunal directed the Applicant to effect service of the proceedings upon the First Respondent by sending them by post to an address in Pakistan, and by advertisement in a newspaper in Rawalpindi, Pakistan. The First Respondent was to be deemed served seven days after the date of posting of the documents, or the date of advertisement in a Rawalpindi newspaper, whichever was the later.

7. The Tribunal was referred to the bundle of service documents, which contained a letter sent by Mr Steel to the First Respondent in Pakistan dated 26 June enclosing the papers in this matter. In a further attempt to contact the First Respondent, Mr Steel had communicated with the Punjab Bar Council (with whom the First Respondent was registered) requesting confirmation of his address. On 1 July 2015 the Punjab Bar Council replied, confirming the address of the First Respondent being that to which Mr Steel had already written.

8. Mr Steel also provided copies of the advertisement published in Pakistan Today, and Business Recorder both on 10 September 2015.

9. Mr Steel applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided that:

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

10. Mr Steel submitted that, in accordance with the decision of the Tribunal of 16 June 2015, the Respondent was deemed to have been served with notice of the substantive hearing on 17 September 2015 by way of the advertisement in the above mentioned newspapers.

11. Mr Steel referred the Tribunal to the case of R v Jones [2001] EWCA Crim 168 ("Jones"), stating that the relevant provisions of the checklist devised in that case were provisions (i), (ii), (vi), (ix) and (xi), which stated as follows:

> "(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;
>
> (vi) 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;
>
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
>
> (xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present"

12. In relation to provision (i) Mr Steel submitted that the First Respondent had:

- Failed to respond to the hearing notice;
- Failed to comply with the Tribunal's directions;
- Failed to respond to serve any evidence;
- Failed to attend the hearing; and
- Failed to offer any explanation for his non-attendance.

13. The First Respondent left the Firm shortly after the events came to light. There was evidence that he had deliberately evaded service. The First Respondent had had ample opportunity to engage in the proceedings, and had chosen not to do so. In the circumstances, it could be inferred that the First Respondent wished to take no part in the proceedings and had waived his right to be present.

14. In relation to provision (ii) it was submitted that, given the efforts made to contact the First Respondent, and given his clear evasion of the proceedings, it was manifestly obvious that the First Respondent would not attend if matters were adjourned to try to secure his attendance. Further, although the First Respondent would be disadvantaged by not providing his account (provision vi), it was clear that he did not intend to provide an account, as he had been given the opportunity to do so, and had not availed himself of it.

15. Finally it was submitted that it was in the interests of both the general public (provision ix) and the Second Respondent (provision xi) for matters to proceed. The allegations arose from matters occurring in 2012, and included an allegation of dishonesty. The Second Respondent had co-operated with the Applicant throughout, and it would be unfair for matters not to proceed against him.

The Tribunal's Decision

16. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the First Respondent. The Tribunal saw evidence that an enquiry agent had been able to obtain a direct contact number for the First Respondent. On calling the number, the enquiry agent spoke to someone who spoke clear English. When asked if he was the First Respondent, the man stated that his name was Mohammed Ali, and began speaking in a language that the enquiry agent did not understand. The number called was the same as the number held by the Punjab Bar Council, for the First Respondent.

17. The Tribunal considered whether it would be fair to proceed in the First Respondent's absence. The Tribunal had regard to the principles in Jones. The First Respondent had not served any evidence or complied with the Tribunal's directions. He was alleged to have acted dishonestly; the serious nature of that allegation meant that it was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. Further, it was in the interests of the Second Respondent, who was in attendance, for the matter to proceed.

18. The Tribunal determined that the nature and circumstances of the First Respondent's lack of communication showed that he had deliberately absented himself from the proceedings and waived his right to appear. Accordingly, the Tribunal was satisfied that in this instance the First Respondent had chosen voluntarily and deliberately to try to evade service, and had absented himself from the hearing. There was nothing to indicate that he would attend or engage with the proceedings if the case were adjourned. In light of these circumstances, it was just to proceed with the case, in the First Respondent's absence.

19. The Tribunal deemed all allegations against the First Respondent as denied, and required the Applicant to prove all allegations beyond reasonable doubt.

Preliminary Matter (2) - The Second Respondent's Admissions

20. At the commencement of the hearing Mr Steel informed the Tribunal that the Second Respondent admitted the allegations he faced. Mr Butler confirmed that this was indeed the case. Notwithstanding the admissions, the Tribunal required the Applicant to prove the allegation beyond reasonable doubt.

Factual Background

21. The First Respondent was born in 1984, and was granted Registered Foreign Lawyer ("RFL") status in January 2012. His RFL status was suspended on 27 November 2012. At the material time the First Respondent was practising as an

RFL with the Firm. He was appointed a Director of the Firm on 1 October 2012 and remained in post until the Firm was intervened into on 27 November 2012.

22. The Second Respondent was born in 1939 and was admitted as a solicitor in August 2008. His name remained on the Roll of Solicitors. His Practising Certificate was made subject to a number of conditions. At the material time the Second Respondent was practising as a Solicitor and was a Director of the Firm. He was appointed as a Director on 28 August 2012 and was still in post at the date of the intervention.

23. The First and Second Respondents were the only Directors of the Firm. The Firm employed at least three unadmitted employees, namely: RQ, SC, and JK. SC and RQ were signatories, along with the Second Respondent, of the Firm's client account. The Second Respondent denied signing a mandate for the client account. The Firm also engaged a former solicitor, SA, who had removed his name from the Roll of Solicitors in 2009.

The Forensic Investigation

24. On 19 November 2012, Mr David Bailey, a Forensic Investigations Officer of the SRA, ("the FI Officer") attended the Firm's premises to commence an investigation, taking with him letters dated 19 November 2012 addressed to the First and Second Respondents, giving notice of the investigation of the Firm and enclosing notices pursuant to section 44B of the Solicitors Act 1974.

25. The FI Officer was met by Miss GY and Mr DV both from M PLC, with whom the premises from which the Firm traded were shared. Mr DV informed the FI Officer that he had not seen either the First or Second Respondents for three weeks and that all files and office equipment had been removed from the office, with the exception of some old office appliances previously stored in the boardroom. Mr DV stated that "Raj" had collected the client files two or three weeks previously. Mr DV had not been provided with a forwarding address for the Firm, but said that SA had visited the offices from time to time and had stated that he was trying to contact the First and Second Respondents.

26. The FI Officer made contact with SA on 20 November 2012. SA stated that he had decided to leave the Firm towards the end of October and had concentrated on closing his matters. About two or three weeks prior to the inspection, he had arrived at the Firm's offices to find that the computers had been removed. Since then he had been in contact via email with the First Respondent. SA informed the FI Officer of two matters of which he was aware, where existing mortgages had not been redeemed and instead only 10% of the amount required had been repaid (Arnold Road and Cavendish Drive), and a further two matters where the stamp duty had not been paid. On 22 November 2012 SA provided further information concerning unredeemed mortgages in relation to Tennyson Avenue.

27. Between 19 and 22 November 2012 the FI Officer also made contact with several firms who were acting or had acted on the other side of conveyancing transactions dealt with by the Firm.

28. On 21 November 2012, the FI Officer returned to the Firm's offices and noted that the Firm's name plaque had been removed from the front door. Upon ringing the front door bell, the FI Officer was denied access to the premises and informed that the Firm was no longer there.

29. The FI Officer produced a report on 22 November 2012 ("the FI Report"), following which the SRA resolved to intervene into the practice and appointed an Intervention Agent. At the point of intervention (27 November 2012), the Practising Certificate of the Second Respondent, and the First Respondent's RFL status, were suspended with immediate effect. During the course of the intervention, an analysis of the transactions that took place with the Firm's main client account between 2 August and 27 November 2012 was produced.

30. The contents of the FI Report were raised with the Respondents in letters dated 11 September 2013. The Second Respondent replied on 3 October 2013. The First Respondent did not respond and the Applicant's letter to him was returned in the post.

Conveyancing Transactions

31. A number of the allegations arose from various reports received from other solicitors and opposing parties about apparent irregularities in numerous conveyancing transactions in which the Firm was involved. These transactions fell into two categories; (a) those where mortgages were unredeemed; and (b) lost deposit and/or completion monies.

(a) Unredeemed Mortgages

Albert Road

32. In or around August/September 2012 VL instructed the Firm in relation to the sale of his property at Albert Road, at a purchase price of £200,000. The day-to-day running of the file appeared to have been carried out by SA. The purchaser was represented by CW Solicitors.

33. On 4 October 2012 a redemption statement was obtained in respect of VL's existing mortgage with Santander, showing that a total of £163,820.59 was required to redeem the mortgage. On the same day, the Firm provided Replies to Requisitions on Title. In respect of question 4(A) ("Please specify the mortgages or charges which will be discharged on or before completion"), the Firm listed Santander.

34. A completion statement produced by the Firm dated 5 October 2012 listed the amount required to redeem the Santander mortgage as £163,820.59, with £36,143.19 from the sale proceeds due to be remitted to the client. Contracts were exchanged at 8:45am on 5 October 2012 by DS of CW Solicitors and SA. The transaction completed on the same day.

35. At 11.20 on 5 October 2012, VL emailed SA asking him to forward the net sale proceeds to a nationwide account in the name of CG. A copy page from CG's bank statement showed £36,143.19 being received from the Firm on 5 October 2012,

followed by a CHAPS payment to a supplier of mobile telephones and accessories of £36,000, along with a CHAPS payment fee of £25, with the remaining £118.19 been transferred to VL.

36. An analysis of the bank statements showed that £200,135.78 was received by the Firm from CW solicitors on completion. The client account balance then stood at £231,868.13. The statements showed that £16,382.05 (i.e. 10% of the amount required to redeem the mortgage, the decimal point having been placed in the incorrect position) was transferred to Santander the same day, and £36,143.19 net sale proceeds transferred to CG in accordance with VL's instructions. The client account balance was then £179,342.89. Several additional large sums were then transferred out of client account on 5 and 8 October 2012 as set out below:

DATE	PAYEE	NARRATIVE	AMOUNT (£)
5 October 2012	GS	Client Instruction	49,650
5 October 2012	FK	Client instruction for invoice	49,375
8 October 2012	RA	On instruction of client	48,350
8 October 2012	SBP	B36/001/MKS 85 Cheques Rd	25,000

37. At close of business on 8 October 2012, the client account balance stood at £6,967.89.

38. On 8 November 2012 VL contacted SA by email (using SA's personal email address) stating that he had just received a call from Santander to say that his mortgage had not been redeemed. VL sought an explanation and threatened to contact the police. A further redemption statement was obtained from Santander the same day showing that the loan remained outstanding at £148,085.36.

39. VL's email was forwarded by SA to the First Respondent at the Firm's email address. The First Respondent replied asking for further details and to see the file: "How much is the amount? Why was it not redeem?(sic)…assure [VL] that we will look into the matter ASAP and put it right. I don't know what's what." SA replied at 15.24 that day purportedly attaching a CHAPS instruction showing the correct amount and stating: "Assuming it is a bank error and they did not send the full amount, as I see it: A. The difference… is still in the Client Account. B. The extra £646.82… with daily rate of 19.19 should be met by HSBC…."

40. At 11.24 on 9 November 2012 SA emailed the First Respondent expressing concern that he had not heard from the First Respondent following his emails "last night and this morning" and seeking an update on the matter. SA emailed the First Respondent again at 12.40 on 9 November 2012, stating that VL had telephoned again asking what the position was and requiring a response by 1pm. The First Respondent responded to the first email at 12.52 stating that: he was going to Friday prayers; that VL's file should be given to "Raj" who would come in that day; and that VL should be assured that his file "will be sorted ASAP". The First Respondent then replied to the later email at 12.56 requesting VL's contact details so he could contact VL "later" and stated:

> "I have contacted HSBC. It was an error from the bank. The amount sent out was incorrect il (sic) need a copy of the new redemption statement and we need to work out how we will find the difference which will be over £1,000.

> C and N have lefy (sic) me in a stupid situation and a dysfunctional firm. I have too much on my plate."

41. At 18.45 on 9 November 2012, SA emailed the Firm's email address complaining that VL had not heard from the First Respondent as promised and was not satisfied by the explanation of a bank error. SA's email was then forwarded to a personal email address in the First Respondent's name at 19.08. The email, which referred to threats from the client to contact the police stated:

> "V has not heard from you at all.
> I have done my best to assure him re bank error.
> He was not happy with me passing on yr (sic) assurances.
> I have no choice but to give him yr (sic) number now.
> He will ring you and you will not answer.
> He will then take further action.
> He is not an average uninformed client.
> He is a clued up Property Manager in an established chain and fears a scam.
> He cannot be fobbed off until Monday
> This cannot wait.
> You really need to call him now…
>
> I believe if you do not call him he will be going to the Police.
>
> I…will give V your number if he has not heard from you by 7.30"

42. SA emailed the First Respondent again (using both the Firm and his personal email addresses) on 12 November 2012 at 08.49, expressing his bafflement at the First Respondent's failure to contact the client and clarifying that a transfer of £147,438.54 was required to redeem the Santander mortgage. He sent a further email at 12.38 confirming that he had been told that the First Respondent had made contact with VL to assure him that payment was being made that day.

43. At 12.24 the First Respondent emailed SA in relation to this transaction and also Cavendish Drive, as follows:

> "I need to sort the issue out on these two cases. I am sending Raj into the office to collect the files.
>
> I have been very upset with the whole situation and I'm not really happy and what has gone on. I am not one to blame people but I feel like the world is falling apart… (sic)
>
> I want to get all payments out of the account and close shop but I need to be sure that all the funds are correctly allocated. I cannot trust anyone. I hate N, J and C. What they have done to me is wrong, this company was full of fraud every 3rd case is a problem. I'm picking up new problems everyday…"

44. SA replied at 12.40 again stating that the First Respondent needed to make the missing payment on the Albert Road transaction, that the client would not release the file to the First Respondent, and that "your actions have severely prejudiced many

other ongoing files and chains of transactions with all the blame coming back to me. Your silence etc has made my life 100 times worse…"

45. The First Respondent replied:

> "I am not doing things your way or anyone else's way. I am the owner of the company, Tavistock Law. If I do not see the file I am not going to send any payment anywhere. I want to see what is going on. Too many people taking advantage. If V wants to go to the Police then he is more than welcome. I have my Practising Certificate and livelihood on the line.
>
> It's my fault I trusted you, [RQ] and the previous owners. I want you to know I have not just 2 cases with problems. There are 4 matters and il (sic) be going through each one myself. I have spoken to law society ethics and our supervisory department who have and are guiding me on how to deal with this situation. V and Co need not worry I will get things sorted. Please try and hep (sic) me, I've had enough of people putting hurdles in front of me. I do need both files to resolve the two issues, if I don't get them then I won't do anything. I can't do anything…"

46. VL emailed the First Respondent referring to a text received from the First Respondent where he had informed VL he would update him by 1pm on 13 November; no update was received. The email referred to a further text sent by the First Respondent where he stated he was speaking with the HSBC and Santander and would update VL by the end of the day. Again, no update was received.

47. VL received an email response in the name of the First Respondent at 12.05 on 14 November 2012 as follows:

> "I have had in dept (sic) talks with HSBC head office and the HSBC business manager on our account. I can confirm to you that we are holding funds in our account and as of yesterday 3pm, HSBC have asked for 48 hours to resolve this saga.
>
> I have also been assured all losses and fees incurred will be reimbursed by them, quite rightly.
>
> …I will be calling Santander and giving them my personal undertaking and the firms undertaking that this money will be cleared off. I have (sic) you appreciate I could not do this without being sure that HSBC will release the funds and accept liability. I have 3 cases all similar and 3 lenders require clearing. There is £378k in the account a copy of which I sent to [SA].
>
> I will get back to U later today and assure that this mess will be sorted soon."

48. The analysis of the statements and transactions shows that the client account balance at the start of 15 November was £1,766.79. £80,000 was then received as a deposit on an unrelated transaction. Two transactions occurred for £75,000 and £5,000 respectively, leaving a balance at the end of that day of £1,766.79.

49. On 20 November 2012, VL emailed the First Respondent, having been contacted by Santander regarding the mortgage arrears stating "You promised to update on Friday but didn't…I feel like I am being taken for a ride". SA also emailed the First Respondent reporting that: "I have heard from [VL] that Santander have told him that they have heard NOTHING from you or HSBC about the missing payment…"

50. On 27 November VL lodged a claim with the Compensation Fund. The Compensation Fund paid £152,665.57 to Santander on 17 June 2013 in relation to this transaction.

51. Two further transactions followed a similar pattern:

Tennyson Avenue

52. Tennyson Avenue was subject to two existing legal charges; one in favour of First Plus Financial Group plc ("First Plus"), and the other in favour of Woolwich/Barclays. First Plus confirmed that the total amount payable to redeem the mortgage, as at 24 September 2012, was £55,458.99. Completion of the sale took place on 24 September 2012.

53. Completion documents showed:

- An HSBC "Activity History" printout purportedly showing the creation of a CHAPS payment to First Plus in the sum of £55,450.99. The printout stated the payment was created on 24 September 2012 at 14.36 under the Second Respondent's reference; and

- A HSBC printout purportedly showing confirmation of a CHAPS payment to Barclays in the sum of £252,444.32. The printout stated that the payment was actioned on 25 September 2012 at 12:55 under the Second Respondents reference.

54. The bank statements also showed that £5,545.89 (i.e. 10% of the amount needed to redeem the First Plus mortgage, the decimal point having been placed in a different position) was transferred to First Plus on 24th September, and £25,244.43 (again, only 10% of the amount required to redeem the Barclays mortgage) was transferred to Barclays on 25 September. Several additional large sums were also transferred out of client account on 24 September to apparently unrelated parties.

55. On 14 January the vendors lodged a claim with the Compensation Fund for the sums owed to First Plus and Woolwich/Barclays. A schedule provided by the Compensation Fund indicated that to date, payment of £284,685.61 had been made on this matter following adjudication, comprising of £229,008.09 to Woolwich/Barclays on 31 May 2013, £2,750.19 to Mr FAF and Ms JB on 12 June 2013, and £52,927.33 to First Plus on 17 June 2013.

Cavendish Drive

56. MV and SV were the purchasers of the property at Cavendish Drive, in relation to which they instructed JS of SL. The purported vendor, DP, was represented by the Firm. The purchase price agreed was £267,000. The property was subject to a charge dated 15 December 2005 in favour of the Royal Bank of Scotland (RBS), First Active.

57. On 6 September 2012 the Firm (purportedly via MAK, a Director of the Firm between 8 May and 14 September 2012) gave an undertaking to QSL (acting for HSBC, mortgagee for MV and SV) that it would hold the net mortgage advance to the order of QSL until it was in receipt of the balance of the purchase monies and complete the sale. The Firm also gave an undertaking to return the mortgage advance by telegraphic transfer by the end of the following working day, if completion did not take place on the date of receipt or the following day. The matter exchanged and completed on 21 September 2012.

58. The client account bank statements and subsequent analysis of financial transactions showed that the balance on client account at the end of the previous day (20 September) was £29,714.26. On the day of completion, £26,700 was received from SL and £240,300 from QSL (the mortgage advance), making a client account balance of £296,714.26.

59. A completion statement issued by the Firm noted that £93,860.29 was outstanding on the vendor's mortgage with RBS, however the bank statements showed that only 10% of the money required to redeem the mortgage was paid. Several large sums were transferred out of client account on 21 September to apparently unrelated parties. At close of business on the day of completion the client account balance stood at £33,719.26.

60. A claim was lodged with the compensation fund on 4 December 2012. A letter and redemption statement from RBS dated the same date confirmed that the amount then outstanding on the mortgage was £84,785.14, with a daily interest rate of £3.70. The schedule provided by the Compensation Fund dated 21 January 2015 confirmed that a total of £85,359.20 had been paid out on 26 April 2014 in respect of this transaction. A letter dated 18 December 2012 was received from the Second Respondent in response to notification of the Compensation Fund award stating that: "May I state categorically that I had no knowledge of the matter to which the claim relates nor the events leading to the claim".

(b) Lost Completion/Deposit Monies

Windsor Road

61. This transaction was initially reported to the Applicant by NC, (the solicitors for the purchasers) who provided a form of complaint with attached documentation on 30 October 2012. Further papers were later provided to the Compensation Fund in support of a claim in respect of this matter, including NC's copy file.

62. The Firm purported to act for the vendors, Mr GS and Mrs KS; this transaction purportedly completed on 4 October 2012. NC were instructed to act on behalf of the purchasers - MT and his sons. The purchase price was agreed at £290,000. The property was subject to two registered charges; one dated 30 April 2008 in favour of TMB; and one dated 13 April 2010 in favour of BoB. The price stated to have been paid by the vendors on 16 May 2008 was £475,000.

63. The file from NC contained two copies of the Fittings and Contents Form, the first naming GS and KS as the vendors and the second purportedly signed by both vendors. Many of the questions on the Form were left blank or crossed through and annotated "sold as seen". There was also a Property Information Form purportedly signed by GS on 22 August 2012, and an Additional Property Information Form, again purportedly signed by GS, which stated that there was no Home Information Pack for the property as it was a "Private Sale".

64. The Firm wrote to NC on 22 August 2012 confirming that they acted for the vendors in the sale and enclosing the forms detailed above together with a draft contract. The letter included RQ's reference and contact details and stated that: "We understand that the parties are seeking to complete this transaction as a matter of urgency…."

65. NC replied to the Firm on 23 August 2012 confirming their instructions and requesting redemption statements for the two charges registered on the property, along with confirmation that the property was being sold "as per market value" and that there would be sufficient money available from the sale proceeds to redeem all existing charges. The letter also requested "an unconditional undertaking from you that you will redeem all existing charges on completion and will let us have relevant discharges certificates/confirmations as soon as possible after completion."

66. An email was sent at 16.29 on 23 August 2012 from "YR" at the Firm to NC confirming that: "all outstanding charges will be redeemed in full. We can further confirm that there will be sufficient monies to redeem all existing charges from the sale proceeds." The email went on to state that: "The property is being sold as a private sale… Nonetheless for the sake of clarity our client can confirm that the property is being sold below market value."

67. NC replied on 24 August 2012 asking why the property was being sold below market value and requesting "a clear undertaking from you that you will remove all charges of financial nature from the property on completion (sic)".

68. YR sent a further email at 13.08 the same day confirming that the sale was at an undervalue due to the condition of the property which required "a lot of care and work". The email also contained the following undertaking: "We hereby undertake to discharge the registered charge dated 30 April 2008 in favour of [TMB] and the registered charge dated 13 April 2010 in favour of [BoB] in full upon receiving the full completion monies for the agreed sale."

69. Contracts were exchanged at 15.30 on 24 August 2012 with the contract noting that RQ dealt with the exchange for the Firm. The contract stated that the purchase price was £290,000 including a deposit of £29,000 (paid by cheque). The balance remaining to be paid upon completion was £261,000, with completion set for

21 September 2012. The "Special Conditions" of the contract had been altered so that paragraph 4 stated: "The Property is sold with vacant possession on completion and all financial charges shall be removed on completion by the Seller".

70. On 14 September 2012 NC wrote to the Firm enclosing the draft TR1 transfer form and Requisitions on Title, in the Law Society's standard form including a warning notice that replies to Requisitions 4.2 and 6.2 were treated as a solicitor's undertaking.

71. The Firm replied on 17 September 2012 enclosing Replies to Requisitions on Title confirming that the balance of the purchase price (£261,000) should be paid into the Firm's HSBC client account. At paragraph 6.1, the Firm listed the two charges secured on the property, being the 2008 charge in favour of TMB and the 2010 charge in favour of BoB. In response to Requisition 6.2 ("Do you undertake to redeem or discharge the mortgages and charges listed in reply to 6.1 on completion and to send to us Form DS1, DS3, the receipted charge(s) or confirmation that notice of release or discharge in electronic form has been given to the Land Registry as soon as you receive them?"). The Firm replied "We undertake to redeem the mortgage charges listed in 6.1 on completion and forward to you the relevant DS1 form." The form appeared to be signed on behalf of the Firm and again the covering letter contained RQ's reference.

72. On 21 September 2012, the planned completion date, the Firm sent an email in the name of RQ to NC stating that completion had been rescheduled to 25 September 2012, as squatters had been trying to gain access. NC responded the same day confirming that they had received similar instructions.

73. On 25 September, the rescheduled completion date, the Firm sent a further email in the name of RQ to NC confirming that the property had now been secured and asking for completion to be set for 1 October 2012. NC replied stating that its client required completion by 28 September and offering to transfer funds on 27 September to be held to the order of NC as the acting solicitor would be unavailable for 10 days after that date. The funds were duly transferred on 27 September 2012 and the Firm confirmed receipt by email that day. The email, from RQ, stated that: (a) the funds would be held to the order of NC; (b) completion was anticipated to take place "early next week"; and (c) "Both vendor and buyer are communication (sic) in respect of this matter".

74. After speaking to its client and attempting to contact RQ on 28 September, NC wrote to the Firm enclosing a Notice to Complete. The letter was sent by fax on 28 September. NC then spoke to "ref RQ" on the telephone on 1 October 2012 asking for the matter to be completed that day and reiterating that a Notice to Complete had been served. An email in response in the name of RQ was then received on or around 1 October stating that "… We are informed that both buyers sellers and the agents are in talks and are seeking a resolution…" The email was annotated by NC with a note of the telephone conversation at 12.45 with "Miss J", asking for completion funds to be returned and the delay to be resolved; this was confirmed in a letter sent by fax the same day. A further letter was sent by fax at 17.30 on 1 October addressed to the "Senior Partner/Principle Solicitor" at the Firm confirming the details of NC's bank account as "you still have not returned funds of £261,000 which we had transferred to

you to hold to our order". A further letter requesting return of the funds was again sent by fax on 2 October 2012.

75. A telephone call between NC and "Miss J" was recorded in a file note dated 3 October 2012 at 11:45am, which stated that the directors of the firm – "Mr Paul and Mr Khan" – were not in the office. NC stated that the completion funds had still not been returned and informed Miss J that it would be reporting the matter to the SRA if it did not hear and receive funds by 12:30pm. A further file note at 12pm recorded a telephone call from "Mr K" of the Firm in which NC was told that the funds would be returned "today".

76. The Firm then sent an email at 13.34 on 3 October in the name of the First Respondent referring to a subsequent telephone conversation with RQ. In this email, the First Respondent confirmed that "[the Second Respondent] and RQ are the two authorised directors who can send funds out of the client account" but that both were away on court duty and were expected to return later. The email also stated that "Our [RQ] has confirmed he will be returning to concluded (sic) this matter today" and that the keys were to be released on Thursday (i.e. 4 October) at 4pm.

77. NC sent a further letter by fax at 10.14 on 4 October asking for confirmation of the position in respect of completion, and again requesting the return of funds pending completion. RQ on behalf the Firm replied confirming that "the keys will be released today at 4pm and completion will eventually take place". A handwritten NC file note recorded that RQ of Tavistock Law confirmed at 4.25pm that the matter had completed.

78. An analysis of the bank statements showed that the £29,000 deposit was received into client account on 31 August 2012. This was followed by various payments in and out of the account (some apparently related to other transactions) but included a payment of £29,000 the same day to "DB" ("On the instruction of our client Mr H"). The client account balance was £310,517.35 after the receipt of the £261,000 completion monies. The bank statements showed that a series of transactions then occurred over the next few days to recipients who did not appear to be related to the sale of Windsor Road. By the date of completion, the balance in client account was £31,732.25.

79. NC chased for the executed transfer on 8 October, and again on 12 October also asking for evidence of discharge of the existing charge. The executed transfer was sent to NC on 16 October 2012 under cover of a letter from RQ. The transfer, dated 4 October 2012, was purportedly signed by both GS and KS, with the signatures witnessed by the First Respondent. The signatures appeared to be different to those contained in the earlier Fittings and Contents and Property Information Forms. NC confirmed receipt of the transfer on 16 October and again requested clarification that the existing charge on the property had been redeemed.

80. A further hand written file note, dated 29 October 2012 at 2.30pm, recorded a telephone conversation between NC and Mr J of RSM, who introduced himself as the appointed receiver on the property on behalf of BoB. During the course of the conversation NC were informed that BoB had never authorised the sale and furthermore that one of the "vendors" had confirmed that they were not aware of the purported transaction.

81. NC attempted to contact both RQ and the First Respondent by telephone the same day without success and therefore sent a letter by fax at 16.27 on 29 October 2012 repeating the telephone conversation with RSM and asking "to know of your position on redeeming the existing charges considering that you have given a professional undertaking to do so and about the allegation that one of the sellers was not aware of the transaction". The letter was addressed to the "Senior Partner". At 16.54 NC telephoned the Firm and spoke to "VS" who confirmed that the messages had been passed on but that everyone had left for the day. NC then sent a further letter by fax at 17.51 demanding a response and evidence of redemption of the charge by 11am the following day, failing which the matter would be reported to the SRA.

82. On 30 October 2012, NC wrote to BoB seeking clarification of the appointment of a receiver. On the same day, they received a telephone call from BoB's solicitors, who stated that "… No money was received by the bank from the seller's solicitor". NC again attempted to contact the Firm by telephone on two occasions that day but was told firstly that "[the First Respondent and RQ" were with clients, and subsequently that the partners were in a meeting discussing the matter in question.

83. Later that day the First Respondent sent a letter to NC stating that:

> "We are very concerned of the nature of this transaction and have also been contacted by the solicitors acting for the receivers in this matter. I can assure you our firm was acting for the purported Mr GS and Mrs KS. I am personally going over the whole transaction and can assure you that we will be assisting you in any way possible (sic).
>
> In light of the circumstance and what has transpires we have suspended RQ subject to internal investigations, I will be contacting you very shortly to confirm our position. We have informed about insurers (sic)."

84. The matter was reported to the SRA the same day (30 October 2012) and was subsequently the subject of a claim to the Compensation Fund filed on 6 December 2012. In the meantime, the purchasers instructed new solicitors SS and Co, and issued an urgent application for an injunction preventing the receiver from obstructing their access to the property. The legal proceedings were subsequently discontinued.

85. During the course of the initial court application, the purchasers were provided with a letter from Mr and Mrs S, dated 1 November 2012 and addressed to PF at F Law which stated that:

> "we hereby confirm we have NOT sold the property since the BoB have take (sic) possession, and/or received any financial benefits i.e. a contractual/non-contractual sale deposit, rental income in any shape or form."

86. A subsequent letter written by the purported vendors dated 10 April 2013 and addressed to ARP (then acting for the purchaser) further confirms that "we have not instructed Tavistock Law Solicitors for any matter, at any time, past or present. We can further confirm that we have not had any dealings with your client Mr T in respect

to a sale of the property". The signatures on those letters do not appear to match either those on the transfer or those on the initial Fittings and Contents Form.

87. According to the Deed of Appointment of Receiver, Receivers were appointed on 16 May 2011. Following the intervention into the Firm, the purchasers made a claim against the Compensation Fund for the sum of £290,000. The Compensation Fund claim had been stood over whilst other remedies were investigated.

Marten Road, Southend Road and Cary Road

88. The Firm purportedly acted for the vendor of these three properties, which were allegedly being sold as a package for £149,000 each. The price stated to have been paid by the vendor in 2006 was £215,000 (Marten Road), £215,000 (Cary Road) and £219,000 Southend Road. CD were initially instructed to act for the purchasers in all three transactions, however, sometime after exchange of contracts the purchase of Southend Road and Cary Road was transferred to NS due to the requirements of the proposed finance provider. Marten Road was subject to a registered charge in favour of M1, Cary Road was subject to a registered charge in favour of the Bank of Scotland, and Southend Road was subject to a registered charge in favour of JP Morgan Chase Bank, National Association.

89. Contracts were exchanged on 9 October for Marten Road and Southend Road, and on 10 October for Cary Road. On 10 October deposits for all three transactions were paid to the Firm (Marten Road - £10,000, Southend Road £14,900, Cary Road - £10,000), totalling £34,900.00.

90. The transactional and bank statement analysis showed that after receipt of the deposit monies there were two notable payments out of client account in the sums of £17,500 and £17,300, £100 less than the deposit monies received. Completion monies for Marten road of £139,000 were received on 19 October 2012. Immediately afterwards three large payments out to apparently unrelated persons were made, totalling £139,000.

91. No completion monies were received from NS, as they were unhappy with the responses received from the Firm, and so refused to send any money directly to the Firm; those transactions did not complete.

92. On 28 November 2012, SRS, solicitors for the purported vendor, wrote to the SRA to report that the vendor instructed that "…her three properties appear to have been "sold" without her knowledge or consent and indeed she has not signed any contractual documents whatsoever."

93. On 12 December CD received a letter from the solicitors acting for M1 (who did not receive any redemption funds), advising that M1 had been unaware of the sale of Marten Road until 16 October 2012 when it received a call from the borrower in response to a letter before action she had received dated 15 October 2012.

94. The Compensation Fund Schedule indicated that as at 21 January 2015, a total of £216,177.92 has been paid out in respect of the claims relating to these three transactions.

(a) *Completed Sale*

High Street, Plaistow

95. The Firm purported to act for the vendor; NC of NS acted for the purchaser at an agreed purchase price of £860,000. The property was subject to a charge in favour of Lloyds TSB Bank Plc ("Lloyds"). Contracts were exchanged on 10 September 2012 and a deposit of £43,000 was paid (£5,000 directly to the vendor and £38,000 by way of cheque to the Firm from NS on 11 September 2012). The transaction completed on 22 October 2012, with the balance of £814,066.00 being paid. The transfer contained a signature, allegedly on the behalf of the vendor, with the First Respondent acting as a witness.

96. NC became aware of two other purported transactions relating to the property, both of which, by 16 November 2012, had proceeded to exchange. NC requested evidence that the funds has been sent to Lloyds, stating that a copy of the CHAPS transfer would do. The First Respondent sent an email in response on 20 November 2012, attaching what appeared to be an HSBC CHAPS payment confirmation. On receipt, NC contacted his bank manager who advised him that the sort code on the CHAPS voucher was false.

97. The receipt of the balance of the purchase monies on 19 October 2012 brought the client account balance to £953,942.36. Over the next 11 days, various payments out were made from client account, some of which appeared to be related to separate transactions, and some of which appeared to be unrelated to any underlying conveyancing transaction. On 30 October the client account balance was £8,734.79.

(b) *Exchange of Contracts – with (1) EEL and (2) WEL*

98. These two transactions appeared to have been conducted after the purported sale detailed above.

99. An email exchange took place between RL (solicitors for EEL) and the Firm between 6 and 7 November 2012, culminating in RL paying £20,000 on 7 November as a "goodwill payment" to be held as Stakeholder by the Firm before any contracts or documents were released. The agreed purchase price was £1,000,000. An email in the name of the First Respondent sent on 7 November confirmed that there was one contract issued. On 8 November, an email was sent in the name of the First Respondent confirming the sale price. Contracts were exchanged that day between the First Respondent and RL with the balance of the deposit (£30,000) being transferred to the Firm's client account that day.

100. On 7 November the Firm was emailed by ABGM (solicitors for WEL) stating that it was understood that the vendor required a payment of £20,000 "to be held by [the Firm] as Stakeholder" before nay contracts or papers would be released to potential purchasers. ABGM confirmed that their client was willing "to make this payment subject to you providing an undertaking…that [the Firm] will return the funds…within 48 hours' notice if the matter does not proceed to Exchange of Contracts…" An email was sent in response in the name of the First Respondent, providing the Firm's client account details, offering exclusivity and undertaking to

"return the funds to you within 48 hours' notice if the matter does not proceed to Exchange of Contracts."

101. On 8 November 2012 (after exchange had already occurred with EEL) ABGM emailed the First Respondent acknowledging the Firm's undertaking and confirming that "funds have been sent." A response was sent by RQ on 9 November 2012, attaching the contracts and other documentation. Contracts were exchanged on 14 November 2012. The deposit was £100,000 with completion due on 17 January 2013. An email in the name of the First Respondent was sent to ABGM requesting confirmation that the balance of the deposit had been sent. The payment was confirmed in a letter of 14 November 2014 which stated: "The balance of the 10% deposit namely the sum of £80,000 has been sent over to you by transfer as you are holding the sum of £20,000 on account."

102. On 15 November ABGM received a call from their client, who informed them that someone else had exchanged on the same property and providing them with RL's details. ABGM contacted RL. RL confirmed that they had exchanged contracts in respect of the property on 8 November 2012, and had paid a deposit of £50,000 to the Firm.

103. After the receipt of the deposit monies in relation to both transactions (£150,000) there were several large payments out of client account to apparently unrelated parties, leaving a client account balance of £1766.79.

104. As at 21 January 2015, a total of £1,010,247.34 had been paid out by the Compensation Fund comprising: £858,683.81 for the completed transaction; £51,163.28 in respect of the EEL transaction; and £100,400.25 in respect of the WEL transaction.

Kingsdown Road

105. The Firm purported to act for the vendor; BNI acted for the purchaser at an agreed purchase price of £420,000. Contracts were exchanged on 29 October 2012 with completion set for 7 November 2012. A deposit of £42,000 was paid by cheque on 30 October 2012. On that date, two large, and apparently unrelated payments were made out of client account for £37,500 and £31,000. Following receipt of the completion monies of £377,000 on 8 November 2012, two large, and apparently unrelated payments were made out of client account, leaving a client account balance of £1,766.79.

106. Following completion, BNI did not receive the executed transfer from the Firm. On 20 November 2012, BNI received a letter from the Land Registry (confirming a telephone conversation of 19 November 2012) which stated that: "We have received on behalf of the registered proprietor an allegation that the registered proprietor had neither signed nor entered into any transfer or agreement to transfer the…property or any charge of the...property."

107. As at 21 January 2015, a total of £419,961.00 had been paid out in respect of this transaction by the Compensation Fund.

PII Insurance

108. On 21 September 2012 the Firm sent an email in the name of MAK to the Assigned Risks Pool ("ARP") requesting an application form PII for the 2012/2013 year as the Firm was "struggling to get the required insurance". In response, the Firm was informed that it was ineligible for ARP cover for the 2012/2013 year without approval from the SRA, as it had previously been insured by the ARP for the 2010/2011 year.

109. Following a further email dated 21 September 2012 and telephone conversation on or around 25 September, purportedly by the Second Respondent, further details were sent by email to the SRA, which stated that the Firm had not managed to secure insurance cover because at the time of applying "it was a sole practitioner firm which consisted of a foreign lawyer", and that it still hoped to obtain insurance on the open market given time.

110. On 26 September the SRA decided to grant approval under the SRA Indemnity Insurance Rules 2012 such that the Firm would be eligible to re-enter the ARP for one month to 31 October 2012, provided that (a) a proposal form was submitted before 30 September 2012; and (b) payment of the premium was made in full by 31 October 2012. That decision was sent to the Firm by email on 27 September 2012.

111. The Firm responded the same day by way of an email in the name of the Second Respondent asking for additional time, the facility to pay by instalments, and indicating the intention to appeal the SRA's decision. A completed proposal form, purportedly signed by the Second Respondent, was submitted to the ARP on 27 September 2012. Grounds of appeal against the SRA's decision and submissions were submitted by way of a letter signed in the name of the Second Respondent on 8 October 2012. Further submissions were received by way of letters signed in the name of the Second Respondent dated 10 October 2012, and an email dated 29 October 2012.

112. The appeal was refused and the Firm was notified of the decision on 29 October 2012 via an email from the SRA which stated that "…as you know, your firm was closed by the end of business on 31 October 2012..." On 31 October 2012 the SRA received an email from the Firm stating that the Firm had managed to obtain indemnity insurance and giving details of a Hiscox policy. The SRA responded the same day to clarify that "… Hiscox is **not** a qualifying insurer this year, and has not been since 30 September 2010. This means that the insurance cannot be the obligatory qualifying insurance…"

113. On 5 November 2012 the SRA contacted the Firm by telephone to discuss its plans for closure no partner was available however the First Respondent returned the later that day and said that the Firm "now had PII". When asked for details, he said that he would fax or email them; however, no fax or email was received.

114. No payments were ever received by the SRA in respect of the ARP insurance cover and the SRA received no written confirmation that other qualifying insurance was in place. However, the firm continued to act in various transactions, including High Street, Plaistow and Kingsdown Road.

Witnesses

Mr David Bailey

115. Mr Bailey, a FI Officer of the Applicant, told the Tribunal that the content of his FI Report dated 22 November 2012 was true to best of his knowledge and belief.

116. In response to questions from the Tribunal, Mr Bailey confirmed that when he attended the premises to undertake an inspection, the Firm was essentially abandoned. No client files had been left on the premises, and only a few items of office equipment remained. He explained that on 20 November, he had attended the offices of the First Respondent's former practice, where he was informed that the First Respondent had joined that firm as a partner in 2012, stayed for a few months, and had left the firm on 14 September. He had not provided a forwarding address.

117. Mr Bailey also confirmed that he did not make any enquiries in relation to the position of the Firm's PII.

Findings of Fact and Law

118. 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 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

First Respondent

119. **Allegation 1.1 - He involved himself in, or permitted or acquiesced in the involvement of the Firm in conveyancing transactions that bore the hallmarks of mortgage fraud in breach of Principles 2, 4, 5, 6, and 10 of the Principles.**

119.1 Mr Steel submitted that in his email of 8 November 2012, the First Respondent confirms that he had over £300,000 in client account, which he purported was the completion monies from Cavendish Drive. It was clear from the statements and an analysis of the transactions that in fact the completion monies had been largely dispersed on the day of completion. In addition, although the client account balance as at 8 November 2012 was as stated in the First Respondent's email, it is clear that the bulk of that balance (some £377,000) had been received only that day from BNAS in respect of Kingsdown Road. This too was dispersed to various parties, such that as at 9 November, the client account balance was actually only £1,766.79.

119.2 The SRA submitted that in each of the conveyancing transactions detailed, the Firm received into its client account deposit and/or completion monies which the Firm had undertaken to apply for a specific purpose; in each case the monies were not used for their intended purpose but were transferred out of the client account to apparently unrelated third parties, in breach of Principles 2,4,5,6 and 10 of the Principles. As a consequence, it was submitted, the Firm was used as a vehicle for widespread mortgage fraud, the cost of which ultimately fell on the profession as a whole through the Compensation Fund.

119.3 At the time of the transactions, the First Respondent was the only Director present and responsible for supervision of the Firm's conveyancing practice (the Second Respondent being mainly away from the office and, when present, not involved in conveyancing work), and therefore this could only have occurred because the First Respondent, at the very least, abdicated his responsibilities as principal in the Firm. In at least seven of the cases, the First Respondent appeared to have been personally involved in dealing with the transaction and/or completion monies. In particular:

- In relation to the purported sales of Cavendish Drive and Albert Road, the Firm's failure to redeem the vendor's mortgage was brought to the First Respondent's personal attention at the latest by 8 November 2012;

- In relation to the purported sale of Windsor Road, the First Respondent was a witness to the signature on the TR1 on or about 4 October 2012 and/or made of the problems with the transaction by 29 October 2012 at the latest;

- In relation to the purported sale of Marten Road, the First Respondent again witnessed the signature of the TR1 by the purported vendor on or about 19 October 2012;

- In relation to the purported sale of high Street, Plaistow the First Respondent was a witness to the TR1, and subsequently personally took part in the exchange of contracts with both EEL and WEL.

119.4 In each case, the First Respondent took no action to prevent, report or rectify the failure to redeem or complete, and in many cases the First Respondent gave false assurances that the problems arose due to an error or that redemption had been made when this was not the case, and the monies had instead been transferred to unrelated third parties.

119.5 Given his involvement in certain of the transactions, and the email exchanges with SA, the First Respondent must consequently have been aware that funds were received in each of these cases and that they were not used for their intended purpose but were transferred out of the client account to apparently unrelated third parties. It follows that he at least acquiesced in these actions or was complicit in them.

119.6 It was submitted that by virtue of these matters, the First Respondent failed to act with integrity (Principle 2), failed to act in the best interests of his clients Principle 4), failed to provide a proper standard of service to his clients (Principle5), failed to behave in a way that maintained the trust places in him and in the provision of legal services (Principle 6), and failed to protect client money and assets Principle 10).

119.7 The Tribunal was satisfied on the documents and evidence presented by Mr Steel that the factual matters relied upon by the Applicant were proved. In particular, the Tribunal found that all of the facts and matters set out in the FI Report which dealt with the substance of the allegations were true and accurate. The Tribunal was referred to the bank statements and email exchanges in the exemplified matters. The Tribunal examined those documents in detail in order to fully scrutinise and test the Applicant's case. With regard to the Albert Road transaction, the Tribunal noted that an email exchange had occurred between the First Respondent and both SA and VL.

The Tribunal was satisfied that the First Respondent had, at the very least, acquiesced in the use of client monies for purposes other than that for which they were intended. The First Respondent had taken no action to remedy the failures in any of the exemplified matters, and in some instances had given false explanations as to the cause of the failure. The Tribunal determined that by acting in the way that he did, the First Respondent had involved himself in, or permitted or acquiesced in the involvement of the Firm in conveyancing transactions that bore the hallmarks of mortgage fraud. The Tribunal accepted in full the submissions made by Mr Steel, and found that the First Respondent had breached the Principles as pleaded. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt on the evidence and the submissions.

120. **Allegation 2 – Dishonesty in relation to allegation 1.1**

120.1 Mr Steel submitted that the First Respondent's actions were clearly dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra"), which required that the person had acted dishonestly by the ordinary standards of reasonable and honest and realised that by those standards he or she was acting dishonestly.

120.2 In acquiescing in or facilitating the use of the Firm's client account for the commission of mortgage fraud; and in acquiescing in or facilitating the use of deposit and completion monies for purposes unrelated to the underlying transactions resulting in a client account shortfall of over £2.3 million, the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

120.3 Not only was his conduct dishonest by the ordinary standards of reasonable and honest people, but the First Respondent would also have been aware that it was dishonest by those standards for the following reasons:

- When the fraudulent transfers of completion monies relating to Cavendish Drive and Albert Road to unrelated third parties was specifically brought to the First Respondent's attention by (at the latest) 8 November 2012, the First Respondent failed to report or rectify the shortfall, but instead he assured SA that the failure to redeem mortgages was due to a bank error and that the completion monies were still held in the Firm's bank account. The First Respondent must have known this was not the case as the completion monies had already been dispersed to unrelated third parties;

- The First Respondent informed the Solicitors representing the purchasers of Windsor Road that RQ had been suspended following his involvement in that transaction when he must have known that this was not the case and that RQ was continuing to work on other conveyancing transactions, e.g. High Street, Plaistow;

- The First Respondent sent an email to NS, who was acting for one of the would-be purchasers of High Street, Plaistow attaching a false CHAPS voucher purporting to show redemption of the vendors mortgage including non-existent sort codes for the payee, when he must have known this to be false since the sort codes were fictional and the completion monies had already been dispersed to unrelated third parties;

- The First Respondent appeared to have been involved in the exchanges of contracts for High Street, Plaistow both with EEL and with WEL, despite having witnessed the TR1 completing the sale of the same property less than three weeks previously.

120.4 The actions of the First Respondent, and the statements made by him arose from conscious decisions to act that could not have been made innocently.

120.5 The Tribunal found that reasonable and honest people, applying ordinary standards, would consider that a solicitor who did not redeem mortgages, continued to exchange on a property that was already sold, and involved himself in the sale of a property where the owner was unaware of the sale, had acted dishonestly, and therefore the objective test was satisfied and accordingly found that the First Respondent's actions were objectively dishonest as pleaded by Mr Steele.

120.6 The Tribunal then considered whether the First Respondent was subjectively dishonest. The Tribunal examined in detail the Albert Road transaction, and the emails sent by the First Respondent to SA and VL. The First Respondent had emailed VL on 14 November 2012, stating that as at 13 November 2012, the Firm was holding funds in its account, when the true balance in the account was £1,766.79. The Tribunal was satisfied that the First Respondent was aware of the true balance in client account and further, that the monies had been dispersed to unrelated third parties on 5 and 8 October 2012. The Tribunal found that the First Respondent had been entirely untruthful in this regard, which he knew to be dishonest.

120.7 In his email to SA of 9 November 2012, the First Respondent stated that the mortgage had not been redeemed due to "an error from the bank". The First Respondent knew that this was untrue, and knew, when writing that email, that he was being dishonest. Further, he had taken no action in relation to the wrongful dispersal of the monies, and instead had knowingly misled VL, which he knew to be dishonest.

120.8 The First Respondent represented to NC, the solicitors for the purchasers on the Windsor Road transaction, that RQ has been suspended, when he knew that this was not the case. The Tribunal considered this to be a deliberate misrepresentation by the First Respondent, in order to conceal his own involvement in the fraud being perpetrated; it was a conscious act on the part of the First Respondent which he knew to be dishonest.

120.9 NS, acting for the purchasers of High Street, Plaistow, were sent a CHAPS voucher by the First Respondent which purported to show redemption of the mortgage. This was sent on 20 November, after the First Respondent had completed two further exchange of contract transactions on the property. The sort code contained on the CHAPS was false, and non-existent. The First Respondent witnessed the TR1 completing the sale of the property, and was involved in the exchange of contracts on the WEL and EEL transactions for the same property, which he knew was already sold. The Tribunal found that these actions could not be explained as errors, and determined that the Respondent had deliberately taken those actions, which he knew to be dishonest.

120.10 Accordingly, the Tribunal, having found that his actions were objectively dishonest had no hesitation in finding that the First Respondent had consciously, knowingly and deliberately acted in the manner alleged, and knew at the time of doing so, that he was acting dishonestly.

121. **Allegation 1.2 - He failed to run the Firm in accordance with proper governance and sound financial and risk management principles in breach of Principle 10 of the Principles in that: he failed adequately, or at all, to supervise staff employed by the Firm; he continued to practice without PII; he failed to effect an orderly closure of the Firm; and he facilitated or acquiesced in improper withdrawals from client account leaving a minimum shortage of £2,107,800 in breach of the SAR 2011.**

121.1 It was submitted that the First Respondent had failed adequately, or at all, to supervise staff employed by the Firm, including SA, RQ, and JK, all of whom had conduct of matters which resulted in the Firm's client account being involved in the commission of mortgage fraud.

121.2 He had continued to practice until at least 19 November 2012 despite failing to secure PII for the 2012/2013 practice year, as a consequence of which the Firm was required to be closed by 31 October 2012. Mr Steel highlighted the fact that the transactions involving High Street, Plaistow and Kingsdown Road took place after the date by which the Firm was required to be closed.

121.3 The First Respondent had failed to effect an orderly closure of the Firm. The FI Officer visited the Firm's premises on 19 November 2012 to find that the practice had been effectively abandoned, neither of the Directors had been seen for the previous 3 weeks and all files had been removed. There was no one at all from the Firm present at the time of the attempted inspection. No proper steps had been taken to inform the parties in ongoing transactions that the Firm would be closing, nor to transfer files. There had been no attempt to close the Firm in an orderly fashion.

121.4 Further, he had acquiesced in, or permitted, the improper withdrawal of funds from client account leaving a minimum shortage of £2,363,439.80.

121.5 In doing so, it was submitted that the First Respondent had failed to run the Firm in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 and/or failed to protect client money and assets in breach of Principle 10 of the Principles.

121.6 The Tribunal determined that the First Respondent had failed adequately, or at all to supervise staff; he was aware of the problems in relation to Windsor Road, and RQ's involvement with that transaction, but allowed him to continue to work on other conveyancing matters, despite telling the solicitor for the purchasers that RQ had been suspended. The Tribunal found that it was his failure to supervise staff or to carry out his role effectively in the Firm, which enabled the Firm to become involved in the commission of mortgage fraud.

121.7 It was clear that the First Respondent had continued to practice without PII, which he knew was in breach of his obligations. Further, he had informed the Applicant that the Firm had PII, when he knew that it did not. The Tribunal noted that the First Respondent had made no effort to effect an orderly closure of the practice. Instead, he had abandoned the practice, simply disappearing, and leaving no address or contact details.

121.8 The Tribunal found that at the very least, the First Respondent had acquiesced in the improper withdrawal of funds from client account. He had been appraised of the issues in relation to the redemption of mortgages and had taken no proper action to investigate, nor had he reported the difficulties to the Applicant.

121.9 The Tribunal found that by failing to adequately supervise staff, practising without PII, facilitating or acquiescing in improper withdrawals from client account, and failing to effect the orderly closure of the Firm, the First Respondent had failed in his duty to run his business in accordance with proper governance and sound financial and risk management principles. He had also failed to carry out his role in the Firm effectively. Accordingly, the Tribunal found that allegation 1.2 had been proved beyond reasonable doubt on the evidence and the submissions.

122. **Allegation 1.3 – He failed to deal with the SRA in an open, timely, and co-operative manner in breach of Principle 7 of the Principles.**

122.1 Mr Steel submitted that the First Respondent misled the SRA by wrongly stating during the telephone call on 5 November 2012 that the Firm "now had PII" when this was not the case. Further he failed to reply to an investigation notice from the SRA dated 19 November 2012, and to provide any of the information or documents requested in the appendices to that letter, and to the Notice issued under Section 44B of the Solicitors Act 1974 dated 19 November 2012 which accompanied the letter. The First Respondent also failed to respond to the SRA's letter dated 11 September 2012 which enclosed the FI Report. It was submitted that these failures were all in breach of Principle 7 and Outcomes 10.8 and 10.9 of the Principles.

122.2 The Tribunal found that the First Respondent had made no attempts to co-operate with the Applicant at any point during the investigation or the proceedings before the Tribunal. It was the First Respondent's duty, as a regulated person, to ensure that the Applicant had up-to-date contact details for him. The Tribunal considered that it was entirely unsatisfactory that the Applicant had to go to the lengths it did to try to contact the First Respondent; it was apparent that the First Respondent had deliberately evaded service of the proceedings. The Tribunal determined that in evading service, and failing to respond to any correspondence from the Applicant, the First Respondent had failed to comply with his legal and regulatory obligations, and had failed to deal with the Applicant in an open, timely and co-operative manner, thereby breaching Principle & and Outcomes 10.8 and 10.9 of the Principles as pleaded. Accordingly the Tribunal found allegation 1.3 proved beyond reasonable doubt on the evidence and the submissions.

Second Respondent

123. **Allegation 3 - he failed to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 and/or failed to protect client money and assets in breach of Principle 10 of the Principles in that: he failed to ensure compliance with the SAR 2011; he failed adequately, or at all, to supervise staff employed by the Firm; and he had no understanding of, or effective control over the finances of the Firm despite being a signatory on at least one of its bank accounts.**

123.1 Mr Steel submitted that the Second Respondent had failed to prevent the improper withdrawals from client account in relation to the conveyancing transactions. Further he had failed adequately, or at all, to supervise staff employed by the firm including SA, RQ, and JK, all of whom had conduct of the matters which resulted in the Firm's client account being involved in the commission of mortgage fraud. The Second Respondent, by his own admission in his responses to the SRA, had no understanding of or effective control over the finances of the Firm despite being a signatory to at least one of its bank accounts. Mr Steel made it clear that there was no suggestion that the Second Respondent had been involved in any of the frauds perpetrated by the Firm.

123.2 It was submitted that whilst the Second Respondent appeared to have been largely absent from the Firm at the material time, he remained a principal of the practice with all the consequent responsibilities and duties. He took no steps to ensure that the Firm was adequately managed in his absence, and indeed, given that the only other Director, the First Respondent, was an RFL, the Second Respondent must have known that there was no admitted solicitor remaining in the Firm in his absence capable of lawfully carrying on its conveyancing practice. However, there was no evidence that any steps were taken to ensure that the Firm was able to comply with its regulatory requirements and the Firm continued to conduct conveyancing transactions until the intervention on 27 November 2012.

123.3 By virtue of those matters, the Second Respondent failed to run the Firm in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 and/or failed to protect client money and assets in breach of Principle 10 of the Principles.

123.4 The Tribunal found that in failing to ensure that staff were adequately supervised, failing to ensure compliance with the SAR 2011, and having no understanding of, or effective control over the finances of the Firm, the Second Respondent was in breach of the Principles as pleaded and alleged. Accordingly, the Tribunal found allegation 3 proved beyond reasonable doubt on the admissions, evidence and submissions.

Previous Disciplinary Matters

124. There were no previous disciplinary matters against either Respondent.

Mitigation

First Respondent

125. None.

Second Respondent

126. Mr Butler submitted that the Second Respondent had been in practice for over forty years, seven of which were in the UK. He had been a partner at a previous practice for two years, but had resigned due to irregularities at that practice. In 2012 he found himself looking for employment and came across the position at the Firm. He was initially interviewed in August 2012, and returned for a second interview with the Firm on 3 September 2012. It was at that second interview that he was offered the position as a partner. He was surprised to be invited to join the practice in that capacity, as the vacancy was advertised as being for an associate solicitor. It was explained that the previous solicitor partner had just resigned, and they were anxious to replace him.

127. Mr Butler submitted that the NM1 form which suggested that the Second Respondent became a director of the practice on 28 August 2012 was incorrect; this was in fact before the Second Respondent had attended his second interview, been offered the position, and appointed. His appointment as a partner was subject to a probationary period of six months, when the position was to be reviewed.

128. The Second Respondent commenced his employment with the Firm on 22 October 2012. He had attended the Firm's office in September 2012 to familiarise himself with their files and procedures. In total, from the commencement of his employment to the intervention into the Firm, the Second Respondent was in the office for a total of no more than eleven days. After his one week induction, the Second Respondent went on holiday to Nigeria for approximately five weeks. He attended the office for the week commencing 22 October 2012. On 28 October 2012, he went to Nigeria in relation what he believed to be a commercial business transaction for a client of the Firm.

129. The Second Respondent accepted that as a director he had all the consequential responsibilities that flow from that position. It was submitted that he had tried to make some checks and enquiries, but before he had a chance to see any of the requested documentation, he was sent to Nigeria on behalf of the Firm. He was told that the information requested would be provided to him, and he had no reason to doubt that it would, or that the practice was not being run in line with the Applicant's regulatory framework. He was expecting to receive the information requested, and had no idea that he had been brought into the practice to give the practice credibility, and allow it to perpetrate the frauds described. The Second Respondent was unable to say for certain, but he believed that his being sent to Nigeria was possibly calculated to allow the Firm to perpetrate the frauds. He was in Nigeria from 28 October – 27 November 2012. During that time he met with a number of people in relation to the alleged project. Whilst in Nigeria, he received only expenses from the firm, but no salary.

130. The Second Respondent did not accept that he was a signatory to the client account, and believes that his signature on the mandate for that account was forged. Further, Mr Butler highlighted, all of the fraudulent transactions took place when the Second Respondent was away, or prior to his joining the Firm. The Second Respondent played no part in any of the fraudulent transactions, and any correspondence purportedly sent in his name was not sent by him.

131. Mr Butler submitted that there was no suggestion by the Applicant that the Second Respondent had behaved in any way which showed a lack of integrity. There were no issues as to his probity, knowledge or trustworthiness in relation to his conduct as a solicitor; his trustworthiness was not in question. His misconduct related to compliance issues only. It was arguable that the Second Respondent could have done more, however he had joined a practice where there already existed a pre-planned and sophisticated fraud. The Second Respondent had made no financial gain, and in fact had not received a salary from his employment with the Firm. There was no motivation for his misconduct, and he had no culpability for the frauds that has been perpetrated.

132. It was submitted that the Second Respondent had become caught up in a fraudulent practice, and that the reasonable observer would question why someone who had been drawn in in this way would be severely punished when he was not culpable. Mr Butler accepted that this was not a case where no order was an appropriate sanction, but argued that a reprimand would be appropriate when taking into consideration the entirety of the Second Respondents misconduct. The Second Respondent was 76 years old with an unblemished career. He accepted that he had failed to acquire the information that he ought to have had, although he was making the necessary enquiries. Further, the Second Respondent was not aware at the time that he was the only supervising solicitor. Finally, Mr Butler submitted that the allegations proved and admitted, against the Second Respondent, showed no failings by him as a solicitor, and that any sanction that restricted, or removed him from practice, would be disproportionate to his misconduct.

Sanction

133. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition).

First Respondent

134. The Tribunal firstly considered the seriousness of the First Respondent's proven conduct. The Tribunal found the First Respondent to be culpable for the breaches; he had played a role in the exemplified transactions and they were clearly fraudulent. The Tribunal found that the First Respondent had been motivated by greed. His actions were clearly planned. The Second Respondent had been sent away from the office to purportedly deal with a commercial business transaction. The operation of moving the decimal point so as to pay 10% of the amount actually due to redeem the mortgages was evidence of pre-meditation; the Tribunal did not accept that this happened mistakenly. The Tribunal's determination that these were deliberate actions was further supported by the dissipation of funds shortly after the monies were paid into the Firm's client account. The First Respondent was the senior principal of the

Firm, and indeed had stated in his email to SA of 12 November, that he was the owner of the Firm.

135. Further, the Tribunal found that the First Respondent had deliberately kept himself off the mandate for the client account. The Tribunal were unable to be satisfied beyond reasonable doubt as to who forged the Second Respondent's signature on the mandates, and whether the unadmitted staff were accessories to the fraudulent transactions.

136. The Tribunal found that substantial harm had been caused to the trust the public places in the profession and the provision of legal service. The individual victims of the frauds had also been caused substantial harm by the First Respondent's misconduct. The Tribunal did not find that the short period of time for which the First Respondent was an RFL to be a significant factor when considering his culpability and the harm he had caused.

137. The Tribunal found the First Respondent's conduct to be aggravated by his proven dishonesty. His dishonest conduct was deliberate, calculated and repeated. The removal of the files and the computers from the office was evidence, it was found, of the First Respondent's concealment of his wrongdoing. His conduct was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin ("Sharma"):

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

138. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

139. The Tribunal found that he First Respondent had departed entirely from the required standard. Given the serious nature of the proven and admitted allegations, and in line with the authorities and the Tribunal's Guidance Note on Sanctions (4th Edition) the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand, fine or restrictions, as these were inappropriate and disproportionate to the seriousness of the misconduct. The Tribunal considered that the only appropriate and proportionate sanction was to strike the Respondent off the Register of Foreign Lawyers.

Second Respondent

140. The Tribunal firstly considered the seriousness of the Second Respondent's proven and admitted conduct. The Tribunal found that the Second Respondent was as much a victim as the parties who were subject to the fraudulent transactions. He had been given the post under false circumstances with the aim of providing the Firm with the ability to perpetrate the frauds; without a solicitor, the Firm would not have been able to undertake the conveyancing matters. The Tribunal found that the Second Respondent's culpability was more than strict liability. He had been a partner in a previous practice, and knew what the duties and obligations of a partner were. The Tribunal found that the Second Respondent's misconduct was by way of omissions, in that he failed to perform the due diligence of the Firm, and failed to ensure that the staff of the Firm were supervised.

141. The Tribunal found that there was no departure, by the Second Respondent of the required standard of integrity, probity and trustworthiness. Further, he had little opportunity to prevent the frauds from taking place. Although the harm caused was great, this was not caused by the Second Respondent; he did not orchestrate the frauds or have any active role. This was reflected in the allegations against him. The Second Respondent derived no financial benefit from those transactions, and in fact had not been paid his agreed salary for the time that he was employed with the Firm.

142. The Tribunal accepted, in its entirety, the mitigation advanced by Mr Butler. The Tribunal determined that the Second Respondent had been drawn unwittingly into the fraud, which had been carefully planned, and he had only a very brief opportunity to expose it. He had co-operated in full with the Applicant, and, with the benefit of legal advice had shown insight into his misconduct and had accepted and admitted the allegations against him.

143. The Tribunal, having regard to all the circumstances did not find it would be unfair or disproportionate to impose a sanction, as it found that the Second Respondent was an experienced solicitor, who had failed to undertake the due diligence that a solicitor of his experience would be expected to take.

144. The Tribunal considered that his culpability for his misconduct was low. Although significant harm had been caused, this had not been caused by his actions; he had no involvement with the fraudulent transactions. He had himself been used so as to provide a front for the Firm, and had been manoeuvred into the situation. Notwithstanding this, the Tribunal found that it was a failing to be a partner and have no control. In those circumstances, the Tribunal determined that it was appropriate to restrict the Second Respondent's ability to be a member or partner in a practice.

145. The Tribunal considered that there was no likelihood of the Second Respondent repeating the misconduct, given the very particular circumstances in which the admitted and proven misconduct had occurred, and given the restriction it was placing on his ability to practice. The Tribunal determined that the protection of the public and the reputation of the profession did not require more than a Reprimand in addition to the restriction.

Costs

146. Mr Steel applied for costs in the sum of £38,303.01. He explained that the majority of the costs were incurred prior to the matter being issued, at which point the costs were £31,120.41. Mr Steel explained that a large part of the pre-issue costs arose from the Intervention Agents reconstructing the transactions by examining the statements. Having regard to apportionment between the Respondents, Mr Steel submitted that the majority of the documents and the work undertaken in relation to this matter related to the underlying fraud, to which the Second Respondent was not a party. Although it was difficult for the Applicant to apportion costs, Mr Steel submitted that one way would be to assess the costs since issue, and attribute a fair amount of those costs to the Second Respondent. Mr Steel reminded the Tribunal that the matter was prepared on the basis that the Second Respondent denied the allegations; it was only on the day of the hearing that the Second Respondent had confirmed that he would admit all matters against him.

147. Mr Butler submitted that the majority of the costs had been incurred due to the First Respondent. He accepted that the Second Respondent would have caused the SRA to incur some additional costs, and urged the Tribunal to consider the Second Respondent's financial situation as detailed in his Personal Financial Statement.

148. The Tribunal considered that the case had been well prepared and the presentation and advocacy had been excellent. The Tribunal decided that the overall reasonable and proportionate amount of costs which should be allowed in this case was £35,000.

149. In considering the apportionment of costs, the Tribunal took account of the culpability of each Respondent, and the submission that the vast majority of the costs had been caused by the reconstruction of the transactions. The Tribunal considered that a fair division of costs between the Respondents was for the First Respondent to pay £34,000 and the Second Respondent to pay £1,000.

150. The Second Respondent had provided the Tribunal with a statement of means which, it was submitted, showed a limited ability to pay costs. The Tribunal considered whether any discount should be given on financial grounds to the Second Respondent. The Tribunal had not deprived him of the ability to work in the legal profession, and did not think a reduction in costs was appropriate. However, when taking into account his means, the Tribunal determined that the order for costs should not be enforced without leave of the Tribunal.

Statement of Full Order

151. The Tribunal Ordered that the Respondent, KAMRAN ADIL, Registered Foreign Lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £34,000.00.

152.1 The Tribunal Ordered that the Respondent PI [NAME REDACTED] solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

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

152.2.1 The Respondent may not:

152.2.1.1 Practise as a sole practitioner, partner of a Recognised Body or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS).

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

DATED this 11th day of March 2016
On behalf of the Tribunal

J. Devonish
Chairman