The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 11 October 2016 in respect of findings. The appeal was heard by Mr Justice Morris on 22 February 2017 and Judgment handed down on 3 March 2017. The appeal was dismissed.
Newell-Austin v Solicitors Regulation Authority [2017] EWHC 411 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11359-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DEIDRE DAIN NEWELL-AUSTIN First Respondent

NAJMA NAHID ASSROUNDI Second Respondent

RASHAD AHSAN Third Respondent

Before:

Mr I. R. Woolfe (in the Chair)
Mr K. W. Duncan
Mrs L. Barnett

Date of Hearing: 12–14 September 2016

Appearances

Mr Edward Levey, barrister of Fountain Court Chambers, Fountain Court, Middle Temple Lane, London EC4Y 9DH instructed by Bevan Britten LLP, 2 Fleet Place, London EC4M 7RF for the Applicant.

Mr Russell Wilcox, barrister, of 10 Kings Bench Walk, Temple, London EC4Y 7EB instructed directly by the First Respondent.

The Second and Third Respondents did not appear and were not represented.

JUDGMENT

Allegations

1. The allegations made against all three of the Respondents by the Solicitors Regulation Authority ("the SRA") were that, in their respective roles at Austin Law ("the Firm"), a recognised body:

1.1 They permitted or allowed the Firm to become involved in, or acquiesced in the Firm's involvement in, conveyancing transactions that bore the hallmarks of mortgage fraud (including failures to redeem mortgages and/or identify fraud) and in so doing breached Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 During the period that each was a principal or partner at the Firm they failed to carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles, and in particular:

1.2.1 they failed to exercise appropriate supervision over the practice and/or over Zak Ahmed ("Zak" also known as AH), AR (also known as "Sam"), and SC (also known as SA), unadmitted members of staff employed by and/or working with the Firm in breach of Principles 2, 3, 6, 8, and 10 of the Principles; and

1.2.2 they permitted or acquiesced in or failed to prevent improper withdrawals from client account, in breach of Rules 6 and 20(1) of the SRA Accounts Rules 2011 ("SAR") and Principles 2, 3, 6, 8, and 10 of the Principles.

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

2.1 She failed to comply with undertakings to redeem mortgages in breach of Principles 4, 6, and 10 of the Principles.

2.2 She misled the SRA by failing to provide it with accurate information to enable it to make a decision on her application to obtain authorisation for the partnership in breach of Principle 7 of the Principles, and in so doing she failed to achieve mandatory Outcomes 10.2 and 10.4 of the SRA Code of Conduct 2011 ("the Code").

3. The additional allegations made against the Second Respondent alone were that:

3.1 She misled the SRA and/or failed to inform the SRA of relevant facts necessary to enable the SRA to carry out its regulatory function by failing to disclose to it that Zak, an unadmitted member of staff, had impersonated the Third Respondent, a partner in the Firm, during an SRA inspection visit on 15 and/or 17 July 2013 in breach of Principles 2, 6, and 7 of the Principles.

3.2 She compromised her independence by allowing unqualified members of staff to direct her actions in breach of Principle 3 of the Principles.

3.3 She failed to comply with undertakings to redeem mortgages in breach of Principles 4, 6, and 10 of the Principles.

4. The additional allegation made against the Third Respondent alone was that he compromised his independence by allowing non-admitted employees of the Firm to control it and to have access to client funds in breach of Principles 2, 3, 6, and 8 of the Principles.

5. The allegations set out at 1.1, 2.2 and 3.1 above were made on the basis that the Respondents were dishonest, although dishonesty was not a necessary ingredient for the substantiation of those allegations.

Documents

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

- Applicant's Application dated 26 February 2015
- Applicant's Rule 5 Statement and Exhibit "PS1" dated 26 February 2015
- Applicant's Supplementary Bundle
- Applicant's Schedule of Costs dated 5 September 2016
- First Respondent's First Witness statement (undated) and Updated and Amended Witness Statement together with Exhibit DNA1 dated 13 September 2016
- Second Respondent's First Witness Statement dated 31 August 2015
- Second Respondent's Second Witness Statement (undated) together with a chronology and letter (including enclosures) dated 9 September 2016

Preliminary Matters

Absence of the Second and Third Respondents

7. The Second and Third Respondents did not attend the hearing and were not represented. The Second Respondent emailed the Applicant on 9 September 2016 stating that she would not attend the hearing. The Second Respondent also sent a letter dated 9 September 2016 to the Tribunal asking that the Tribunal excuse her non-attendance.

8. The Third Respondent had not engaged with the proceedings at any stage. On 16 April 2015 the Tribunal had directed that service of the proceedings at the email address he had previously provided to the Applicant was deemed to be effective.

9. Mr Levey applied for the case to proceed in the Respondents' 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 Levey referred the Tribunal to correspondence which, in his submission, showed both that notice of the hearing had been served on the Second and Third Respondents in accordance with the SDPR. On 19 January 2016, the Tribunal wrote to both the Second and Third Respondents informing them of the hearing date. The Second

Respondent's letter was sent by recorded delivery and was not returned; the Third Respondent's letter was emailed to the address deemed the address for service.

11. It was submitted that in light of the correspondence referred to, it was clear that the Respondents had properly been served with notice of the hearing, and that they were aware of the hearing date. It was also clear from the Second Respondent's correspondence that she did not intend to attend the hearing. There had been no communication from the Third Respondent.

12. Mr Levey referred the Tribunal to the case of R v Jones [2001] EWCA Crim 168 (Jones) and the criteria which the Tribunal ought to consider when determining whether a matter should proceed in the absence of a Respondent. It was clear that the Respondents would not attend, and had voluntarily absented themselves from the proceedings such that they had waived their right to appear.

13. The Tribunal also considered the case of Rehman v The Bar Standards Board [2016] EWHC 2023 (Admin) (Rehman), where Hickinbottom J found that a Tribunal could hear matters in the absence of the Respondent if it considered it just to do so. The discretion to proceed in the absence of the Respondent should be exercised with the utmost care and caution. The starting point for considering whether matters should proceed in the absence of the Respondent was the criteria set down in Jones which included:

- the nature and circumstances of the Respondents behaviour in absenting themselves from the trial and whether their behaviour was deliberate, voluntary and such as plainly waived their right to appear;
- whether an adjournment might result in the Respondents attending;
- the likely length of any adjournment;
- the extent of the disadvantage to the Respondents in not being able to give their account of events;
- the risk of drawing an improper conclusion about the absence of the defendant;
- the seriousness of the offence;
- the general public interest and the particular interest of victims and witnesses that the proceedings should take place within a reasonable time of the events to which they relate.

14. Whilst fairness to the affected professional was of prime importance, other relevant factors included:

- Fairness to the prosecuting body (including their witnesses);
- The absence of any power to require the attendance of the professional who was subject to disciplinary proceedings;

- The burden on professionals who are subject to a regulatory regime to engage with the regulator, in respect of both the investigation and the ultimate resolution of any charges;

- The cost and delay involved in an adjournment;

- The public interest in ensuring that professional standards are maintained and enforced.

15. The Tribunal was satisfied that the proceedings, and notice of the hearing date, had been properly served on the Respondents; it was clear from the correspondence that the Second Respondent was fully aware of the hearing date, and had chosen not to attend the hearing, asking for her non-attendance to be excused. The Third Respondent had failed to engage in the proceedings from the outset. The Tribunal had regard to the principles in Jones and Rehman. The Tribunal was satisfied that in this instance the Respondents had chosen voluntarily to absent themselves from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible, particularly given that the allegations included allegations of dishonesty against all Respondents.

Admissibility of the Second Respondent's Statement

16. The Second Respondent's second witness statement, together with the chronology and letter (with enclosures) of 9 September 2016 was not served on all parties prior to the hearing. Further, the First Respondent's updated amended statement of 13 September 2016 (which at the commencement of the hearing had not yet been signed), had similarly not been served on all parties. Further, both statements were served out of time, and not in accordance with the Tribunal's directions.

17. The Applicant did not object to the admissibility of the statements. The First Respondent objected to the admission of the Second Respondent's evidence on the basis that it was highly prejudicial, and contained a number of allegations against the First Respondent which, given the non-attendance of the Second Respondent, the First Respondent would be unable to test. There were a number of allegations against the First Respondent which were relevant to her culpability, her involvement in the fraudulent transactions and her knowledge of Zak's impersonation of the Third Respondent. Mr Wilcox submitted that, in the circumstances, it would not be proper to allow the Second Respondent's statement to be admitted into evidence. It was further submitted that in the event that the Tribunal deemed the statement admissible, the First Respondent would consider making an application to adjourn the hearing so as to obtain evidence to rebut the assertions contained therein.

18. Mr Levey submitted that the statement should, and ought properly, to be admitted. Whilst the statement contained prejudicial comments, the unsigned, updated and amended statement of the First Respondent also contained comments that were prejudicial to the other Respondents. The submissions made in relation to the testing of the assertions made in the statement were accepted; however the question was one of the weight the Tribunal afforded to that evidence and was not one of admissibility.

19. Further, the Second Respondent was not in attendance, and it was clear that she had anticipated that the statement would stand as her evidence and would be considered by the Tribunal. In the event that the Tribunal did not admit the statement, fairness dictated that the Second Respondent should be informed and given the opportunity to apply for an adjournment.

20. The inclusion of prejudicial comments within the statement was not a ground for ruling the statement inadmissible; there was already evidence from the Second Respondent contained within the papers seen by the Tribunal that similarly contained prejudicial comments. That evidence had not been objected to.

21. Mr Levey confirmed that the Applicant did not rely on the content of the statement to prove its case against any of the Respondents.

22. The Tribunal noted that the Updated and Amended Statement of the First Respondent, whilst provided to the Tribunal and the Applicant, was not just late, but was also unsigned and undated. Mr Wilcox submitted that the position in relation to that statement was different, as the First Respondent had attended and would be giving evidence in the proceedings in any event.

23. The Tribunal determined that it would be neither fair nor appropriate to exclude the statement of the Second Respondent. The Tribunal would consider the weight of that evidence in the absence of the Second Respondent and the other parties' inability to test that evidence. Mr Wilcox confirmed that there would be no application to adjourn the hearing in light of the Tribunal's ruling.

Factual Background

24. The First Respondent was born in 1974, and admitted to the Roll of Solicitors in August 2006. She remained on the Roll of Solicitors and had a practising certificate subject to conditions. The Second Respondent was born in 1968 and admitted to the Roll of Solicitors in November 1995. She remained on the Roll of Solicitors but did not have a current practising certificate. The Third Respondent was born in 1986 and was granted Registered Foreign Lawyer status by the SRA in December 2012. His Registered Foreign Lawyer status was suspended with immediate effect on 29 July 2013. He had not applied for that status to be reinstated.

25. At all material times until 26 June 2013, the First Respondent was the sole principal of the Firm. The Second and Third Respondents were employed by the Firm from 15 April and 1 March 2013 respectively. From 26 June 2013 all three Respondents were partners of the Firm.

26. On 2 July 2013, the First Respondent resigned from the Firm. Three days later, the SRA received a complaint from G & Co Solicitors reporting concerns about a conveyancing transaction undertaken by the Firm. Consequently, an investigation was undertaken by an officer of the SRA. The SRA intervened in the Firm on 29 July 2013.

History of Austin Law ("the Firm")
Recruitment of the Second and Third Respondents

27. The First Respondent was recognised as a sole practitioner trading as Austin Law by the SRA from October 2011. The Second and Third Respondents joined the Firm in or about April and March 2013 respectively. The accounts as to how the Second and Third Respondents came to be working at Austin Law differed.

28. In interview with the SRA on 3 September 2013, the First Respondent explained that she was introduced to the Third Respondent by a contact called "Sandeep" who was assisting a friend to find employment for his nephew and niece. The friend in question was SC, known to the First Respondent as SA. The First Respondent stated that she first met the Third Respondent in December 2012 although he did not start attending the Firm until February 2013. Further an unadmitted member of staff, Zak (real name believed to be AH), joined the Firm at the same time as the Third Respondent as his bookkeeper, and AR (known as Sam) also started at the same time.

29. In an interview with Mr Pooles QC on behalf of the Firm's insurer, the Third Respondent claimed that he was introduced to the firm by Zak, who had approached him in the street at the end of November 2012, having overheard a telephone conversation in which the Third Respondent told a friend that he was looking for professional work. At this stage, the Third Respondent had passed the qualifying exam to be admitted as a barrister in Pakistan although he had not obtained a practising licence. The Third Respondent stated that he was then interviewed at the Hilton Hotel by Zak, Sam and SC (who was introduced to him as "the boss" and whom he later described as "uncle"). Having been briefed as to what to say, he was taken by Zak and Sam to meet the First Respondent, who agreed that he would join Austin Law once his registration as an RFL was approved. That approval was obtained in February 2013. He subsequently started work at Austin Law at the beginning of March, attending one or two days a week for 4 - 5 hours each time.

30. The First Respondent stated in her SRA interview that she was introduced to the Second Respondent by Sam in April 2013 (Sam having advertised for a lawyer), and that the Second Respondent was engaged because a third partner was needed for insurance purposes due to the Third Respondent's RFL status. The Second Respondent stated that she applied for a job at the Firm, having seen it advertised on a government job search link.

31. The Second Respondent stated in interview with the SRA that she was interviewed by Sam and Zak (posing as the Third Respondent) at the Hilton Hotel sports bar opposite the Firm's office. In an affidavit sworn by the Second Respondent on 19 August 2013, she referred to a text from "Sam" describing the job as "salaried partner" and also stated that she was given a letter of engagement dated 5 April 2013 describing her as a "salaried partner," before meeting the First Respondent at Clapham Junction Station on Sunday, 7 April 2013 to discuss the position. At that meeting, the Second Respondent was asked to sign an RB1 application form to become the Firm's COLP and COFA, which she did. That application described her as a "partner". The Second Respondent confirmed in interview that at this stage she did not know what a COLP or COFA did. The SRA's records indicated that the Second Respondent was initially engaged as a Consultant.

Application to become a Partnership

32. On 2 April 2013, the First Respondent had a telephone conversation with the SRA in which she apparently referred to an earlier idea of passing her practice onto another solicitor due to ill-health, and reportedly stated that "she is now considering a longer term solution to this and that she interviewed two solicitors….whom she considers potential candidates for a partnership". On 8 April 2013 (the day after the Second Respondent's interview) the First Respondent submitted an application form to the SRA to set up that partnership.

33. The RB1 partnership application form and covering letter, both dated 8 April 2013, stated that the Firm intended to provide legal services with effect from 15 April 2013. There was an endorsement below that date on the form which stated "Please note that the Applicant body is unable to commence practice until the firm has been granted recognition". The covering letter asked that the application be expedited as the First Respondent was finding it difficult to obtain professional indemnity insurance as a sole practitioner.

34. The proposed partners for the Firm were the three Respondents, with the First Respondent named as the person qualified to supervise and the Second Respondent named as COLP and COFA. The RB 1 form asked various questions of the applicants including:

34.1 At section 12 the form asked for details of partners who were RFLs. That section had been crossed through and the Third Respondent's details were instead included as a solicitor partner under section 10. The suitability test for RFLs had, however, been completed, albeit not signed. There were also various questions about candidates' criminal offences, including at question 3: "Is the candidate currently facing any criminal charges?" A note underneath stated: "If the candidate answered "Yes", they must disclose the details of the charge(s). We will not determine their application until they can confirm that the charge(s) has/have either been dropped or the outcome of their case is known." The applicant ticked the box marked "No". There was also a candidate's declaration which referred to "Knowingly or recklessly giving the SRA information which is false or misleading or failing to inform the SRA of significant information" the potential consequences for which included (inter alia) rejection of the application and/or disciplinary action being taken by the SRA. The declaration further stated that the candidate was required "to ensure that all information is correct and complete to notify the SRA as soon as it becomes aware of or has information that reasonably suggests that it has or may have provided the SRA with information, which was or may have been false, misleading, incomplete or inaccurate, or has or may have changed.". Subsequently the applicant also ticked a box agreeing that "I will notify the SRA as soon as I become aware that any information provided in this application has changed."

34.2 At Section 14 of the application, the Second Respondent's details were given as the proposed COLP/COFA. The Second Respondent described herself in this section as "Partner". This section was signed by the Second Respondent on 7 April 2013, i.e. the same date as her interview with the First Respondent. At question 5 of the application, the candidate was asked to declare any bankruptcies, IVAs or County Court Judgments. The Second Respondent ticked the box marked "No".

35. On 26 April 2013, the SRA advised the First Respondent that the application would not be expedited. The First Respondent replied on 13 May 2013 stressing the importance of the application to allow her to travel abroad on urgent family business. She also stated in her email "Both partners have been working with the firm for the past two months and are ready to instigate their new roles subject to the written approval of the SRA".

36. On 17 May 2013 the SRA wrote to the Second Respondent asking her to explain her response to question 5 on the application form in light of two County Court judgments totalling over £105,000 appearing against her name in the relevant credit checks. The Second Respondent replied on 19 May 2013 explaining that the judgments were in the name of her husband and in relation to his debts. The following day, the Second Respondent telephoned the SRA saying that she had discussed the situation with the First Respondent and asked whether it would be easier to nominate the First Respondent as COLP/COFA since she was already approved for the sole practice. During this conversation, the First Respondent's apparent intentions to leave the practice were queried by the SRA, and the Second Respondent confirmed that "…this would not be long-term, probably only for a period of 4 weeks or so".

37. On 20 May 2013, the SRA wrote to the First Respondent asking her to confirm her plans i.e. did she intend to cease being a partner in the near future, or was it right as suggested by the Second Respondent that she would be away for a certain period of time. The letter also asked why the First Respondent had not proposed remaining as COLP and COFA. The First Respondent replied on 22 May 2013 saying "I cannot predict my future plans but my immediate intention is to travel to see my family….I am considering a longer break from practice but cannot do so until such time that Mrs Assroundi [the Second Respondent] has been approved as a qualified supervisor or the firm makes alternative arrangements". The email also stated that once the partnership was approved the First Respondent would be away for at least 4 weeks, albeit contactable by telephone and email, and further that due to the length of time taken for the application to be approved, the First Respondent would stay as COLP/COFA, albeit she would be away from the office.

38. The SRA wrote on 29 May 2013 to the First Respondent seeking clarification of the position and in particular who was to be the COLP/COFA. The letter raised the uncertainty about the supervision of the practice, and the SRA's concerns about the Second Respondent's level of experience. The letter also queried various aspects of the partnership structure.

39. On 31 May 2013 the Third Respondent was arrested and released on police bail in connection with the Kingsdown Road conveyancing transaction; he was not charged with any offence. He explained to the SRA that he did not attend the Firm from then onwards. On 4 June 2013, the First Respondent sent an email to the SRA stating that:

> "….the office has handled a transaction that is now the subject of a Fraud. I am in the process of filing a detailed Summary of Events together with the measures of how to prevent similar event (sic) occurring again".

40. No details were provided in the email; no mention was made of the Third Respondent's arrest; and the "Summary of Events" referred to was never received by the SRA. The email was not sent to the caseworker dealing with the partnership application. The SRA acknowledged this report by a letter dated 6 June 2013.

41. On 7 June 2013 the First Respondent replied to the SRA's email of 29 May 2013 explaining that she would "have no choice" but to continue acting as COLP/COFA until such time as the Second Respondent was approved for those roles. The email also referred to a waiver application allowing the Second Respondent to supervise the practice. Further the First Respondent stated that "Notwithstanding Mrs Assroundi (sic) approval to supervise and manage I will still employ a conveyance (sic) in my absence to deal with the conveyancing files." In terms of their respective roles in the partnership, the First Respondent stated that the intention was for the First and Second Respondents to supervise the practice, with the Second Respondent conducting the day-to-day management of the Firm. The Third Respondent "will be allowed minimal management task because of his locks (sic) of experience. However he will continue to casework under supervision and promote the firm by networking and advertising."

42. The SRA sent an email to the First Respondent on 18 June 2013 setting out the outstanding points which needed to be discussed including the First Respondent's period of planned absence. A note was taken of a conversation between the SRA and the First Respondent on 18 June 2013, in the course of which the First Respondent suggested that the partnership be approved as proposed but with the First Respondent remaining as COLP and COFA and appointing a locum to supervise during her planned period of leave.

43. The SRA then held a discussion with the Second Respondent on 19 June 2013 during which the caseworker confirmed the basis of the new structure i.e. the three Respondents as partners, and the First Respondent as COLP/COFA. This was confirmed in an email from the caseworker to the Second Respondent on 20 June 2013 stating that the SRA was proceeding with the application on the basis that the Second Respondent's application to be a COLP/COFA was withdrawn (although this issue could be re-addressed in the future, depending upon the First Respondent's "future plans") and on the understanding that the firm would appoint a locum "during the period of leave Mrs Newell-Austin intends to take shortly".

44. On 20 June 2013 there was a telephone conversation between the SRA and the First Respondent when she agreed to send the completed COLP/COFA forms to the SRA. The caseworker also sent an email later that day to the First Respondent confirming that she was drafting her approval of the application on the basis that: (i) an outstanding ARP premium was paid, (ii) the First Respondent was nominated as COLP/COFA, and (iii) the County Court judgments had no implications on the Second Respondent. The email also attached the COLP/COFA forms for the First Respondent to complete. The First Respondent replied by email the same day confirming that the paperwork would be submitted as soon as possible. The relevant COLP/COFA forms were returned on 21 June 2013.

45. The Firm was granted authorisation to trade as a partnership on 26 June 2013, with the First, Second, and Third Respondents as partners/managers. This was confirmed to the First Respondent by email that day. The First Respondent then resigned on 2 July 2013.

How the Partnership operated

46. The First Respondent advised the SRA in her email of 7 June 2013 that the intention was for the Second and Third Respondents to become partners in the Firm and to share the equity as to 60/20/20 respectively. The First Respondent confirmed this arrangement in her interview with the SRA on 3 September 2013. The SRA's records indicated that the Second Respondent was engaged originally as a consultant, despite the title of "salaried partner" apparently on the letter of engagement dated 5 April 2013 and of "partner" on the RB1 and COLP/COFA application to the SRA. The Third Respondent, in his response to the S44B Notice, denied ever being a partner in the Firm.

47. In an interview with Mr Pooles QC on 11 September 2013, the First Respondent stated that she had never made any payments to the Second and Third Respondents; as partners they would have shared in any profits, and at that time the Firm was not making a profit. The Second Respondent stated that her salary was £24,000 per annum for core hours of 10.00am to 2.00pm. She was paid directly into her bank account, and received £2,600 in May and £6,000 (including an advance) in June, authorised by Sam and/or Zak. She also received additional "gifts," e.g. a laptop computer from SC (who she called "Uncle"). The Third Respondent stated that he was paid around £200 per week, cash, by Zak and/or Sam.

48. Both the Second and Third Respondents stated that the Firm was actually owned and/or managed by the unadmitted members of staff.

49. In her SRA interview, the First Respondent confirmed that, up until 2 July 2013 when she resigned, she had carried out weekly checks of between 2 to 5 files, and had also been responsible for opening and distributing incoming post. She also stated that she had "tried" to see as much as possible of the outgoing post, but had not had time to check every single letter. She had held weekly staff meetings and met with her bookkeeper every week. During her interview with Mr Pooles QC she also confirmed that she supervised the Third Respondent, Zak and Sam prior to the Second Respondent's appointment.

50. During her SRA interview, the First Respondent stated that the Second Respondent was "very competent on her conveyancing matters" and that the Third Respondent "wasn't a brilliant or great conveyancer, but he knew enough to be handling a file". Appended to the FI Report was a copy of the Second Respondent's CV which showed that she had no post qualification conveyancing experience; the Third Respondent told Mr Pooles QC that he had no knowledge of conveyancing. Despite her apparent lack of experience, from the date of her engagement the Second Respondent was working on conveyancing matters for the Firm. The Third Respondent explained that he attended the Firm only to read through immigration files to help him to get to know the work, however, several conveyancing transactions were conducted in his name.

51. A number of unadmitted persons also worked at the Firm, including Zak, SC and the First Respondent's bookkeeper.

52. The First Respondent stated in her SRA interview that the Second and Third Respondents, Zak and Sam often spoke to each other and also to some of the clients in Urdu - which she did not understand.

The Intervention

53. On 5 July 2013, G & Co reported the Kingsdown Road transaction in which the Firm had acted for the vendors (and which completed in May 2013) to the SRA. Following receipt of this report, an Investigation Officer of the SRA ("the IO") undertook a "no notice" inspection of the Firm on 12, 15 and 17 July 2013. On 12 July 2013, when the IO first attended at the premises, none of the three Respondents were present. Sam and another unadmitted member of staff told the IO that the First Respondent was no longer a partner and that the Firm belonged to the Second Respondent who was unwell.

54. On 15 July 2013 the IO returned to the Firm and was told that the Second Respondent was not available. The notification letter was handed to a person claiming to be the Third Respondent. On 17 July 2013 the IO conducted an interview with the Second Respondent and the individual claiming to be the Third Respondent. The Second Respondent was also handed a notification letter on this occasion. During the visit, the IO requested that any documentation which was not immediately available should be sent to her by 25 July 2013.

55. The Second Respondent stated in her SRA interview that on the evening of 19 July 2013, Zak asked Sam for a set of office keys which Sam provided to him. The Second Respondent confirmed that she did not query the reason for this. She subsequently clarified that only the First Respondent and Sam held keys to the office, and that Sam let Zak have use of her keys during that week.

56. On 25 July 2013 the Second Respondent telephoned the SRA Authorisation Department and explained that she had attended at the Firm that day to find that the office was empty of all client files and computers.

57. On 29 July 2013 the SRA intervened in the Firm. On 3 September 2013, the SRA interviewed the First and Second Respondents. During those interviews, both the First and Second Respondents informed the SRA that the person to whom the IO had spoken during the inspection in July 2013, and whom the IO had believed to be the Third Respondent, was actually Zak, posing as the Third Respondent. The Second Respondent admitted at this stage that she had become aware of this deception the day after the IO's interview that being 18 July 2013.

58. As the IO had been unable to interview the Third Respondent, on 30 October 2013 the SRA sent a letter to him enclosing a Section 44B Notice setting out a number of requests for information, to which a response was required by 13 November 2013. The Third Respondent replied by email on 9 November 2013, enclosing a copy of his defence in a civil claim brought in relation to the Thurlstone Avenue transaction. In those documents, the Third Respondent claimed only to have been a "salaried

employee" of the Firm, not a partner, and that he did no work whatsoever on the Firm's conveyancing files, stating: "I do not know anything about conveyancing". The Third Respondent admitted opening bank accounts in the Firm's name under the instructions of unadmitted members of staff working at the Firm, but denied having access to client money.

59. The IO prepared an FI Report dated 14 November 2013.

Bank Accounts

60. The Firm held a number of bank accounts which could be operated, by one or more of the Respondents and as follows:

A. Lloyds TSB, 39 Piccadilly, London (operated by the First Respondent only)

Account Name	Date	Balance
Mrs D Newell-Austin T/A Austin Law Clients Call Account	29.07.13	£539.00
Austin Law Solicitors Office Account	09.05.13	-£18,185.75

B. Lloyds TSB, 39 Piccadilly, London (operated by the Second & Third Respondents only).

Account Name	Date	Balance
Austin Law Clients Call Account	22.07.13	£61,809.96
Austin Law Electronic Tariff	22.07.13	-£18,842.39

C. Santander, 38 The Broadway, London (operated by the Third Respondent only)

Account Name	Date	Balance
Austin Law Business Current Account	01.08.13	£178.49

D. Barclays, 2 Portman Square, Leics (operated by the Third Respondent only)

Account Name	Date	Balance
Mr Rashad Ahsan T/A Austin Law	15.08.13	£0.00
Mr Rashad Ahsan T/A Austin Law	15.08.13	-£96.27
Mr Rashad Ahsan T/A Austin Law	15.08.13	£0.00

61. The Lloyds TSB bank accounts at B above were not disclosed to the IO during her investigation. The opening forms for those accounts recorded that the Second and Third Respondents opened the account on 1 May 2013, signing as "salaried partner" and "equity partner" respectively, notwithstanding that the partnership was not

authorised by the SRA until almost 2 months later. The Third Respondent told the SRA in his response to the section 44B Notice that he was not involved in the opening of an account at Lloyds TSB.

62. The FI report also noted that the Third Respondent had seemingly used two different forms of identification, a provisional driving licence for Barclays at D above, and a full driving licence for Lloyd's TSB at B above. The Second Respondent confirmed in interview with the SRA that the identification provided to Lloyd's TSB appeared to her to be the genuine Third Respondent. However, she had attended the bank separately to open the Lloyds TSB accounts and could not therefore confirm whether the person attending was actually the Third Respondent or Zak posing as the Third Respondent.

63. The Santander account at C above was opened by the Third Respondent on 18 April 2013 (and was opened according to him, at the insistence of the First Respondent and Zak). The Third Respondent informed the SRA in his section 44B response that Zak accompanied him to open the account. The Third Respondent stated that he was told that this branch was too far from the office and he was taken by Sam to open the Barclays accounts. The FI Report stated that Barclays had confirmed that the accounts had never been used and the debit balance of £96.27 on one of the accounts related to bank charges.

Conveyancing Transactions

64. Allegations 1.1, 2.1, and 3.3 arose from a series of conveyancing transactions conducted by the Firm during the period April to July 2013.

65. Kingsdown Road

65.1 On 12 April 2013 the First Respondent received an email purportedly from FH to act in the sale of a property at Kingsdown Road at a purchase price of £435,000. The initial enquiry email stated that there were no charges on the property. The purchasers initially instructed G & Co to act on their behalf. A subsequent letter from MAB dated 15 May 2013 confirmed their instructions and was marked "For the attention of [Zak]".

65.2 Copies of a driving licence and utility bill (dated 16 August 2012, some 8 months previously) in the name of FH were purportedly certified by the Third Respondent on 12 April 2013. During an interview with the IO on 17 July 2013, Zak (posing as the Third Respondent) confirmed that he had met the client to confirm his identity and had checked the original documents. However, in the Third Respondent's letter to the SRA dated 20 June 2014, he stated that he (i.e. the Third Respondent) had signed the certification upon the First Respondent's instruction without having seen the original document or having met the purported client.

65.3 The client care letter dated 17 April 2013 was sent in the First Respondent's name; however, the reference on that letter was that of the Third Respondent. The Second Respondent informed the IO in interview on 17 July 2013 that she was the supervisor on this transaction, and that the actual work was carried out by Zak. The First Respondent stated in her interview with the SRA that she had been told by Zak that

the client was a contact of the Third Respondent and so she had passed the file to the Second Respondent who it had been agreed would work on new matters and instructions coming in via the Third Respondent. A copy of a confirmation of instructions form purportedly signed by the client was on the Firm's copy file.

65.4 The Firm provided the purchasers' solicitors with an official copy of the register; that copy was historic, in that it did not show a restriction dated 19 November 2012. An official copy of the register obtained by the SRA included a reference to the restriction. The Firm's copy, whilst issued on 22 April 2013, showed the entries in the register as at 19 November 2012 at 15.17 (the date of execution of the restriction). The Land Registry's covering letter dated 22 April 2013 (addressed to "Rashad") stated that: "There is an/are application(s) pending in the Land Registry". A G & Co file attendance note dated 31 May 2013 indicated that the pending application was not disclosed.

65.5 Also on the copy file were authorities, purportedly signed by the vendor, dated 9 May 2013 which authorised transfers of £141,000 to FPL and £60,000 to LL, those transfers to be made upon completion.

65.6 The copy contract dated 9 May 2013 purportedly signed on behalf of the seller had been annotated to state that exchange took place between G & Co and the Third Respondent. The purchase price had been altered by hand to £470,000 with a completion date of 13 May 2013. The Memorandum of Exchange indicated that the deposit of £47,000 was being "held to order." An email exchange dated 9 May 2013 between G & Co and the Firm (purportedly in the name of the Third Respondent) indicated that the Firm would be using a private email address because the Firm's server was down. The SRA's records indicated that the email address provided belonged to the Second Respondent. The signature on the copy of the transfer (purportedly that of the vendor) was witnessed by the Third Respondent.

65.7 £470,000 completion monies were received into the Firm's Lloyds TSB client account (that could be operated by the First Respondent only) on 13 May 2013. On 13 and 14 May 2013 respectively, transfers out of client account authorised by the First Respondent were made to FPL (£141,000), and LL (£60,000) as per the authorities purportedly from the client of 9 May 2013.

65.8 On 15 May 2013, G & Co wrote to the Firm stating that their client had tried to enter the property following completion only to find:

> "a large number of occupants….who advised him that they were family members of the seller…..they seemed to be surprised that the property was sold and there are suggestions that this is a fraudulent transaction….".

65.9 MAB also on behalf of the purchasers, wrote to the Firm on 15 May 2013 asking for details of where the completion monies had been sent and stated that:

> "We are increasingly concerned that our clients have been the victims of a fraud concerning the sale of the property at … Kingsdown Road….It appears that your firm has held itself out as acting for the seller…whereas you have been acting at the direction of a fraudster".

65.10 On15 or 16 May 2013, MAB LLP sent an email requesting the bank details of the recipients of the "sale proceeds" and stated that:

> "In summary, it is the allegation of…[DH, son of FH]… that the signature on the form TR1 is a forgery since…[FH]…can hardly walk and would have been incapable of attending your offices. The signature of...[FH]...was witnessed by your Rashad Ahsan. We do not know if…[DH's]…allegation is correct but if it is then your firm has been used as a vehicle for fraud. It is not so much that your client was involved in a criminal act but rather that Mr H… had no knowledge of your firm or the transfer…".
>
> The bank details were provided by FA described as the First Respondent's assistant, due to the First Respondent being abroad.

65.11 The copy Austin Law file contained an attendance note dated (erroneously) "16.54.2012" recording a meeting between the three Respondents about this matter, where they went through the file. The attendance note stated "Rashad insisted the client was the one whose ID he has certified when that client attended the office and he has taken his instructions from that very same client all throughout the case…Rashad had no reason to suspect the client was not the client as he alleged to be and the client showed no suspicious behaviour whatsoever. As far as Rashad is concerned the transaction went without any pblms (sic) and the instructions to transfer funds were via written client instructions and these are on file." This was inconsistent with the Third Respondent's account as recorded in his subsequent interview with Mr Pooles QC.

65.12 Austin Law wrote to MAB on 17 May 2013 stating that the Firm's client account had been frozen and the balance of the sale proceeds remained in the client account and, further, providing an undertaking "that they will not be transferred from the account until this matter has been resolved." Lloyds TSB emailed the Firm on 20 May 2013, in response to the First Respondent's email of 17 May notifying them of the fraud, stating that: "This account is blocked and I do not have the authority to unblock it. According to the notes on the system you need to go into the Paddington branch with proof of entitlement to the funds, this will need to be from the person who sent the funds and CANNOT be in the form of an email/fax".

65.13 On 22 May 2013, the First Respondent authorised the transfer of the balance of the completion monies (£269,000) to MAB. During her SRA interview the First Respondent stated that there was an authority on file from G & Co authorising the transfer to MAB, but the FI Report stated that there was "no evidence" of this on the copy sale file. The file did, however, contain a letter dated 21 May 2013 from MAB requesting the transfer of the £269,000 sale proceeds into its client account, to be released upon 10 days written notice or by agreement or court order. The First Respondent admitted that she did not know whether the purchasers were buying with a mortgage, and had not enquired as to whether there was a mortgagee involved to whom the funds might belong prior to authorising the transfer to MAB.

65.14 On 4 June 2013, MAB gave 10 days' notice to the Firm that it intended to release the remaining completion monies to its clients.

66. Thurlestone Avenue

66.1 The Firm was instructed to act for the purported vendor, TS, in relation to the sale of this property to purchasers ZM and NM, in around mid-April 2013. The Memorandum of Sale produced by the estate agents was dated 28 February 2013. An email from the solicitors acting for the holder of an equitable charge stated that the Firm was the "fourth Solicitor that your client has changed in last eight week (sic)". The Memorandum of Sale was sent by the estate agents, to "Sam" at the Firm on 28 February 2013, two months before the Firm were instructed in this transaction, and despite the fact that other firms were apparently instructed in the meantime.

66.2 The fee earner listed on the Austin Law matter ledger was the Second Respondent, and on 16 April 2013 she sent an email to the vendor's former solicitors requesting their file. A letter from the Firm to the purchasers' solicitors, dated 19 April 2013 stated "please address all future correspondence to Mr Rashad Ahsan who will be handling this matter." Office copy entries obtained on 25 March 2013 showed that the property was subject to two restrictions and six registered charges.

66.3 On the Completion Information and Requisitions on Title form, provided by the purchasers' solicitors, the Second Respondent provided details of the Firm's client account for the purposes of transferring completion monies. At 6.1, the Second Respondent listed the six registered mortgages and charges, and at 6.2 she provided the following undertaking:

> "We undertake to redeem and discharge the mortgages and charges listed in 6.1. We will forward confirmation of notice of electronic discharge and all UN2's upon receipt of the same".

66.4 That undertaking was repeated in an email sent in the name of the Second Respondent on 25 June 2013, in which it was stated: "We….confirm our undertaking to discharge the charges upon successful completion.".

66.5 P Solicitors, who acted on behalf of a registered chargee, wrote to the Second Respondent on 29 May 2013 expressing their surprise that they had not heard from her when they understood that contracts had been exchanged with completion set for 10 June 2013.

66.6 Although the Lloyds TSB client account details had been provided, the completion monies of £409,825 were received into the Santander account on 10 June 2013, and as at that date was the only money in that account. The Santander bank statement showed a series of cash withdrawals, as well as purchases at a number of stores. On 18 June 2013, the payment was returned to the purchasers' solicitors leaving the account £5,222.48 overdrawn. In his (unsigned) defence to subsequent legal proceedings brought by the purchasers, the Third Respondent stated that he had "caused a payment of £409,825 to be returned from the Santander Bank account" but did not state why. The money was then returned to the purchasers' solicitors from that account, and was subsequently received again from the purchasers' solicitors into the Firm's Lloyd's TSB client account on 21 June 2013.

66.7 The file contained a copy letter and redemption statement dated 13 June 2013. That letter set out the amount required to redeem one of the charges (£261,391.88) and appeared to give instructions to pay the redemption monies into an HSBC bank account in the name of "PERITO".

66.8 A draft completion statement set out the list of charges that were to be redeemed, including £261,391.88 as above, and five other charges. The completion statement showed that £5,343.80 was due to the vendor from the proceeds of the sale. The Second Respondent sent an email dated 24 June 2013 to the First Respondent giving the "Perito" payment details and requesting that she authorised the redemption of the mortgage that day. During her SRA interview the First Respondent was shown that email. She stated that she recalled receiving instructions from the Second Respondent as to where the money should go but could not recall the name "Perito" and stated that she would have asked questions about this before any transfer. The Second Respondent, in her interview, denied sending the email.

66.9 There was no evidence of any payments out of the client account to any of the registered chargees, although the Second Respondent explained that she had authorised those payments.

66.10 The bank statements for the Lloyds TSB client account operated by the First Respondent only, showed that the entire account balance of £493,110.34 was transferred out of that account on 2 July 2013 into a separate Lloyds TSB client account operated by the Second and Third Respondents only.

66.11 On 3 September 2013, L Solicitors, on behalf of one of the chargees, wrote to the SRA confirming that the letter of 13 June 2013 purporting to give instructions for payment of redemption monies to "Perito" was "not a true copy of the letter actually sent by our client to Austin Law, in that the details of the bank account into which payment was to have been made has been altered…". A true copy of the original letter and redemption statement dated 13 June 2013 showed that the payment details were completely different. The covering letter to the SRA stated that "We confirm that our client has not received the redemption sum of £261,291.88 or indeed any redemption monies in this matter".

66.12 A schedule provided by the Compensation Fund confirmed that, as at 16 February 2015, a total of £454,506.84 had been paid out in respect of this transaction.

67. <u>Cowley Road</u>

67.1 The FI Report noted that this file was unavailable for review as it had been removed from the Firm's offices prior to the intervention. However, information was provided by KSL, who acted for the mortgagee, Aldermore Bank PLC ("Aldermore"), and from the Respondents in interview, as well as from papers submitted in support of a Compensation Fund claim.

67.2 The Firm acted for NR in the transfer of three properties on Cowley Road from his sister RR. The mortgage advances were in the total sum of £1,845,000.

67.3 Official copies of the register (issued on 4 November 2013) in relation to each of the three properties show that RR was the registered proprietor of each of the properties, which were subject to a registered charge in favour of Clydesdale Bank ("Clydesdale"). The parties had agreed that the Clydesdale mortgages would be discharged upon completion.

67.4 The Second Respondent stated in interview with the SRA on 3 September 2013 that she was the fee earner on this transaction, and that she had understood RR, the transferor, to be acting for herself in the transaction. She accepted passing papers to Zak to conduct the transaction and denied any involvement past the initial stages (i.e. obtaining searches) and denied sending out later emails which were in her name, or taking any telephone call from the bank. During her SRA interview, the First Respondent confirmed that she met the client, NR, and verified his identification; however, she did not conduct the transaction herself and it was handled by the Second Respondent and Sam, who had introduced the client.

67.5 On 1 July 2013, a letter was sent from the Firm to KSL, in the name of the Second Respondent, giving various undertakings including inter alia;

> "In consideration of you sending to us the net mortgage advance from the above matter WE HEREBY UNDERTAKE as follows:
>
> (a) To act as your agents upon completion…
>
> (c) That as your agents we will comply strictly with specific instructions supplied.
>
> (d) That if the transaction is not completed within three working days of your sending advance monies to us, we will contact you to obtain further instructions (this will normally be that the monies be returned to yourselves via telegraphic transfer)…
>
> (g) We will take such steps as are necessary to perfect title including complying with Land Registry and HMRC requirements (including payment of any additional sums required by either or both of them not recovered by the deductions made from the mortgage advance).
>
> (h) To procure the discharge of any charges registered against the Property [the charges then being particularised] and thereafter to forward to you, within three working days of completion, forms DS1 or such other appropriate form of discharge, duly executed by the relevant charge holder..."

67.6 The Firms completion statement showed that the amount required to redeem the existing mortgages was £1,752,122.36 and that £78,193.64 would be due to be paid back to NR. On 15 July 2013 the release of the Aldermore mortgage funds was authorised and receipt was confirmed by an email in the Second Respondent's name dated 16 July 2013. The matters purportedly completed the same day.

67.7 The Lloyds TSB client account statements (operated by the Second and Third Respondents only) showed the mortgage funds of £1,832,981 being credited to the account on 16 July 2013 with £78,193.64 being paid to the client. A number of payments were then made to various unrelated third parties out of the client account, with no payment being made to Clydesdale to redeem the existing mortgages.

67.8 During her interview with the IO on 3 September 2013, the Second Respondent confirmed that she authorised the transfers out of the Lloyds TSB client account, as she had on file the client's written instructions by email to make those transfers; however the file was not recovered and no evidence of those instructions was provided. The Second Respondent stated that she was instructed to make the transfers by "Rashad". She admitted that at the time of making some of the transfers she was aware that Zak, rather than the Third Respondent, had carried out the conveyancing work on the file, and that she had to authorise the transfers personally because Zak was unable to operate the account.

67.9 In the proceedings issued by Aldermore against the Firm and the three Respondents the claim against the Third Respondent was discontinued by agreement. The claim against the First and Second Respondents turned on whether they were in fact principals of the Firm at the time of the undertakings on 1 July 2013. The court found that both the First and Second Respondents were partners in the Firm with effect from the approval of the partnership by the SRA on 26 June 2013. Both were therefore liable in respect of the undertakings given on 1 July 2013. Further, the First Respondent's liability to comply with the undertakings was not affected by her ostensible resignation from the Firm the following day, even if that was an effective resignation.

67.10 On 16 December 2014 the Adjudication Panel decided that payment should be made from the Compensation Fund of £1,763,180.05 in favour of Aldermore in respect of their claim.

68. <u>Central Park Road</u>

68.1 This file was not available for the IO to review as the files had been removed from the Firm's offices. However, information was provided by the solicitors acting for the purchaser.

68.2 The Firm acted for the vendors in the sale of this property. Emails dated 28 June to 16 July 2013 sending out various documents showed that work on the file was done by, or in the name of, the Second and Third Respondents.

68.3 Official copies confirmed that the vendor was the registered proprietor of the property subject to a charge in favour of the Bank of Scotland Plc.

68.4 On 26 July 2013, the date of completion, the Firm provided "new bank details" for payment of completion monies. The details given were for the Firm's Santander account (operated by the Third Respondent only). The Firms reference at the top of the letter was "NA/RA/1205".

68.5 A handwritten note on the contract signed by the purchaser indicated that Zak conducted the exchange on behalf of the Firm. The matter completed the same day and payment of £250,000 was received by the Firm. The bank statement showed that £241,752, was transferred to an unrelated third party on 30 July 2013. There was no evidence of any money having been transferred to the Bank of Scotland to redeem the outstanding charge.

68.6 According to the FI Report, Santander confirmed that the Third Respondent (who was the account holder and sole signatory) authorised the payment. A schedule provided by the Compensation Fund indicated that, as at 16 April 2015, a total of £269,980.40 had been paid out in respect of this transaction.

69. Cherrywood Lodge

69.1 The Firm acted for the vendor. An official copy of the register of title dated 4 April 2013 confirmed that the vendor was the proprietor of Cherrywood Lodge, which was subject to a charge dated 29 January 2008 in favour of Mortgage Express.

69.2 On 28 June 2013, the Firm wrote to the purchasers' solicitors returning the completed Completion Information and Undertakings Form, and providing undertakings to "to redeem or discharge the mortgages and charge(s) listed in reply to 5.1 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 received them".

69.3 The Firm's client account bank statement for Lloyds TSB (operated by the Second and Third Respondents) showed a receipt of £14,150 on 3 July 2013 marked "Dep Hampton".

69.4 Completion took place on 11 July 2013 and a copy of the transfer was purportedly signed by the vendor with the Third Respondent as a witness. On the day of completion, the balance purchase monies of £125,710.55 were received into the same Lloyds TSB client account as the deposit against reference "TFR RJ & P CLIE."

69.5 Following the intervention into the Firm, the purchasers' solicitors attempted to register their client's title to the property, but the application was rejected on 5 August 2013 because of missing documentation: - "We are unable to complete your application without evidence of the discharge of the charge dated 29 January 2008 in favour of Mortgage Express…"

69.6 A claim was subsequently made against the Compensation Fund on behalf of the purchaser as the vendor's existing mortgage had not been redeemed. There was no evidence on the Firm's client account bank statements that any monies were paid to Mortgage Express in respect of this transaction. The relevant Lloyds TSB bank statements indicated that the majority of monies received into this account, including the completion monies in respect of Cherrywood Lodge, had been dispersed to unrelated parties prior to the intervention, leaving a balance of £61,809.96 in the account.

69.7 The schedule provided by the Compensation Fund dated 16 February 2015 indicated that an adjudicator payment had been made on this matter in the sum of £140,319.01.

70. Shortlands

70.1 The Firm acted for the vendor in the sale of her property for £242,000.00. Official copy entries obtained on 12 June 2013 showed that the vendor was the registered proprietor of the property, subject to a registered charge dated 4 June 2008 in favour of Santander UK Plc.

70.2 The Third Respondent was recorded as having exchanged contracts. It also appeared that the Second Respondent was routinely working on this matter.

70.3 The Firm's bank statement for Lloyds TSB showed that £242,000 was received on 12 July 2013, and that £16,125 was then paid out of that account to the vendor. There was no evidence from the bank statements that any money was paid to Santander to redeem the vendor's mortgage.

70.4 The schedule provided by the compensation fund indicated that as at 16 February 2015 a total of £228,186.77 had been paid out to the purchasers in this matter.

Compensation Fund Claims

71. A schedule of all Compensation Fund payouts as at 16 February 2015 showed that a total of £2,856,173.15 had been paid out in respect of the six transactions set out above. In total, the Compensation Fund had, at 16 February 2015, paid out over £2,866,783 in respect of Austin Law claims, with other claims still outstanding as at 26 February 2015.

The SRA's Investigation

72. The Applicant wrote to the First and Third Respondents on 30 January 2014, and to the Second Respondent on 31 January 2014, raising the allegations and seeking an explanation.

73. The Second Respondent replied on 7 February 2014, denying ever having been an owner or equity partner of the Firm, and stating that she had never seen the financial details of the Firm. She stated that she was offered a position as a salaried partner, working around three hours per day, and that the First Respondent had assured her in a letter dated 5 April 2013 that she would have "no liability or responsibility"; this was the only reason she had accepted the job. The Second Respondent was asked for a copy of that letter, but it was not provided at that time. The Second Respondent also stated in her reply that she had no conveyancing experience and that this was known to the First Respondent, who had assured her that she would be trained. The First Respondent had subsequently told the Second Respondent that she would have to be nominated as COLP and COFA to cover "a couple of weeks' holiday to Jamaica".

74. The Second Respondent maintained that she had "no idea whatsoever the transactions were not real and right" and admitted that she "always acted pursuant to DNA [the First Respondent], Sam and Zak …" and that she was "told what to do all the time". She repeated her assertion that she only discovered after the SRA's visit that the Third Respondent had actually been impersonated by Zak, at which point she confronted Zak and Sam but was "convinced…to keep quiet". She admitted that "I should have told SRA when I found out Zak was Zak but under my bosses instructions not to I didn't…" The Second Respondent further admitted that: "I was never independent. They all told me what to do. Sam gave me the job she passed me even Ahmed, [the First Respondent's] assistant told me what to do. I never felt like a solicitor let alone a partner. I was just a "file handler" I felt like an office assistant being told what to do all the time…" She also stated that she had asked the First Respondent about giving undertakings and was told that "it was a firms understanding (sic) and it would be dealt with at end of transaction. I didn't know and [the First Respondent] dictated the undertaking to me. I just did it as part and parcel of the work. I had no idea it was personal to me I was told it was what we do in conveyancing matters". Subsequently the Second Respondent also stated that the First Respondent had made the bank transfers "other than those I did" and that she "had no idea what went wrong".

75. The Third Respondent sent a letter in reply to the allegations dated 18 February 2014. In his letter, he explained that he had limited leave to remain in the UK and indicated that "if I did anything wrong then there is no point for me to stay in this country". The Third Respondent maintained that he "never facilitated any identity fraud or any kind of fraud whatsoever". He accepted that he had not disclosed his arrest to the SRA but stated that "I even did not know what SRA is (sic)". The Third Respondent stated that he was not an "owner or supervisor" of the Firm, and that he understood himself to be employed by the First Respondent and unadmitted members of staff Zak and Sam. He further admitted that, despite accepting a "fixed salary" of £200 per week, he "did not carry out any kind of work at Austin law" and had no knowledge of the conveyancing files, notwithstanding his arrest on 31 May 2013 in connection with the Kingsdown Road transaction. He admitted opening bank accounts for the Firm using his name and home address, namely a bank account at Santander in Stratford and at Barclays on Edgware Road under the direction of the First Respondent, Zak and Sam, because "they clearly explained me that it is compulsory for every employee of the firm to open the bank accounts in his/her name….". He further admitted that in June 2013, "they came to me and took belonging of both accounts Santander and Barclays". He therefore denied authorising the payment in July of £241,752 from funds relating to the sale of Central Park Road.

76. The First Respondent replied to the allegations on 5 March 2014. She stated that: "I am without representation at present and rely on my answers to [the IO] in my interview on 3rd September. However, I accept that the gravity of the matter is such that it is inevitable that the matter must be referred to the tribunal."

77. On 26 February 2014, the SRA received a copy of the transcripts of interviews conducted by Mr Pooles QC (instructed by Capita and the Assigned Risks Pool ("ARP"), the Firm's insurers) with the Respondents on 11, 3 and 5 September 2013 respectively. In his interview, the Third Respondent further clarified his account of the Kingsdown Road transaction, again denying carrying out any work on the file or

meeting the purported vendor/client. The Third Respondent stated that he was called into the office in May 2013 where he met with the First Respondent, Zak and Sam, and was asked to certify a photocopy driving licence in the name of FH (the supposed client) and was told that Sam had seen the original. The Third Respondent also stated that he was then told that there was a problem with the file, and that he would need to meet with investigators, when he should say that he met FH in the office, and that he was the same person whose driving licence copy he had certified, and from whom instructions had been taken in this transaction. The Third Respondent stated that he said he had not agreed to this because it was not true. He remained adamant that he had not worked on the file.

78. The Second Respondent, in her interview, admitted that Zak "was signing off letters and emails as Rashad" and that both she and the First Respondent were aware that work was being undertaken in the Third Respondent's name when he was not in the office. She admitted that she was "theoretically" supervising the Third Respondent after the First Respondent had resigned, but stated that the First Respondent was still attending the office. The Second Respondent initially stated that she had understood that Zak had bought the Firm; however, subsequently, she stated that she was told that someone else was buying the practice.

79. In respect of the Cowley Road properties, the Second Respondent denied both working on the file past the initial stages and sending out later emails in her name, saying it was dealt with by Sam, Zak, and the First Respondent.

80. In her interview with Mr Pooles QC on 11 September 2013, the First Respondent described how the partnership had evolved and confirmed that both the Second and Third Respondents had been carrying out work on the conveyancing files. However, she also stated that, until the Second Respondent commenced working at the Firm, she allowed Sam, Zak, and the Third Respondent only limited access to files and to the Firm's computer and telephone system, and permitted them to be in the office only 2 to 3 hours per day because she "didn't have enough time to be supervising". She also stated that she had not been paying Sam since she was part of the Third Respondent's team, saying "Rashad and Najma and Sam had discussed how their salary will be paid because the intention was I wasn't going to be there supervising or to be paying these people's salaries…" She confirmed her understanding that SC was the uncle of the Third Respondent.

81. The First Respondent also confirmed that she was aware at the date of her resignation that the Second Respondent had not yet been approved as COLP/COFA or supervisor but expected approval soon and did not see why the practice could not continue.

82. The First Respondent claimed to have only a vague knowledge of the Cowley Road files, and stated that she had not realised that the transferor (the client's sister) was apparently not represented. The First Respondent further stated that the client would conduct discussions with the Second Respondent and with Sam in a different language which she could not understand.

83. In respect of the Kingsdown Road transaction, the First Respondent stated that she believed that this was an "honest mistake" on the part of the Third Respondent which she "didn't consider a striking off offence". However, she also stated that she had

stopped the Third Respondent from attending the office afterwards. She admitted that she did not inform the SRA saying "I didn't think of it then".

84. In light of the transcripts, and apparently conflicting statements contained therein, the SRA raised further allegations with the Respondents by way of letters to each dated 29 April 2014. The First and Second Respondents did not reply to those further letters.

85. The Third Respondent provided a response on 20 June 2014. He stated that any contradictory statements were due to stress and language problems. In respect of Kingsdown Road, the Third Respondent repeated his admission that he had certified a copy of the client's identification, although he had not seen the original and had not met the client. He stated that the First Respondent had asked for his help in this, as there was an issue on the file, and had told him that the original document had been seen by someone in the office (Sam). In his interview with Mr Pooles QC, the Third Respondent stated that he was told to say that he had met the client and had taken instructions from the same person throughout the case, which he had said that he would not do because it was untrue.

Witnesses

86. The following witnesses provided statements and gave oral evidence:

- Carolann Shimmin – Forensic Investigation Officer in the Forensic Investigation Department of the SRA
- Deidre Newell-Austin – The First Respondent
- James Bogle – Character witness on behalf of the First Respondent

87. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

88. 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.

89. **Allegation 1.1 - the Respondents permitted or allowed the Firm to become involved in, or acquiesced in the Firm's involvement in, conveyancing transactions that bore the hallmarks of mortgage fraud in breach of Principles 2, 6, and 10 of the Principles.**

89.1 The SRA submitted that this allegation was put on the basis that in each of the six conveyancing transactions set out above, the Firm received into one of its client accounts deposit and/or completion monies which the Firm had either undertaken to, and/or was under an obligation to, apply for specific purposes (namely, either the redemption of an existing mortgage or payments to vendors to complete a sale/transfer). In each case the monies were not used for their intended purposes but were transferred out of the client accounts to unrelated third parties in breach of Principles 2, 6, and 10 of the Principles. On at least one occasion (the Kingsdown Road transaction), it appeared that the purported vendor/client of the Firm was not aware that his property been sold. As a consequence, the Firm was used as a vehicle for widespread mortgage fraud, the cost of which ultimately fell upon the profession as a whole through the Compensation Fund.

89.2 At all relevant times, the First Respondent was a principal of the Firm. Furthermore, there was also evidence of her personal involvement in the transactions, for example:

89.2.1 She authorised the payments to unconnected third parties FPL and LL on the Kingsdown Road transaction;

89.2.2 She authorised the payments out of completion monies on the Thurlestone Avenue transaction to the "Perito" account on the basis of a false redemption statement;

89.2.3 She met the client in respect of the Cowley Road transactions and verified his identity;

89.2.4 She sent an email to the purchaser's solicitors confirming instructions in respect of the Cherrywood Lodge transaction.

89.3 The Second and Third Respondents were partners of the Firm from 26 June 2013 and remained partners during the completion and disbursement of monies relating to the Cowley Road, Central Park Road, Cherrywood Lodge, and Shortlands transactions. Further there was evidence of their personal involvement, prior to 26 June 2013, in the Kingsdown Road and Thurlestone Avenue transactions as follows:

89.3.1 In respect of the Kingsdown Road transaction, the Second Respondent admitted in interview with the SRA that she had been the supervisor on this transaction.

89.3.2 According to a typed attendance note of an apparently internal meeting, the Third Respondent was conducting the Kingsdown Road transaction (although this was denied by him) and he was subsequently arrested (although not charged) in relation to his involvement with the transaction. In addition, the Third Respondent confirmed that he certified the purported copy identification of the purported client in the matter without either having met the alleged client or having seen the original identification.

89.3.3 In respect of Thurlestone Road, the Second Respondent sent emails, completed the Replies to Requisitions on Title and provided a further undertaking on 25 June 2013. She also requested payment out of the

completion monies to the wrongful "Perito" account. In addition, correspondence was requested to be directed to the Third Respondent and work was carried out in his name. The Third Respondent was also the sole signatory on the Firm's Santander account, from which he permitted payments to be made from the completion monies to unrelated third parties before returning the money to the sender and leaving the account overdrawn.

89.4 There was evidence showing that the Second Respondent worked personally on the Cowley Road, Central Park Road and Shortlands transactions. The Second Respondent admitted authorising the wrongful payments out of completion monies on the Cowley Road transactions, on the instructions of Zak, whom, it was submitted, she knew at around this time had impersonated the Third Respondent. She also provided undertakings by way of a letter dated 1 July 2013 in respect of this transaction which were not complied with.

89.5 The Third Respondent was the sole signatory on the Santander account, from which the wrongful payment using the completion monies from Central Park Road was made; however, he denied making this payment.

89.6 Mr Levey submitted that the First Respondent effectively handed over the Firm to the unadmitted members of staff, who then used the Firm as a 'fraud factory'. Although it was accepted that the First Respondent did not know this at the outset, she should have been alert to the issues, particularly once the fraud in relation to the Kingsdown Road transaction became known to her. The Second and Third Respondents allowed their names to be used to facilitate the frauds, and again, should have been alert (if indeed they were not complicit) when the details of the Kingsdown Road transaction became known to them. These factors, it was submitted, were clear evidence that the Respondents failed to act with integrity, failed to behave in a way that maintained the trust the public places in them and the provision of legal services, and failed to protect client money and assets.

89.7 The First Respondent, in her response of 6 June 2015, denied acquiescing or knowingly permitting or allowing the Firm to become involved in the transactions. Further, she denied acting without integrity in breach of Principle 2 of the Principles. Dishonesty was also denied. In all other regards, Allegation 1.1 was admitted by the First Respondent.

89.8 The Second Respondent, in her statement of 31 August 2015 admitted acquiescing "in the Firm's involvement in conveyancing transactions that bore the hallmarks of mortgage fraud (including failures to redeem mortgages and/or identity fraud) and in so doing [I] have breached Principles 2, 6 and 10 of the SRA Principles 2011." The Second Respondent denied dishonesty.

89.9 The Third Respondent had not engaged with the Tribunal process. The Tribunal treated all allegations as denied by him in their entirety.

89.10 The Tribunal found, beyond reasonable doubt, that the transactions clearly bore the marks of mortgage and/or identity fraud. Indeed, this was not disputed by the First and Second Respondents. It further found that the Respondents had permitted and allowed the Firm to become involved in, or acquiesced in the Firm's involvement

in, conveyancing transactions that bore the hallmarks of mortgage/identity fraud. The Tribunal did not accept the limited admissions made in this regard by the First and Second Respondents. The First Respondent's admission was made on the basis that she had not acquiesced or knowingly allowed or permitted the involvement, however 'knowingly' did not, on the face of it, form part of the allegation. The Tribunal considered that as the fraudulent transactions occurred, and the Respondents were, at various times, partners whilst they occurred, the fact of occurrence was sufficient to prove, beyond reasonable doubt, that the First Respondent had allowed and permitted it.

89.11 The Tribunal further found that the First Respondent in having ceded control of the Firm to the non-admitted members of staff, had acquiesced in the Firm's involvement in the fraudulent transactions. The Second and Third Respondents, in taking their instructions from those unadmitted members had also acquiesced in the Firm's involvement in the fraudulent transactions. Accordingly, the Tribunal found, beyond reasonable doubt that all the Respondents had acquiesced in the Firm's involvement in transactions that bore the hallmarks of mortgage/identity fraud as pleaded and alleged, and as admitted by the Second Respondent.

89.12 The Tribunal determined that it was clear on the facts that the Respondents had failed to protect client money and assets as completion monies had been dispersed to unrelated third parties. In failing to protect client monies and assets, the Respondents had failed to behave in a way that maintained the trust the public placed in them and the provision of legal services. Members of the public would be extremely concerned that monies provided for the purchase of properties was misappropriated in the way that it was. Accordingly, the Tribunal found beyond reasonable doubt that all the Respondents had breached Principles 6 and 10 on the evidence and submissions. These breaches were admitted by the First and Second Respondents, and found proved against the Third Respondent.

89.13 The Tribunal determined that in acting (or failing to act) in the way that they did, each Respondent lacked integrity in breach of Principle 2. The First Respondent had recruited partners for the Firm in a highly unorthodox manner. They were not properly vetted, and were recruited, not for their skills and abilities, but simply to make up the numbers so as to allow the Firm to obtain open market insurance. She failed to properly control the unadmitted members of staff, and turned a blind eye to the obvious risks of her actions. When the fraud in relation to the Kingsdown Road transaction became known to her, she did little to ensure that future monies that might be received by the Firm were protected. She showed no true regard for her clients' monies. The Tribunal found that the First Respondent's actions were not those of a solicitor acting with integrity. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 2 as alleged and pleaded.

89.14 The Second Respondent, having, on her own admission, discovered the impersonation of the Third Respondent by Zak, had continued to take instructions from him, and had paid away completion monies to unrelated third parties. These were not the actions of a solicitor acting with integrity. Accordingly, the Tribunal found beyond reasonable doubt, that the Second Respondent had breached Principle 2 as pleaded and alleged; indeed this was admitted.

89.15 The Third Respondent had, according to him, accepted a job in a law firm, for which he would be paid in cash, that job being offered to him by a stranger who had overheard a telephone conversation he was having about a search for work. That in and of itself should have caused the Third Respondent concern. He did not ask any questions. He did not know, and did not seek to know what his remit was as an RFL. On his own account, the Third Respondent accepted that he was effectively being paid for nothing, other than the use of his name as an RFL. The Third Respondent was aware that his name was included in the application for recognition that was submitted to the SRA. He was also aware that, following his arrest, he was not to return to the office, yet he did not contact the SRA to inform them of his arrest for a fraudulent transaction occurring in the Firm or his exclusion from the office. The Tribunal determined that these were not the actions of a lawyer acting with integrity. Accordingly, the Tribunal found, beyond reasonable doubt, that the Third Respondent had breached Principle 2 as alleged and pleaded.

90. **Dishonesty in relation to allegation 1.1**

90.1 Mr Levey submitted that the actions of the Respondents were dishonest according to the combined test laid down in Twinsectra Ltd v Yardley and Others [2012] UKHL 12 (Twinsectra) which required that the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

90.2 It was submitted that in permitting the Firm to become involved in, or acquiescing in the Firm's involvement in, transactions which bore the hallmarks of mortgage fraud, the Respondents acted dishonestly by the ordinary standards of reasonable and honest people. Further, the Respondents must have been aware that it was dishonest by those standards, because their actions in becoming involved in those transactions and in failing to prevent, report, or rectify the fraudulent transfers of completion monies arose from conscious decisions to act or to cede control of the power to act which could not have been made innocently.

90.3 In relation to the First Respondent, Mr Levey argued that the circumstances in which she recruited both the Second and Third Respondents were highly unusual and suspicious. It was also highly unusual that an RFL would be recruited to the practice and have his own bookkeeper (Zak) when he was not undertaking any work. The First Respondent was aware that Zak was not his real name, as he later provided a passport in the name of AH. The First Respondent did not pay the Second and Third Respondents, nor did she pay Zak or Sam. At the time of the recruitment of the Second and Third Respondents, the Firm was in significant debt, had rent arrears, was not profitable and the First Respondent was unable to obtain open market competitive insurance. The First Respondent was aware that she would not simply be able to sell the Firm to the Second and Third Respondents as they would not be acceptable to the SRA due to their limited experience – neither of them were suitably qualified to supervise the practice. The First Respondent, it was submitted, passed the practice to Sam, Zac and SC, (all unadmitted) and recruited the Second and Third Respondents as a 'front'. She wanted the partnership application to be expedited so that she could leave once it was approved. To that end, the First Respondent resigned from the partnership six days after it was granted authorisation.

90.4 Mr Wilcox submitted that the First Respondent had given honest and consistent evidence, and that whilst her actions may have been naïve and "perhaps stupid", she had not acted dishonestly. At the time that the other Respondents and the unadmitted staff joined the Firm, the First Respondent was at a vulnerable period in her life; there was a degree of financial vulnerability, and a great deal of vulnerability in her personal life, with the loss of her mother and a trusted and relied upon member of staff. The First Respondent did not cede control of the practice, rather control of the practice was taken from her. The frauds were sophisticated and perpetrated by a group that seemed trustworthy, who surreptitiously seized control of the Firm. It had been submitted by the Applicant that the First Respondent had a powerful financial motive to hand over control of the Firm in improper circumstances. It was not disputed that the Firm had an overdraft, and was not profitable nor that run-off insurance costs in the event of closure would not have been insignificant. It was always the First Respondent's intention to hand over the Firm at some point; this was known to the Applicant. However, her personal motives were much stronger than her financial ones – she wished to be able to spend more time with her family and fulfil her family obligations. The First Respondent testified that she had £80,000 in personal savings in 2013; this was more than enough to cover any run-off insurance and consequent liabilities.

90.5 As regards the recruitment of the Second and Third Respondents they were introduced to her by people known to her; she had no reason to distrust their motives. It was not accepted that the Third Respondent was rarely in the office; he was there regularly. His restricted hours were to allow the First Respondent to properly supervise his work. Zak came with the Third Respondent. The fact that Zak was not his given name did not cause the First Respondent any concern. Most of the members of staff were known by a nickname, including the First Respondent herself. When she asked him to provide his ID he did not hesitate. The use of a nickname did not raise any suspicions in the First Respondent, nor, it was submitted, would it raise suspicions for a normal and reasonable person. It was not accepted that the Second Respondent was not an experienced conveyancer. The First Respondent explained that she had received two references from previous employers who said that she had conveyancing experience. The meeting at which the First Respondent offered the Second Respondent a position at the Firm, although taking place on a Sunday, was a lengthy meeting, at which the Second Respondent elaborated on her conveyancing experience. The First Respondent trusted her, and thought she would make a good addition to the Firm. Further, it was made clear to the Second Respondent at that meeting that she would be a partner and the COLP and COFA in a new partnership.

90.6 Mr Wilcox submitted that the allegation of dishonesty in relation to allegation 1.1 was "general in the extreme". The type of inference that the Tribunal was being asked to draw was on the basis that as the events occurred and therefore the First Respondent was dishonest. Mr Wilcox referred the Tribunal to Fish v GMC [2012] EWHC 1269 (Admin) which stated:

> "…an allegation of dishonesty should not be found to be established against anyone, particularly someone who had not been shown to have acted dishonestly previously, except on solid grounds.… it is an allegation that.. should be clearly particularised so that the person against whom it is made knows how the allegation is put …….no-one should be found to have been

dishonest on a side wind or by some kind of default setting in the mechanism of the inquiry. It is an allegation that must be articulated, addressed and adjudged head-on."

90.7 There was an attempt in the Rule 5 Statement to particularise the dishonesty allegation using the framework of Twinsectra, but even that was not real particularisation, and it was only during the hearing that the Applicant had sought to particularise the steps and incidents in which it was said that dishonesty was grounded. Mr Wilcox submitted that in considering the allegation of dishonesty attaching to allegation 1.1 the Tribunal ought to restrict the factual matrix to those paragraphs expressly relied upon in the Rule 5 statement.

90.8 Mr Levey submitted that the time for taking issue with the particularisation of any allegation was not during the closing of the Respondent's case; those points should have been taken earlier.

90.9 The Tribunal determined that the allegation of dishonesty was sufficiently particularised in the Rule 5 Statement. The First Respondent had provided a response and two witness statements in which the allegation was denied. There was no suggestion at that stage that she did not understand the case that she had to meet, or the facts upon which the allegation was based. Further, the First Respondent had been extensively cross-examined by Mr Levey; at no point during her responses to his questions did she indicate that she did not understand the case against her. In the circumstances, the Tribunal rejected Mr Wilcox's submissions in relation to lack of particularisation. The suspicious circumstances that were outlined by Mr Levey in his opening and cross-examination of the First Respondent were clearly outlined in the Rule 5 statement, and although they were not specifically referred to by paragraph number, their significance in relation to the allegation of dishonesty was clear. In the circumstances, the Tribunal did not find it appropriate to restrict itself to the paragraph numbers specifically referred to in the Rule 5 Statement in relation to the allegation of dishonesty.

90.10 The Tribunal did not find that reasonable and honest people operating ordinary standards would find the First Respondent's actions dishonest. Wanting to have new partners so as to reduce insurance costs was not inherently dishonest, nor was wanting new partners so as to provide an exit strategy that would not involve the purchase of run-off insurance. When the fraud in the Kingsdown Road transaction was discovered, the Tribunal found that it was not clear to the First Respondent who was involved, however it was clear that she did not suspect the Third Respondent, or any other members of staff (admitted or otherwise) as being involved in the fraud at that time. The fraud was reported to the Applicant by the First Respondent (albeit belatedly and in minimal terms). When she was aware that the Third Respondent was to be arrested and questioned, she believed that this was to eliminate him from criminal responsibility; he was the best person to be questioned as he was the one that had met the client. The actions she took thereafter fell woefully short of what she ought to have done. However, whilst the First Respondent may have been careless, the Tribunal was not satisfied beyond reasonable doubt, that the ordinary honest member of the public would find her to have acted dishonestly. Given the Tribunal's finding of a lack of objective dishonesty, it did not consider whether the First

Respondent had been subjectively dishonest. Accordingly, the Tribunal did not find that the First Respondent had acted dishonestly, and that allegation was dismissed.

90.11 In relation to the Second Respondent it was submitted that she was aware of the impersonation of the Third Respondent by Zak at an early stage. She was to be paid a salary of £24,000 a year for working part-time, with very little conveyancing experience in a Firm that conducted mainly conveyancing work. Her remuneration did not come from the First Respondent, but instead came from Zak and/or Sam and/or SC; members of her family also received gifts. Further, she continued to receive money from SC post the intervention into the Firm. Even if, which was not accepted, the Second Respondent only discovered on or about 17 July that Zac had impersonated the Third Respondent, the Second Respondent was under a duty to report that. In the knowledge that Zak was impersonating the Third Respondent, and that two fraudulent transactions had taken place, the Second Respondent continued to take instructions from him regarding the payment out of completion monies.

90.12 The Second Respondent, in her first statement dated 31 August 2015, accepted that she had acted in a naïve and gullible manner, but 'vehemently' denied that she had ever acted dishonestly as alleged.

90.13 The Tribunal noted that in the Second Respondent's Third Affidavit dated 19 August 2013, she stated that she discovered the impersonation of the Third Respondent by Zak "some time in June I think it was". It was, according to that Affidavit after that discovery that she was informed by the First Respondent that she (the First Respondent) intended to go to Jamaica. The Second Respondent then "realised how important it was that I obtained the waiver, and made an application accordingly, entering into lengthy correspondence with the SRA about the issue." In her interview with the SRA, the Second Respondent explained that it was in fact after the SRA visits to the office in July that she became aware that Zak had impersonated the Third Respondent. The Tribunal did not find, beyond reasonable doubt that the Second Respondent was aware of the impersonation prior to the SRA visit. The Tribunal were satisfied, beyond reasonable doubt, that the Second Respondent was aware of the impersonation by Zak of the Third Respondent by no later than 18 July 2013. The Tribunal were also satisfied that following that discovery, the Second Respondent failed to report the impersonation to the SRA, and further, continued to take instructions from Zak in relation to the payment out of completion monies when she was already aware of two previous fraudulent transactions.

90.14 The Tribunal found that reasonable and honest people, operating ordinary standards, would find that a solicitor who paid away monies on the instructions of someone who she knew to be dishonest, had acted, dishonestly, and thus the objective limb of Twinsectra was satisfied. The Second Respondent knew that her actions in this regard were dishonest. She had tried to distance herself as much as possible from the allegations, and had given varying accounts as to when she knew of the impersonation. Having discovered the impersonation, she informed Mr Pooles QC at interview that she had told Zak that she "should tell someone about that because it's dishonest", however she failed to do so. The Tribunal found that the subjective limb of the Twinsectra test was also satisfied, and accordingly found, beyond reasonable doubt, that the Second Respondent had acted dishonestly as pleaded and alleged.

90.15 In relation to the Third Respondent it was submitted that in certifying the copy identification of FH as a true copy without having either met FH, or having seen the original identification, the Third Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

90.16 Not only was his conduct, in wrongly certifying the copy identification as true when he had no grounds for believing that it was so, dishonest by the ordinary standards of reasonable and honest people, but, it was submitted, he must also have been aware that it was dishonest by those standards because the certification stamp, which was signed by the Third Respondent, used the wording "CERTIFY TO BE A TRUE COPY OF THE ORIGINAL". The Third Respondent admitted that he had never seen the original driving licence of FH and therefore it followed that he could not have signed that declaration honestly.

90.17 The Tribunal had no hesitation in finding that the Third Respondent had acted dishonestly in this regard. The certification of documents by lawyers was a safeguard for all types of transactions. Certified documents gave confidence to those who had received them that the original documentation had been seen and checked. To certify a document when the original had not been seen was a huge departure from the standards to be expected of any lawyer. Reasonable and honest people operating ordinary standards would find this behaviour to be dishonest. In his interview with Mr Pooles QC the Third Respondent explained that he knew he had not seen FH, and knew that he should not sign the document. The Tribunal considered that it was clear that the Third Respondent knew that his actions would be regarded as dishonest by the ordinary standards of reasonable and honest people, and that by those standards he had acted dishonestly. Accordingly, the Tribunal found beyond reasonable doubt that the Third Respondent had been dishonest.

91. **Allegation 1.2 – During the period that each was a principal or partner at the Firm they failed to carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principles 2, 3, 6, 8 and 10 of the Principles, and in particular**

1.2.1 they failed to exercise appropriate supervision over the practice and/or over Zak (also known as AH), AR (also known as "Sam"), and SC (also known as SA), unadmitted members of staff employed by and/or working with the Firm in breach of Principles 2, 3, 6, 8, and 10 of the Principles; and

1.2.2 they permitted or acquiesced in or failed to prevent improper withdrawals from client account, in breach of Rules 6 and 20(1) of the SAR and Principles 2, 3, 6, 8, and 10 of the Principles.

<u>First Respondent</u>

91.1 In her interview with the SRA on 3 September 2013, the First Respondent explained the supervision arrangements in place until her resignation on 2 July 2013. It was submitted that she clearly failed to exercise adequate supervision over the members of staff, (including in particular Zak, Sam, and SC), in their work which resulted in the

Firm's involvement in various transactions involving mortgage fraud. The First Respondent explained in interview that the Second and Third Respondents, Zak, and Sam often spoke to each other, and also to some of the clients in Urdu, which she did not understand.

91.2 The Applicant argued that the First Respondent continued to allow Zak access to the office and to client files, even after she became aware, as was admitted in her interview on 3 September 2013, that Zak was not his real name and that his identification was actually in a different name.

91.3 The First Respondent resigned from the Firm on 2 July 2013, at which time there was no one else authorised as COLP or COFA and no one at the Firm qualified to supervise. The Firm's application for recognition had been delayed, that delay having been partly caused by the proposal that the Second Respondent be COLP/COFA, with the result that the First Respondent submitted further documents on 21 June 2013 proposing to take on those roles herself. This showed, it was submitted, that the First Respondent was aware that it might prove difficult to obtain approval for the Second Respondent as COLP/COFA, and the Third Respondent was still not attending the offices. There was no evidence that an appropriate locum was appointed to supervise. Although the First Respondent attended the offices of the Firm after this date, this appeared to have been only for the purposes of handing over the practice, and she did not appear to have carried out any supervision after this time; control of the practice appeared to have been completely ceded.

91.4 The First Respondent, in her response of 6 June 2015, denied acting without integrity in breach of Principle 2, or allowing her independence to be compromised in breach of Principle 3. In all other regards, Allegation 1.2 was admitted by the First Respondent.

Second Respondent

91.5 The Second Respondent was a partner in the Firm from June 2013. She admitted in her interview on 3 September 2013 that she was not familiar with the SRA Handbook and did not understand her responsibilities as a partner, stating that "I didn't have any authority to do anything really." This, the Applicant submitted, showed that she was therefore not in a position to carry out her role in the business effectively in accordance with Principle 8, or to exercise adequate supervision over the unadmitted members of staff at the Firm.

91.6 The Second Respondent confirmed in interview that she signed the application forms for submission to the SRA for authorisation to be COLP and COFA for the Firm, but stated that she had not filled in the forms herself and did not understand what the roles entailed. The completion of the forms had occurred before the Second Respondent had even commenced working at the Firm. The Second Respondent further stated that she allowed the First and Third Respondents to complete an application in her name so that she could apply to the Law Society for a waiver allowing her to supervise the Third Respondent.

91.7 The Second Respondent confirmed in her interview with the SRA on 3 September 2013 that she had accepted she had sole responsibility for the Firm from 17 July 2013. She admitted to the SRA that she was aware that Zak had acquired keys to the premises on or around 19 July 2013. She was also aware that Zak had been impersonating the Third Respondent and that the SRA were investigating matters at the Firm. Notwithstanding that knowledge, it was submitted, she took no steps to ensure the security of the premises nor the client files contained therein, and when she attended the office on 25 July 2013 she discovered that all client files and computers had been removed.

91.8 The Second Respondent in her statement of 31 August 2015 admitted the allegation in full, including all Principle and Rule breaches.

Third Respondent

91.9 The Third Respondent was also a partner in the Firm from 26 June 2013. However, he stated, in his letter to the SRA of 18 February 2014, that he did not attend the Firm's offices after his arrest on 31 May 2013. In his interview with Mr Pooles QC on 5 September 2013, the Third Respondent stated that prior to his arrest he attended the Firm's offices only around twice a week for approximately 4-5 hours on each occasion and that he had no knowledge of the type of work carried out by the Firm, attending only to read through old files. Therefore, it was submitted, he was not in a position to carry out his role in the practice effectively or at all pursuant to Principle 8, nor to exercise any supervision over the unadmitted members of staff, nor even to be aware of the activities they were carrying out in the name of the Firm.

91.10 In his interview with Mr Pooles QC on 5 September 2013, the Third Respondent also admitted that in June 2013 he ceded control of the bank accounts to Zak, Sam and SC.

91.11 The Third Respondent made no admissions in relation to allegation 1.2.

91.12 The Tribunal determined that it was clear that the Respondents had failed to exercise appropriate supervision over the practice. In the case of the Third Respondent, he rarely attended the practice, and even when he did so, he remained in a room reading through old files. The ability of the unadmitted staff to perpetrate a number of fraudulent transactions was clear evidence of the Respondents' ineffective management of the Firm, in breach of Principle 8. For the same reasons detailed above in relation to allegation 1.1 (see paragraph 89.12), the Tribunal found that the Respondents also breached Principles 6 and 10. Accordingly, the Tribunal found beyond reasonable doubt that the Respondents had all breached Principles 6, 8 and 10 as pleaded and alleged. Indeed the breaches of those Principles were admitted by the First and Second Respondents.

91.13 As regards Principles 2 and 3, expressly denied by the First Respondent, and impliedly denied by the Third Respondent, the Tribunal found that the First Respondent's explanations in this regard were not credible. The Tribunal determined that the First Respondent had ceded control of the practice to the unadmitted staff, and whilst this had not been done dishonestly, the First Respondent had acted without integrity in doing so. The First Respondent's answers lacked credibility and were, the Tribunal found, self-serving. She acted in complete disregard of her duty to her

clients, and the sacrosanct nature of holding client money. In ceding control of the practice, the Tribunal found that not only had the First Respondent acted without integrity, she had also compromised her independence; she could not be independent when she no longer had control of the practice and proper oversight of the transactions. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had acted without integrity and compromised her independence as pleaded and alleged.

91.14 Similarly, the Third Respondent had shown no interest at all in the Firm, its clients and the management of the practice. He was content to receive payment for lending his name to the Firm, and had accepted in his interview with Mr Pooles QC that he was effectively being paid for nothing. The Tribunal had no hesitation in finding that the Third Respondent had acted without integrity and had compromised his independence. Accordingly, the Tribunal found beyond reasonable doubt that the Third Respondent had breached Principles 2 and 3 as pleaded and alleged.

91.15 The Tribunal found, beyond reasonable doubt that the Second Respondent had breached Principles 2 and 3 as pleaded and alleged on the facts, evidence and admission of the Second Respondent.

92. **Allegation 2.1 - The First Respondent failed to comply with undertakings to redeem mortgages, in breach of Principles 4, 6, and 10 of the Principles.**

Allegation 2.2 - The First Respondent misled the SRA by failing to provide it with accurate information to enable it to make a decision on her application to obtain authorisation for the partnership, in breach of Principle 7 of the Principles, and in so doing she failed to achieve mandatory Outcomes 10.2 and 10.4 of the Code.

19 Thurlestone Avenue

92.1 On 29 April 2013, in the Replies to the Requisitions on Title, the Second Respondent, on behalf the Firm, gave an undertaking to redeem and discharge the six registered mortgages and charges and to forward to Marcus Baum Solicitors the confirmation of electronic discharge and all UN2s upon receipt.

92.2 On 25 June 2013 the Second Respondent sent an email to Gill Neil of Marcus Baum Solicitors confirming the undertaking to "discharge the charges upon successful completion". The transaction completed on 24 June 2013 but none of the six charges were redeemed on completion, or at all, by the Firm.

92.3 The First Respondent, as principal in the Firm on 29 April 2013 and 25 June 2013, it was submitted, was also responsible for the undertakings given by, or on behalf of her or her Firm, including the undertakings given on behalf of the Firm by the Second Respondent.

Cowley Road

92.4 On 1 July 2013, the Second Respondent provided various undertakings in a letter to KSL, including:

- That if the transaction did not complete within three working days of KSL sending the mortgage advance monies to the Firm, the Firm would obtain further instructions, which would normally be that the monies be returned to KSL via telegraphic transfer;

- That the Firm would take such steps as were necessary to perfect title;

- That the Firm would procure the discharge of the three charges in favour of Clydesdale registered against each of the properties, and forward to KSL within three working days of completion, duly executed forms DS1 or other appropriate form of discharge.

92.5 The transaction completed on 15 July 2013 but none of the three charges were redeemed on completion, or at all, by the Firm.

92.6 The Applicant submitted that the First Respondent, as a partner in the Firm on 1 July 2013, was responsible for honouring the undertakings given by or on behalf of her or her Firm, including the undertakings given by her then partner, the Second Respondent. Notably, it was argued, this was confirmed in the judgment dated 6 June 2014 in the case of Aldermore Bank & Another v Austin Law & Others (2014). It was further submitted that this judgment also confirmed that the First Respondent's purported resignation of 2 July 2013 did not absolve her from her liabilities in respect of those undertakings.

Cherrywood Lodge

92.7 On 28 June 2013, in its replies to the Completion Information and Undertakings Form, the Firm gave an undertaking to redeem or discharge the Mortgage Express charge upon completion and to send to the Reece-Jones Partnership the DS1/DS3/receipted charge or confirmation that notice of discharge had been given to the Land Registry as soon as received.

92.8 The transaction completed on 11 July 2013 but the Mortgage Express charge was not redeemed on completion, or at all, by the Firm.

92.9 The Applicant submitted that the First Respondent, as a partner in the Firm on 28 June 2013, was responsible for honouring the undertakings given by or on behalf of her or her firm. Again, the principle of individual partners being liable upon undertakings given in the name of a firm as set out in the judgment dated 6 June 2014 in the case of Aldermore Bank & Another v Austin Law & Others (2014) was relied upon by the Applicant.

92.10 Despite the RB1 application form specifically requiring that the SRA be notified of any changes to material information, and despite correspondence from the First Respondent on 7 June 2013 setting out inter alia proposals for the Third Respondent's role in the partnership, the First Respondent, it was submitted, failed to inform the SRA that: (a) one of the proposed partners, the Third Respondent, had been arrested on 31 May 2013 in connection with an apparently fraudulent transaction he had conducted whilst at Firm; and (b) he had not returned to the Firm's premises from that time onwards. In so doing, it was submitted that the First

Respondent again failed to provide accurate information to allow the SRA to make an informed decision regarding the authorisation of Austin Law as a partnership including the participation of the Third Respondent, and in doing so she misled the SRA.

92.11 The First Respondent, in her Response dated 6 June 2015, admitted allegations 2.1 and 2.2.

92.12 Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had breached the Principles and Outcomes as pleaded and alleged based on the facts, evidence and admissions of the First Respondent.

93. **Dishonesty in respect of allegation 2.2**

93.1 The Applicant submitted that in misleading the SRA in her application for authorisation of the Austin Law Partnership (failing to disclose the arrest of the Third Respondent and his non-attendance at the office), the First Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

93.2 Further, not only was her conduct in misleading the SRA dishonest by the ordinary standards of reasonable and honest people, but she must also have been aware that it was dishonest by those standards for the following reasons:

- Section 12 of the RB1 application form (submitted on 8 April 2013) required the completion of the suitability test in respect of all RFLs who were proposed as partners, which was completed (albeit that it was not signed and the Third Respondent's details were submitted –wrongly - as a solicitor partner). The suitability test for RFLs specifically asked about criminal charges and included a declaration that the SRA would be informed immediately if there were any changes to the material information included on the form. The First Respondent, it was submitted, must have read this as she filled in the suitability test in Section 12 and yet failed subsequently to inform the SRA of the circumstances of the Third Respondent's arrest on 31 May 2013.

- The First Respondent sent an email to the SRA on 4 June 2013 (albeit not to the person dealing with the partnership application) stating that the Firm had been involved in a fraudulent transaction. It was submitted therefore, that she clearly knew that this was relevant information to the SRA; despite her knowledge, she failed to provide details or explain that the Third Respondent had been arrested for his involvement in the transaction.

- The First Respondent wrote to the SRA on 7 June 2013 in connection with her application setting out inter alia the proposals for how the partnership would operate, including specifically the Third Respondent's role; however she failed to mention that he was no longer attending the office.

93.3 The First Respondent denied that she had acted dishonestly. She had completed the form fully, and when the fraud and the Third Respondent's arrest were known to her, she had informed the correct department. She had not considered that his arrest was anything more than "an abundance of caution" by the police and she had not

suspected him of any wrongdoing. She had not considered the application for partnership at the time of making the report, and did not consider that this was something that could affect that application.

93.4 Mr Wilcox submitted that for dishonesty to be proved, there would need to be a breach of a clear rule, and there was not clear responsibility for the First Respondent to report the arrest and release of the Third Respondent to the SRA, or the fact that he had been asked not to attend the office. It was perfectly reasonable for the First Respondent to believe that as the form did not require the reporting of an arrest, that the fact of his arrest did not fall into the scope of matters that should be reported to the SRA – she could reasonably assume that all of the matters that the Applicant needed to be informed of were contained in the form.

93.5 Mr Wilcox submitted that in the circumstances, any honest and reasonable person operating ordinary standards would not have thought that she was under a duty to report the arrest and exclusion of the Third Respondent, particularly when the fraud itself (irrespective of the lack of detail) had been reported.

93.6 The Tribunal determined that reasonable and honest people operating ordinary standards would find the First Respondent's conduct dishonest. She deliberately and consciously misled the Applicant. Whilst there was no duty to report the Third Respondent's arrest, her email to the SRA of 7 June 2013, in which she asserted that the Third Respondent was "being given minimal responsibility at present" due to his lack of "any management experience", was consciously deceitful; particularly as she had excluded him from the office due to the police investigation. The Tribunal found that the First Respondent deliberately failed to inform the authorisation department of the Third Respondent's arrest and exclusion from the office as she was aware that this may have a detrimental effect on the application for authorisation; it was clear that, for a variety of reasons, the First Respondent was anxious for the partnership to be authorised. Thus, both limbs of the Twinsectra test were satisfied. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had acted dishonestly, as alleged, pleaded and submitted.

94. **Allegation 3.1 - The Second Respondent misled the SRA and/or failed to inform the SRA of relevant facts necessary to enable the SRA to carry out its regulatory function by failing to disclose to it that Zak, an unadmitted member of staff, had impersonated the Third Respondent, a solicitor and partner in the Firm, during an SRA inspection visit on 15 and/or 17 July 2013, in breach of Principles 2, 6, and 7 of the Principles.**

94.1 The Second Respondent participated in an interview with the SRA on 17 July 2013 at which a male person was present who introduced himself to the Investigation Officer as the Third Respondent, but who was in fact Zak.

94.2 The Second Respondent was aware that this person was actually Zak, either actually at the time of the interview on 17 July 2013 (according to her Affidavit of 19 August 2013 which stated that she had realised that Zak was impersonating the Third Respondent "at some time in June") or at the very latest by the next day 18 July 2013, when by her own admission with the SRA in interview he confirmed to her that he was really Zak. In an interview with Mr Pooles QC on 3 September 2013,

the Second Respondent recalled Sam telling her on or around 17 July 2013 that Zak was "doing the work as Rashad". The Second Respondent later confirmed in this interview that she knew that the SRA were being misled.

94.3 It was submitted that the Second Respondent failed to make the SRA aware of the deception carried out by Zak until a further interview with the SRA on 3 September 2013, after the SRA had already been told by the First Respondent.

94.4 In her statement of 31 August 2013, the Second Respondent admitted that she misled and/or failed to inform the SRA of the relevant facts necessary to enable the SRA to carry out its regulatory function by failing to disclose to it that Zak had impersonated the Third Respondent during the SRA inspection on 15 and/or 17 July 2013 and thereby had breached Principles 2, 6 and 7.

94.5 Accordingly, the Tribunal found, beyond reasonable doubt, that the Second Respondent breached the Principles as alleged and pleaded, based on the facts, evidence and admission of the Second Respondent.

95. **Dishonesty**

95.1 The SRA submitted that the Second Respondent's actions by misleading the SRA, and/or failing to inform it of the relevant facts, were dishonest. In knowing (at the time or, at the very latest, by the following day) that Zak had impersonated the Third Respondent in an interview with the SRA on 17 July 2013, and in failing to inform the SRA of this deception until after they had been told by the First Respondent on 3 September 2013, the Second Respondent, it was submitted, acted dishonestly by the ordinary standards of reasonable and honest people.

95.2 Further, not only was her conduct in failing to inform the SRA that Zak had impersonated the Third Respondent in interview dishonest by the ordinary standards of reasonable and honest people, but she must also have been aware that it was dishonest by those standards for the following reasons:

- During her interview with the SRA on 3 September 2013, the Second Respondent stated that, having discovered the deception, she told Zak: "I should tell someone about this because it's dishonest".

- Later on in the interview, the Second Respondent confirmed that she did not take any action after discovering that Zak was impersonating the Third Respondent. When asked "would you consider that that was the action of an honest and reasonable solicitor?" the Second Respondent answered: "No, it's not".

95.3 This, it was submitted, was clear evidence that the Second Respondent knew that her actions were dishonest.

95.4 The Second Respondent vehemently denied that she had acted dishonestly as alleged or at all.

95.5 The Tribunal noted that in her interview with Mr Pooles QC, the Second Respondent explained that the reason she did not inform the SRA sooner of Zak's impersonation

of the Third Respondent was because she was told not to do so by Zak and Sam, who were "like my bosses, because they pay me the money (sic)". She accepted that she ought to have told the SRA of the impersonation, and that being told not to tell the SRA was no justification for not doing so. The Second Respondent explained in that interview that she was more concerned about her personal situation than that of the Firm. Further, the Tribunal noted that in her interview with the Applicant, the Second Respondent accepted that her actions were not those of an honest and reasonable solicitor. The Tribunal found, that on the Second Respondent's own evidence, she knew that her actions were dishonest, and thus found that her actions satisfied the subjective limb of Twinsectra. Accordingly the Tribunal found, beyond reasonable doubt that the Second Respondent was dishonest as pleaded and alleged.

96. **Allegation 3.2 - The Second Respondent compromised her independence by allowing unqualified members of staff to direct her actions, in breach of Principle 3 of the Principles.**

96.1 In her interview with the SRA on 3 September 2013, the Second Respondent stated that she "didn't have any authority to do anything really" and that it was as if the bosses were the First Respondent and Zak. Even after becoming aware that Zak was impersonating the Third Respondent, it was submitted, the Second Respondent continued to allow him to conduct sale transactions and direct her in, for example, making various improper transfers from the completion monies relating to the Cowley Road properties.

96.2 The Second Respondent also stated that she had received a text message on 22 July 2013, apparently from "Rashad" (i.e. the Third Respondent) telling her not to come in to the office for a week. It was argued that notwithstanding that she was by then aware that Zak had been impersonating the Third Respondent on a regular basis, and further notwithstanding that the Third Respondent had had no involvement with the Firm since his arrest on 31 May 2013, the Second Respondent made no attempt to contact the Third Respondent to check the veracity of the text but instead accepted the instruction after checking only with Sam, another unadmitted employee.

96.3 The Second Respondent in her statement of 31 August 2015 admitted that she compromised her independence by allowing unqualified members of staff to direct her actions in breach of Principle 3.

96.4 The Tribunal found, beyond reasonable doubt, that the Second Respondent breached Principle 3 as alleged and pleaded, based on the facts, evidence and admission.

97. **Allegation 3.3 - The Second Respondent failed to comply with undertakings to redeem mortgages, in breach of Principles 4, 6 and 10 of the SRA Principles 2011.**

<u>Thurlestone Avenue</u>

97.1 On 29 April 2013, in the Replies to the Requisitions on Title, the Second Respondent, on behalf the Firm, gave an undertaking to redeem and discharge the six registered mortgages and charges and to forward to MB Solicitors the confirmation of electronic discharge and all UN2s upon receipt.

97.2 On 25 June 2013 the Second Respondent sent an email to MB Solicitors confirming the undertaking to "discharge the charges upon successful completion". The transaction completed on 24 June 2013 but none of the six charges were redeemed on completion, or at all, by the Firm.

Cowley Road

97.3. On 1 July 2013, the Second Respondent provided various undertakings in a letter to KSL, including:

- That if the transaction did not complete within three working days of KSL sending the mortgage advance monies to the Firm, the Firm would obtain further instructions, which would normally be that the monies be returned to KSL via telegraphic transfer;

- That the Firm would take such steps as are necessary to perfect title;

- That the Firm would procure the discharge of the three charges in favour of Clydesdale registered against each of the properties, and forward to KSL within three working days of completion, duly executed forms DS1 or other appropriate form of discharge.

97.4 The transaction completed on 15 July 2013 but none of the three charges were redeemed on completion, or at all, by the Firm.

97.5 Although the Second Respondent had denied giving this undertaking (for example during the interview with the SRA on 3 September 2013) her liability, as either the giver of the undertaking or as a partner in the Firm at the relevant time, was confirmed in the judgment dated 6 June 2014 in the case of Aldermore Bank & Another v Austin Law & Others (2014), upon which the Applicant sought to rely.

Cherrywood Lodge

97.6 On 28 June 2013, in its replies to the Completion Information and Undertakings Form, the Firm gave an undertaking to redeem or discharge the Mortgage Express charge upon completion and to send to the Reece-Jones Partnership the DS1/DS3/receipted charge or confirmation that notice of discharge had been given to the Land Registry as soon as received.

97.7 The transaction completed on 11 July 2013 but the Mortgage Express charge was not redeemed on completion, or at all, by the Firm.

97.8 The Second Respondent, it was submitted, as a partner in the Firm on 28 June 2013, was responsible for honouring the undertakings given by or on behalf of her or her Firm. Again the judgment dated 6 June 2014 in the case of Aldermore Bank & another v Austin Law & others (2014) was relied upon by the Applicant.

97.9 The Second Respondent in her statement of 31 August 2015 admitted that she failed to comply with undertakings to redeem mortgages in breach of Principles 4, 6 and 10.

97.10 Accordingly, the Tribunal found, beyond reasonable doubt that the Second Respondent had breached the Principles as pleaded and alleged based on the facts, evidence and admission of the Second Respondent.

98. **Allegation 4 - The Third Respondent compromised his independence by allowing unadmitted employees of the Firm to control it and to have access to client funds, in breach of principles 2, 3, 6 and 8 of the SRA Principles 2011.**

98.1 The Third Respondent in his letter to the SRA of 18 February 2014 stated that "I was not the owner or supervisor of the firm, then how it is possible that I allowed non-admitted individuals to control the firm, in fact I was employed by these people in the firm… I have no idea or knowledge who and how they are working".

98.2 He further accepted opening bank accounts in the name of the Firm at Santander and Barclays at the instigation of, and accompanied by, the unadmitted employees. In his interview with Mr Pooles QC on 5 September 2013 the Third Respondent admitted that in June 2013 he ceded control of those bank accounts to Zak, Sam, and SC.

98.3 The Third Respondent also stated that he "did not carry out any kind of work at Austin Law" and maintained that he did not attend the office after his arrest of 31 May 2013.

98.4 The Tribunal determined that the Respondent was an owner of the Firm, the Partnership being authorised on 26 June 2013, and he being one of the named partners. In those circumstances, he was under a duty not to allow the unadmitted individuals to control the Firm. By his own admissions, he saw the unadmitted individuals as his bosses, such that when asked to hand over control of the accounts he did so. At no point did the Third Respondent contact the SRA, nor did he contact the Firm and resign from his position. He accepted in his interview with Mr Pooles QC that he was effectively being paid for nothing. He had not attended the office since 31 May 2013. The Tribunal found that the Third Respondent in conducting himself in the way that he did had breached the Principles as pleaded and alleged. In particular, no lawyer acting with integrity, having himself been arrested for a fraudulent transaction that he maintained he was not a party to, would then hand over control of client accounts to unadmitted individuals. In so doing the Third Respondent had failed to act independently and behave in a way that maintained the trust the public placed in him and the provision of legal services. In absenting himself from the office he had failed to carry out his role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles; the Third Respondent had not carried out any role at all within the Firm, save to lend his name to the partnership.

98.5 Accordingly, the Tribunal found beyond reasonable doubt that the Third Respondent had breached the Principles as pleaded and alleged.

Previous Disciplinary Matters

99. The First Respondent had one previous matter before the Tribunal on 12 November 2009 (Case No. 10133-2008). On that occasion the First Respondent was ordered to pay a fine in the sum of £7,500.00 and costs in the sum of £10,000.00 jointly and severally.

100. The Second and Third Respondents had no previous matters before the Tribunal.

Mitigation

101. Mr Wilcox submitted that as an allegation of dishonesty had been found proved, the authorities suggested that the sanction of strike off would usually follow; however, consideration should be given as to whether the First Respondent fell into the small category of cases where it was not appropriate to strike her from the Roll; there were exceptional circumstances which surrounded the course of action she took. It was clear that her Firm was subject to an extraordinary set of circumstances, having been taken over by a gang of fraudsters, who, it was suggested, had taken over other firms in a similar way.

102. It was submitted that the First Respondent was naïve in allowing those fraudulent individuals to infiltrate her Firm. She was under tremendous personal and financial stress at the time, although this did not excuse the finding that she materially misled the Applicant, but her proven dishonesty occurred whilst she was in a desperate situation. It was accepted, as found proved, that the First Respondent should have told the Applicant about the arrest, interview and exclusion of the Third Respondent. She had made some attempt to alert the Applicant to the fraud in the report she submitted. Mr Wilcox submitted that this was an isolated incident; her ordinary honesty and integrity was evidenced by Mr Bogle, who attended to give character evidence on her behalf, and the numerous testimonials provided to the Tribunal which attested to her honesty. Although there had been a finding of dishonesty, the circumstances were entirely unprecedented and would not be repeated. Whilst the protection of the public and the need for solicitors to be punctiliously honest was of paramount importance, the imposition of an indefinite suspension together with a restriction order preventing the First Respondent from owning or managing a Firm, or undertaking any supervisory role within a firm, should be sufficient to allay any fears that the First Respondent would present a risk to the public or the reputation of the profession. Her dishonesty had occurred during wholly exceptional, unprecedented and extraordinary circumstances. For those reasons she fell within the exceptional circumstances category such that the Tribunal could consider a sanction other than removing the First Respondent from the Roll.

103. The Tribunal had regard to the statements and exhibits submitted by the Second Respondent, and the explanations provided therein.

Sanction

104. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition-December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession.

In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

105. The Tribunal firstly considered the seriousness of the Respondents admitted and/or proven conduct. The Tribunal found the Respondents to be completely culpable for their breaches; the misconduct having arisen as a direct result of their actions or inaction. The First Respondent was motivated by her desire to leave the Firm. The Second and Third Respondents were motivated by their desire to earn money. The Third Respondent was being paid for doing no real work at all. The First and Second Respondents were experienced solicitors, both of whom had paid away money on the instruction of unadmitted individuals. In particular, the Second Respondent had done so in the knowledge that Zak had impersonated the Third Respondent. Each of the Respondents had sought to deny acting dishonestly, and whilst the findings in relation to dishonesty were based on a different factual matrix for each Respondent, it was clear that each had acted dishonestly. The First Respondent had sought to deny any impropriety of character. The Tribunal found that, in acting in the way that they did, the Respondents had caused harm to the profession and the public; 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"."

106. The Respondents had caused immense harm and damage to the reputation of the profession. The cost of their actions to the Compensation Fund was, at the time of the hearing, in excess of £2 million.

107. The Tribunal found the Respondents' conduct to be aggravated by their proven dishonesty, which was deliberate and calculated, and continued over a period of time. The Tribunal determined that the Respondents knew that their conduct was in material breach of their obligation to protect the public and the reputation of the profession.

108. The Tribunal noted that the First and Second Respondents had, to varying degrees, accepted their regulatory responsibility in relation to the fraudulent activity at the Firm, and had accepted the facts of the frauds. The Second Respondent had gone further, and accepted that her conduct had lacked integrity. The Tribunal accepted that the Second and Third Respondents had previously had unblemished careers. The previous matter of the First Respondent was unrelated to the instant matters.

109. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand or restrictions. 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."

110. The Tribunal acknowledged that each of the Respondents was going through difficult personal circumstances at the time of the misconduct, however, it did not find that any of the circumstances were enough to bring it in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the First and Second Respondents off the Roll of Solicitors, and to strike the Third Respondent from the Register of Foreign Lawyers. The Tribunal further noted that even in the event that it had not found dishonesty against the Respondents, it would have imposed the same sanction on its findings of lack of integrity, such was the departure from the required standards, the harm caused to the individuals involved with the transactions and the damage caused to the reputation of the profession.

Costs

111. Mr Levey applied for costs in the amount of £96,823.15, as per the costs schedule submitted (with adjustments made for any errors). The appropriate order would be one for the costs to be paid jointly and severally by the Respondents, as none of the Respondents had caused additional costs to be incurred by the SRA. The only exception was the costs incurred as a result of the adjourned substantive hearing due to take place in January 2016, that hearing being adjourned on the application of the First Respondent alone. The Respondents, or their then representatives, were all written to on 10 November 2015 in the same terms, namely that in the event that the allegations against them were found proved or properly brought, an order for costs would be sought that they pay the costs of and incidental to the application and inquiry. Should the Respondents wish to argue that they could not pay any costs on the basis of their means, they needed to provide the Tribunal and the Applicant with a statement setting out full details of their capital, income and outgoings together with supporting documents in advance of the substantive hearing. On 16 April 2015, the Tribunal directed that the Respondents provide evidence of their means; to do so could result in the Tribunal determining costs with regard to their means. No detailed evidence of means had been placed before the Tribunal by any of the Respondents.

112. The Tribunal noted that there had been a number of fee earners within the firm of solicitors instructed by the SRA who had worked on this matter; the costs seemed to be relatively high. Mr Levey explained that there were more fee earners than was usual due to a change in staff at the firm.

113. Mr Wilcox recognised that the First Respondent had failed to comply with the direction of the Tribunal in relation to the submission of a statement of means together with supporting documentation. He submitted that the appropriate course was to sever and apportion the costs amongst the Respondents. He explained that the First Respondent retained the legal, but not beneficial interest, in the former matrimonial home, that interest being retained by her husband by way of a consent order. Further, that property was the subject of a charge (far in excess of its value) placed on the property by the Compensation Fund. The First Respondent had no income and would be making an application for state benefits.

114. The Tribunal determined that the costs were higher than was reasonable for the nature of this matter. Duplication of costs due to changing personnel in the Applicant's instructed solicitors should not be borne by the Respondents. The Rule 5 Statement, whilst comprehensive, was over-burdened with extraneous factual information, as was the attached exhibit. Accordingly the Tribunal summarily assessed the costs at £85,000.00 as being reasonably and properly incurred. The Tribunal noted that costs had been incurred by the First Respondent due to the adjournment of the initially listed substantive hearing; it was fair and proportionate that the First Respondent, being the only Respondent who applied for the adjournment, should bear the costs arising out of her application. The Tribunal did not deem it necessary for the costs to be apportioned between the Respondents. Accordingly the Tribunal Ordered that the Respondents pay costs of £75,000.00 jointly and severally, and further Ordered that the First Respondent pay costs of an additional £10,000.00 that being the summarily assessed costs of the adjournment.

Statement of Full Order

115. The Tribunal Ordered that the Respondent, DEIDRE DAIN NEWELL-AUSTIN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do jointly and severally with the Second and Third Respondents pay the costs of and incidental to this application and enquiry fixed in the sum of £75,000.00, and further that she do solely pay further costs of £10,000.00.

116. The Tribunal Ordered that the Respondent, NAJMA NAHID ASSROUNDI, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do jointly and severally with the First and Third Respondents pay the costs of and incidental to this application and enquiry fixed in the sum of £75,000.00.

117. The Tribunal Ordered that the Respondent, RASHAD AHSAN, registered foreign lawyer, be STRUCK OFF the Register of Foreign Lawyers and it further Ordered that he do jointly and severally with the First and Second Respondents pay the costs of and incidental to this application and enquiry fixed in the sum of £75,000.00.

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

I. R. Woolfe
Chairman