SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11527-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NARESH CHOPRA Respondent

Before:

Mr D. Green (in the chair)
Mr P. S. L. Housego
Mr P. Hurley

Date of Hearing: 11-12 January 2017 & 19 April 2017

Appearances

Adam Soloman, Counsel of Littleton Chambers, 3 King's Bench Walk North, London, EC4Y 7HR for the Applicant.

The Respondent appeared and on 11-12 January 2017 he was represented by Richard Nelson, solicitor of Richard Nelson LLP Solicitors, Priory Court, 1 Derby Road, Nottingham, NG9 2TA and on 19 April 2017 he was represented by Jeremy Barnett, Counsel of St Paul's Chambers, Park Row House, 19-20 Park Row, Leeds, LS1 5JF.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Contrary to Principles 2, 4 and 6 of the SRA Principles the Respondent allowed 9 conveyancing transactions to be undertaken by Lillywhite Williams LLP (Lillywhite Williams) and Nationwide Solicitors LLP (Nationwide) between 11 September 2013 and 21 January 2014 where such transactions were:

1.1.1 contrary to section 1.12 of the Council of Mortgage Lenders' Handbook in that the work of one practice was being done by employees of the other;

1.1.2 undertaken by solicitors employed by Nationwide in the name of Lillywhite Williams contrary to Rule 1 of the SRA Practice Framework Rules; and/or

1.1.3 misled lenders as to which firm undertook the transactions

It was alleged the Respondent had acted dishonestly.

1.2 Contrary to Rules 14.3 and 14.5 of the Solicitors Accounts Rules 2011 and Principle 8 of the SRA Principles 2011 in relation to diamond and fine art transactions (24 in relation to Nationwide and 21 in relation to Lillywhite Williams) the Respondent provided banking facilities through a client account and transfers or withdrawals from a client account were not in respect of instructions relating to an underlying legal transaction. It was alleged the Respondent had acted dishonestly.

1.3 Contrary to Principles 2, 4 and 6 of the SRA Principles, in the period 9 December 2013 to 17 June 2014 the Respondent participated in and lent his credibility as a solicitor to 24 dubious transactions concerning diamonds and fine art in relation to Nationwide and 21 dubious transactions in relation to Lillywhite Williams in the period 23 January 2014 to 25 April 2015 where there was no legitimate basis for his involvement as a solicitor. It was alleged the Respondent had acted dishonestly.

1.4 The Respondent acted in circumstances where there was a conflict (or a significant risk of a conflict between him and various clients) in breach of Rule 3 and Outcomes 3.6 and 3.7 of the SRA Code of Conduct in relation to various property transactions in the period November 2012 to September 2013. It was alleged the Respondent had acted dishonestly.

1.5 The Respondent failed to comply with the restrictions on transfers between clients laid down in Rule 27.2 of the Solicitors Accounts Rules 2011 in transferring £4,479.40 from one client ledger account to another client ledger account simply to close one of the client ledger accounts. It was alleged the Respondent had acted dishonestly.

1.6 The Respondent breached Rule 20.1 of the Solicitors Accounts Rules 2011 in the period July 2013 to September 2013 in withdrawing approximately £513,500 in relation to 7 transactions from a client account for a purpose other than to pay to or on

behalf of the client and/or for failing to obtain client instructions in respect of the same. It was alleged the Respondent had acted dishonestly.

2. Save for the allegations of dishonesty, the Respondent admitted allegations 1.2, 1.3, 1.4, 1.5 and 1.6.

Documents

3. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 23 June 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's bundle of Materials and Authorities
- Applicant's Opening Skeleton Argument dated 6 January 2017
- SRA's Schedules of Costs dated 23 June 2016, 4 January 2017 and 16 April 2017

Respondent:

- Closing Submissions on behalf of the Respondent dated 11 April 2017
- Bundle of Legal Authorities on behalf of the Respondent
- Further Note on Lack of Integrity dated 17 April 2017
- Bundle of Additional Legal Authorities on behalf of the Respondent
- Bundle of Character References

Preliminary Matters

4. At the beginning of the resumed hearing on 19 April 2017, the Chairman of the Tribunal drew a matter to the parties' attention. Mr Barnett, on behalf of the Respondent, had served a document called "Closing Submissions on behalf of the Respondent" dated 11 April 2017. Exhibited to that document was an article from the Law Society Gazette which concerned Mr AW, who was a partner of Lillywhite Williams LLP. The article also contained a photograph of Mr AW, and his solicitor, Mr NW.

5. The Chairman of the Tribunal informed both parties that Mr NW was one of his business partners who dealt in regulatory law. This was not an area of law the Chairman practised in. The Chairman stated that he had no knowledge of any work carried out by Mr NW for Mr AW and until the Chairman had read the Respondent's Closing Submissions document and seen the article, he had not been aware of any connection with this case. The Chairman was concerned that there could appear to be

a potential conflict as a result of his business partnership with Mr NW and invited the parties to consider whether they wished the Chairman to continue dealing with the hearing.

6. After a short adjournment, Mr Barnett advised that the Respondent would like the Chairman of the Tribunal to continue Chairing the hearing. The Respondent's view was that this issue had arisen during the course of the hearing. The Respondent believed the hearing had been fair. The Respondent was confident the Chairman's position would not affect the Chairman's decision and if necessary, was content that a Chinese wall could be put in place.

7. Mr Solomon, on behalf of the Applicant, submitted there was no real bias simply due to the fact that the Chairman and Mr NW were work colleagues in the same firm. This was an issue that had arisen part way through the hearing and in any event, neither the Chairman nor Mr NW had any contact or knowledge of this particular case. Mr Solomon confirmed the Applicant wished the Chairman to continue dealing with the matter.

8. The Tribunal carefully considered the test set out in the case of Porter v Magill [2001] UKHL 67 namely

> "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased".

9. Both parties had stated that they wished the Chairman to continue dealing with the case. The Chairman had stated he had no knowledge of Mr AW or of Mr NW's dealings with Mr AW. The Chairman was acting independently from his firm and did not feel compromised in this case.

10. The Tribunal was satisfied that a fair-minded and informed observer, having considered the facts, would not conclude there was a real possibility of bias if the Chairman was to continue dealing with the hearing. Accordingly, the Tribunal concluded it was not necessary for the Chairman to recuse himself midway through the hearing.

Factual Background

11. The Respondent, born in 1959, was admitted to the Roll of Solicitors on 1 October 1984.

12. The Respondent was at all material times a manager and the Compliance Officer for Finance and Administration (COFA) of Nationwide Solicitors LLP of 523-525 Green Lane, Ilford, IG3 9RH ("Nationwide"). The Respondent held a Practising Certificate subject to a number of conditions.

13. These proceedings related to the Respondent's activities in relation to two law firms, Nationwide Solicitors LLP (trading as "Daybells Solicitors") and Lillywhite Williams LLP (previously Lillywhite Williams & Co) of Elliot House, 1 Cinema Parade, Green Lane, Dagenham, Essex, RM8 1AA ("Lillywhite Williams"). Following an

investigation into the firms by the Solicitors Regulation Authority ("SRA"), the Forensic Investigation Officers produced three Forensic Investigation Reports dated 10 July 2014 and 15 October 2014 both of which related to Nationwide, and a report dated 14 October 2014 which related to Lillywhite Williams.

Nationwide Solicitors LLP (Nationwide)

14. On 1 June 2013 Nationwide was authorised by the SRA. In addition to the Respondent, RS was also a manager of the practice (and also practised under the name of Lillywhite Williams as did two Nationwide employees, Ms N and Ms J). MK worked at the practice until he resigned on 12 June 2014. MS joined the practice as a further member following the practice's acquisition of Daybells Solicitors. MS worked at the practice's branch office at 45 Broadway, Stratford, E15 4BL.

Lillywhite Williams LLP (Lillywhite Williams)

15. Lillywhite Williams & Co was founded in 1980 by Mr IL and Mr AW. In 2013, Mr IL and Mr AW agreed with the Respondent that the existing business of Lillywhite Williams & Co would be transferred into a newly formed Limited Liability Partnership to commence trading on 1 October 2013. The primary basis for the arrangement was to enable Mr IL to retire and to enable the practice to continue to operate but without Mr AW becoming a sole practitioner. As part of this agreement, the Respondent was to:

    (a) take over the conveyancing department (previously Mr IL's role);

    (b) take over the firm's expenses including the professional indemnity insurance and

    (c) be responsible for most of the staff.

16. In return for paying all the expenses including the lease of the practice's premises, the Respondent would keep the proceeds of the conveyancing work of Lillywhite Williams. The practice was authorised by the SRA as Lillywhite Williams LLP on 1 February 2014.

17. The effect of the arrangement was that the Respondent had a controlling financial interest in Lillywhite Williams following a Heads of Terms Agreement dated 29 August 2013 between the Respondent and the partners. The Respondent considered himself to be a member, and the owner, of Lillywhite Williams.

18. In the practice's application to the SRA dated 12 December 2013 seeking authorisation of the LLP, the practice declared that it had an arrangement with a third party (i.e. the Respondent) that may allow that other party to have influence over the running of the recognised body, but the Respondent was not named as member of the new LLP. The practice was subsequently authorised by the SRA on this basis.

19. A Companies House search conducted on 13 October 2014 showed the Respondent to be a member of the Lillywhite Williams LLP from 15 May 2014 to 1 October 2014. However this was not reflected in the records maintained by the SRA.

Allegation 1.1

20. The Respondent repeatedly undertook conveyancing transactions at both Nationwide and Lillywhite Williams. These included acting on behalf of various lenders in at least nine matters for which Nationwide was not a member of the relevant lenders' conveyancing panel and acting in relation to instructions which were given to Lillywhite Williams not Nationwide.

21. Furthermore, none of the client matter files contained client instructions to allow files to be moved from Nationwide to Lillywhite Williams or vice versa.

22. Prior to the Heads of Terms Agreement being entered into, Nationwide had been removed from the conveyancing panels of numerous lenders. Following the signing of the Agreement Lillywhite Williams was also removed from the conveyancing panels of various lenders.

23. Between 11 September 2013 and 21 January 2014 various Certificates of Title were signed by staff of Nationwide (including by the Respondent) who had never been employees of Lillywhite Williams. In each case the mortgagor's instructions were to Lillywhite Williams (and not Nationwide). An example of this was on 11 September 2013 a Certificate of Title was signed and dated by Ms J (an employee of Nationwide) although from the client matter file there was no evidence of who had conduct of the matter. The mortgagor's instructions named Lillywhite Williams to act on their behalf, as were addressed to them (and not to Nationwide).

24. In addition a Certificate of Title was signed by Ms N who at the relevant time was employed by Lillywhite Williams. However the file had a Nationwide Completion and Requisition of Title form completed by Nationwide

25. During an interview on 18 June 2014 the Respondent denied there was any issue with this course of action on the basis that the Certificates of Title related to client files of Nationwide which had been transferred to and were being dealt by Lillywhite Williams. The Respondent also stated that he and any staff deployed to Lillywhite Williams were entitled to submit Certificates of Title under that practice's name as he had a financial interest in the practice. However the individuals who signed the Certificates of Title, including the Respondent, were not employees of Lillywhite Williams, nor did they have any other formal connection with Lillywhite Williams.

26. During an interview on 15 April 2014 Mr IL and Mr AW, the managers of Lillywhite Williams, stated that Nationwide employees/members had no authority to sign Certificates of Title in the name of Lillywhite Williams. This included the Respondent.

27. In addition, Mr IL had previously challenged the Respondent on taking mortgage instructions out of his practice and to the Respondent's other practice, Nationwide. This included an incident in relation to a Woolwich mortgage at Barclays Bank.

Allegations 1.2 and 1.3

28. An examination of the Nationwide client bank account statements identified various deposits made into the practice's client accounts which related to escrow transactions

regarding monies received from 24 investors in diamonds and fine art that were subsequently remitted to diamond brokers and wholesalers after deduction of the practice's fees.

29. In the period 9 December 2013 to 17 June 2014 the Respondent conducted 24 escrow transactions and received at least £406,732.42 into the practice's client accounts which was subsequently paid to the relevant diamond wholesalers and brokers after the deduction of the practice's fees, totalling £4,207.06.

30. On 10 July 2014 the Respondent explained he became involved in the conduct of escrow transactions (diamond/commodity purchases) following an approach by two companies. Company A and Company F, who had been using other solicitors for escrow services. Later on 19 August 2014 the Respondent stated that Nationwide was introduced to Company A by DL.

31. In addition to the above activities in relation to Company A, two payments made into the practice's client account were received from H which was a separate legal entity to Company A. A representative of Company A advised that:

> "[H] are a freelance consultancy that work for a number of companies. The individuals working there act as an intermediary between the client and the company to help communicate and negotiate on our behalf".

In an email on 19 September 2014 the Respondent stated payments made were in respect of services provided to Company A in connection with diamond/fine art transactions.

32. On 30 June 2014, £1,385.13 was received into the practice's office bank account (from which £1,320 was subsequently transferred to the practice's client account on 2 July 2014). The Respondent claimed the source of these funds was from Company A. It was not clear from the information provided in relation to the receipt of these monies, or from the information contained in the bank statements that the source of funds paid into the office/client bank accounts was Company A.

33. On 19 August 2014 the Respondent advised the SRA that each escrow transaction utilised an Escrow Instruction Agreement (EIA) issued to the purchaser. These agreements stated that the purchaser acknowledged the practice's role was simply to hold the monies and distribute the purchase funds in accordance with the diamond suppliers' instructions and not therefore to provide any legal advice to the client purchaser or perform any underlying legal transaction. However, the Respondent also repeatedly advised the SRA that the role of the solicitor was more than simply holding and distributing purchase funds and the underlying legal transaction was advising the client broker, drafting the EIA and conducting identity and anti-money laundering checks on behalf of the supplier and purchaser.

34. The SRA found an EIA used by another practice which was in almost identical terms save for the insertion of the name of the commodity broker and the applicable solicitor which seemed to indicate that the Respondent's assertion that the underlying legal transaction involved the drafting of the EIA was incorrect.

35. In relation to the escrow transactions, fees were taken from the broker's fee/commission not from the purchaser. There was no evidence the purchaser was made aware of this. The practice charged a general fee of £200 to the broker for this service which was negotiable depending on the size of the diamond purchased. The Respondent stated that the purchasers paid the amount agreed by them for the diamond and the practice deducted its fee before distribution of the funds. However there was no evidence of the practice or the broker informing the purchasers that Lillywhite Williams' fees were to be taken from their purchase monies. None of the investors were made aware that solicitors' fees were to be deducted from their purchase monies. No notification was provided to indemnity insurers and no engagement letters were provided to the investors (in relation to Company A or any other brokers).

36. A representative of Company A questioned the monies paid to Company AT and H by Nationwide despite those monies relating to an art purchase made through EHC.

37. On 17 September 2014 the SRA contacted seven of the practice's investors and subsequently interviewed four of them.

Investors – Nationwide

38. DP made investments with EHC (the Managing Partner of which was also the Managing Director of Company A until 31 January 2014). DP advised he was not made aware by Daybells Solicitors or EHC of any consultancy fees and he thought his artwork purchase monies "were to be used solely for the purchase of the artwork in question". DP stated he:

> ".....took reassurance from the fact that my monies were paid into a Solicitors client account and would be dealt with in an ethical fashion. In fact it was explained to me by EHC that by paying the monies into a Solicitors client account that this would be afforded the same safeguards as buying a house and using a Solicitor....Since having sent my monies to Daybells Solicitors, I have not had any communication with them or received any correspondence from them..."

However, the Respondent advised the SRA that various parties who may have been involved in any one transaction needed to be paid from the sale proceeds of the product concerned.

39. JR, another investor stated he had not received a yellow diamond in respect of which the practice conducted the escrow transaction. He also stated the Respondent had failed to respond to his most recent email dated 30 July 2014. There was no evidence on the client matter files of clear, verifiable evidence of the purchaser being registered as owner of the diamond as quoted in the Respondent's email sent on 9 April 2014 to JR save for an email from Company A dated 26 June 2014 which stated that in various purchases, including in relation to JR, the diamond supplier had been paid by Company A and that their title to the diamond had been transferred to the investors. This email was not on the copy client matter files previously provided by the Respondent and contradicted JR's assertion that the diamond had not been received by the diamond storage company and that JR had not received his certificate of ownership from Company A.

40. AD made artwork purchases. In her statement dated 25 September 2014 she stated:

> "When I made a second purchase through Daybells I was instructed to send my money to Daybells solicitors along with copies of my identification, documents and a signed Escrow Agreement which is similar to one I signed when dealing with [previous solicitors] ...I did not at any stage instruct Daybells Solicitors to act for me and neither did they offer or give me any legal advice with regards to my artwork purchases...I took reassurance that my monies were to be paid into a solicitors client account and that the firm (EHC) was above board... In my opinion Daybells Solicitors' role in this transaction was to facilitate the transfer of my monies to EHC. I was not made aware at any stage that monies sent to Daybells Solicitors were to be used for payment of their legal services. I thought that the monies sent by me to Daybells were to be used solely for the purchase of my artwork".

41. CC made one diamond purchase from Company A having paid for the diamond through Nationwide's client account. She stated:

> "I did not instruct Nationwide Solicitors to act for me and neither did they offer or give me any legal advice...In my opinion, Nationwide Solicitors' role in this transaction was to facilitate the transfer of my money to [Company A]. I have been shown a copy of an [Company A] invoice dated 3 June 2014 for £3,445.50. I can categorically state I was not made aware by [Company A] that my monies would be used for marketing fees. I thought my monies were to be used solely for the purchase of my pink diamond..."

Investors – Lillywhite Williams

42. The Respondent also conducted his escrow practice from Lillywhite Williams. An examination of the client account bank statements revealed 21 transactions involving client accounts from 23 January 2014 to 25 April 2014, five of which had the handwritten annotation "Escrow". Various bank account statements in the names of the original partners of Lillywhite Williams Mr IL and Mr AW, 'Lillywhite Williams & Co'; and 'Lillywhite Williams LLP' were provided by the Respondent. By email dated 17 July 2014 Mr AW advised the SRA that he and Mr IL (as managers of the practice) had no knowledge of the escrow transactions.

43. On 18 June 2014 the Respondent explained there was an Escrow Agreement in place between the practice and Company A. The escrow transaction process was the same as applied to Nationwide. Usually Company A would send an EIA to the buyer and the buyer would send the practice a cheque for the payment transfer.

44. Like Nationwide, Lillywhite Williams also charged a fee of approximately £200 to the broker for this service, negotiable depending on the size of the diamond purchased.

45. By email dated 17 July 2014 Mr AW confirmed there were no bills of costs on the escrow files, only ledgers. Like Nationwide, the practice had not provided a client care letter to their diamond broker client detailing costs or provided any written notification or bill of costs to the client. Therefore no evidence was produced to show that purchasers were made aware that costs were being deducted by the practice. Invoices supplied to investors showed the unit price for the diamond which gave the

purchase price of the diamond alone. It did not refer to any deduction to account for the practice's fees.

46. Two of the diamond investors who deposited monies with Lillywhite Williams were interviewed by the SRA. One of those investors, JB stated:

> "...I did not instruct [another firm of solicitors] or Lillywhite Williams to act for me and they did not offer or give me any legal advice in respect of my diamond purchases. I took re-assurance from the fact that by paying my monies into a solicitors client account that my monies would be protected as they were in an Escrow account and would be dealt with properly.... In my opinion...Lillywhite Williams' role in these diamond purchases was to facilitate the transfer of my monies to [Company F]... ".

47. Another investor, GH advised the SRA:

> "...I have made subsequent purchases of diamonds from [Company F] totalling £81,000. In these instances I was instructed to send monies to Lillywhite Williams LLP client bank account... I did not instruct [another solicitors firm] or Lillywhite Williams to act for me and neither of the firms did not [sic] offer or give me any legal advice in relation to my purchases. I took reassurance that my monies would be protected as they were paid into an Escrow account and would be dealt with properly... In my opinion... Lillywhite Williams sole involvement in these purchases was to facilitate the payment of my monies through their client account to [Company F] ... I was not told that I would be paying... Lillywhite Williams solicitors fees".

48. Companies House records showed that [Company F] was incorporated on 15 May 2013 and dissolved on 1 July 2014.

Allegation 1.4

49. TN (UK) Consultancy Ltd (TN Ltd) was incorporated at Companies House on 2 February 2011 and was owned by the Respondent, his wife (who was also Nationwide's bookkeeper) and their children. TN Ltd provided finance to a number of companies and individuals (borrowers) secured against property owned or to be purchased by them. In addition the borrowers were also clients of Nationwide. The client matter file and client account ledger indicated that the practice began acting for TN Ltd in November 2012.

Mr S – loan of £100,000

50. The practice acted for TN Ltd in respect of the redemption of a loan to Mr S which concluded in December 2012. The Respondent explained that in January/February 2012 TN Ltd lent £100,000 to Mr S. He stated this was a personal loan and was made without involving the practice. The loan was secured against Mr S's property at 66 W Road, London. Mr S decided to re-mortgage the property and pay back the loan.

51. The Respondent explained that a letter on file dated 19 November 2012 sent by the practice to E Solicitors (retained by Mr S to deal with the re-mortgage of his property

and thus the repayment of the loan to TN Ltd) confirmed that the amount required to redeem the loan was £125,000. The amount was redeemed on 21 November 2012 and was shown on the client account ledger under the reference 'Mr [C] £125,000'. The client account bank statement confirmed that the money was paid into TN Ltd's bank account on the same day and the client account ledger showed no further funds were held by the practice for TN Ltd in relation to this particular loan redemption matter.

52. However the ledger account remained open on reaching a nil balance and contained subsequent credit and debit entries. The file did not contain any correspondence explaining the nature of all of the documents on file, or entries on the client account ledger or any correspondence relating to the negotiation of the loan agreements with the third parties or their legal representatives.

K Ltd trading as WB – Loan of £100,000

53. On 29 and 30 April 2013 further funds were received from TN Ltd creating a client account ledger balance of £85,000. A total loan of £100,000 was paid in two tranches to WB. The purpose of the loan was unknown. On 30 April 2013 £72,000 was paid in respect of a loan made by the practice on behalf of TN Ltd to K Ltd trading as WB. The transfer was posted to the client account ledger under the reference WB. The second tranche was paid directly by TN Ltd and did not pass through the practice's client bank account and did not therefore appear on the client account ledger.

54. There was no evidence of the payment on the file and no such evidence was subsequently provided to the SRA. The practice was retained to deal with the loan agreement and to secure the loan against land owned by K Ltd. The client file contained the loan agreement which stated that K Ltd was advised by AKG in relation to the loan agreement.

Repayment of £100,000 loan to WB by EDL

55. £107,500 was required to redeem the loan made by TN Ltd to WB although there was no evidence on file to support this. The loan was repaid by EDL as opposed to WB. EDL was also a client of the practice. EDL had re-mortgaged a property and received £850,580 from a bridging finance company as detailed below.

56. EDL used part of its re-mortgage money to repay £106,500 of the loan owed by WB and the remaining £1,000 was paid by IP Ltd as shown on TN Ltd's client account ledger (as a credit received on 6 August 2013). However the repayment by EDL did not appear on any client account ledger because the £106,500 had been paid by bank transfer to the bank account of TN Ltd as shown on the client account ledger of EDL. The remaining balance was not paid to TN Ltd but was paid by bank transfer to the bank account of Mr D (another client of the practice) to fund a new loan agreement which had been set up between TN Ltd and Mr D. Payment was made from the EDL client account ledger because TN Ltd had asked for it to be paid directly to Mr D. However there was no correspondence on the client file to evidence this.

57. Mr R was the main director of both EDL and WB (and the sole director and shareholder of IP Ltd). Mr Q was a director of EDL and a friend of Mr R. The two owned multiple companies and would set up a new company as a single purchase

vehicle in almost every property transaction they did. However a company search at Companies House indicated Mr R resigned as a director of EDL in October 2012 and the last annual return filed by EDL at Companies House, on 18 July 2013, confirmed that at the time the loan was made to WB and subsequently when the loan was repaid, Mr Q was the sole director and shareholder of EDL. Details at Companies House also confirmed that Mr R was the sole director and shareholder of K Ltd (which traded as WB. Therefore at the time of the repayment of the loan to K Ltd, the company had no connection with EDL.

TN Ltd and Mr D – Loan of £110,000 partly funded by EDL

58. TN Ltd agreed to lend £110,000 to Mr D secured against his property. The purpose of the loan was unknown. The Respondent advised that Mr D received independent legal advice from another firm of solicitors in respect of the loan (although there was no evidence of this on the client file). The loan agreement on the EDL client file was not signed and no signed loan agreement was on the client file for Mr D relating to the property. On 4 July 2013 £90,000 was transferred from the client account ledger of EDL to the bank account of Mr D. The remaining £20,000 was paid directly to Mr D's bank account from TN Ltd's bank account. There was no evidence of the payment on file and no such evidence was subsequently provided to the SRA.

59. The loan made to Mr D was repaid when Mr D re-mortgaged his property. The practice acted for Mr D on the re-mortgage. The SRA was informed that the amount required to redeem the loan was £113,500 but there was no evidence of this on the client file. On 18 September 2013 the repayment amount was transferred by inter-ledger transfer from Mr D's client account ledger to the client account ledger of TN Ltd and was shown on TN Ltd's client account ledger as £113,500 credit referenced "from 6389 to 3842 LOAN". Following receipt of this money, the balance on TN Ltd's client account ledger was £114,979.40 and this money was then used to make further loans to clients of the practice.

TN Ltd and second loan to Mr D - £29,500

60. On 23 September 2013 a further £10,000 was credited to the client account ledger of TN Ltd. The monies were transferred from the bank account of TN Ltd and were paid to the practice to enable another loan to be made to Mr D registered against his property. The practice prepared the loan agreement and the Respondent stated Mr D took independent legal advice from another firm of solicitors. However on the file there was no loan agreement or evidence that Mr D had taken independent legal advice in relation to the loan and no such evidence was subsequently provided to the SRA. The loan was to enable Mr D to build on the land he owned. On 26 September 2013 £29,500 was paid from the practice's bank account to Mr D's bank account as shown on the client account ledger for TN Ltd under the reference "[DND] £29,500."

TN Ltd and payments on behalf of the Respondent's wife using TN Ltd funds

61. On 20 June 2013 an inter-ledger transfer of £10,000 was made from the TN Ltd client account ledger to the client account ledger of LD Ltd. The practice was retained to act on the cash-only purchase of a property from receivers for approximately

£3.2 million. The potential buyer (a friend of the Respondent) did not have sufficient funds to purchase the property and was therefore looking for investors.

62. LD Ltd was set up as a company through which the property was to be purchased. The Respondent's wife was to take a 10% share in the property and the £10,000 transferred to the client account ledger of LD Ltd represented the Respondent's wife's contribution towards the deposit for the purchase. The Respondent stated that the share was taken by his wife in her personal capacity and not through TN Ltd. There was an authority on file dated 20 June 2013 signed by the Respondent's wife authorising the transfer of £10,000 to LD Ltd's client account ledger.

63. There was a further authority on the file dated 20 September 2013 signed by the Respondent's wife authorising a further transfer of £18,000 from TN Ltd's client account ledger to LD Ltd's client account ledger. This transfer represented the contribution towards the property purchase price by the Respondent's wife.

64. The transactions were recorded on TN Ltd's client account ledger and the funds used to make the payments were funds held by the practice for TN Ltd and not the Respondent's wife in her personal capacity. A separate ledger account was not created to record client money dealt with on her behalf.

65. On 2 July 2013 £2,037.80 was paid from the client account ledger of TN Ltd to the client account of AK and Co and related to the unsuccessful defence of litigation brought by the Respondent's wife in her personal capacity (in respect of which the practice had acted for her). AK and Co were the Claimant's solicitors. There was an authority on the file dated 2 July 2013 authorising the transfer to AK and Co. However no separate client account ledger had been opened for the litigation matter and from which payment should have been made. According to the Respondent the payment was made from the TN Ltd client account ledger as the "money was sitting there".

TN Ltd and IP Ltd – loan £100,000

66. A loan was made to Mr R in his personal capacity secured on a property with £15,000 transferred on 18 September 2013 by inter-ledger transfer from the client account ledger of TN Ltd to Mr R's client account ledger. There was an unsigned authority on the file for this transaction. The remaining £85,000 was paid by TN Ltd from its bank account to Mr R's bank account. There was no evidence on the file of the payment and no such evidence was subsequently provided. There was also no evidence on file to indicate Mr R had taken independent legal advice in relation to the loan and there was no signed loan agreement on the client matter file.

TN Ltd and PI Ltd – Loan £55,000

67. On 18 September 2013 a loan of £55,000 was made by TN Ltd to PI Ltd (a client of the practice at the relevant time) to purchase a property. No signed copy of the loan agreement was on the purchase file for PI Ltd. No evidence was on the file to indicate PI Ltd had taken independent legal advice in relation to the loan. The loan was made by inter-ledger transfer from the client account ledger of TN Ltd to the client account ledger of PI Ltd.

TN Ltd and JPM Ltd – Loan £3,000

68. On 20 December 2012 a loan of £100,000 was made direct by TN Ltd to Mr P without the practice's involvement (although there was some correspondence regarding this loan on the file). On 25 September 2013 a further loan of £3,000 was made by inter-ledger transfer from the client account ledger of TN Ltd to the client account ledger of JPM Ltd to top up the original loan. The only documentation on file was a signed authority to make the inter-ledger transfer.

Allegation 1.5

69. The remaining £4,479.40 client account ledger balance was transferred by inter-ledger transfer to the client account ledger of DTP Ltd, a company in which the Respondent's wife was a director and shareholder together with others. There was an authority on the client file authorising the inter-ledger transfer, however no reason for the transfer was stated and at no point were funds received by DTP Ltd. There was also no evidence of prior dealings between TN Ltd and DTP Ltd. The Respondent informed the SRA that the funds were transferred to close the client account ledger.

Allegation 1.6

70. The matter related to the sale and remortgage of a property at 3 H Rd, by EDL to HR Ltd for £1.375 million. The first file related to the sale of the property (which was at the exchange stage when the SRA carried out its investigations in June 2013). On 19 June 2013 two credits of £8,000 and £60,750 were posted to the client account ledger (as SA and "Sal & H LLP" respectively) which related to the sale of the property and the deposit paid on exchange by the purchasers' solicitors. The second file related to the re-mortgaging of the property. On 2 July 2013 £850,580 was credited to the client account ledger and related to the funds received by the practice from the lender following completion of the re-mortgage by EDL.

71. Following completion of the re-mortgage the funds together with the deposit monies were disbursed to various third parties who had no relationship with the underlying legal transaction as follows:

    (a) On 2 July 2013 a signed authority on file requested the practice pay £50,000 to MF to "repay personal loan". The payment was made from the practice's bank account on behalf of TN Ltd to the bank account of MF. The practice had no involvement in the loan and the loan and payment were unconnected to the sale or re-mortgage of 3 H Rd. The practice did not verify EDL's explanation for the payment and did not take any steps to verify the existence of the loan.

    (b) On 3 July 2013 £224,000 was paid to the joint bank account of Mr and Mrs Q from the firm's client account. There was no evidence on file to explain why funds held for the company were being paid directly to its director's personal account or to explain the relationship to the sale or re-mortgage of 3 H Rd.

    (c) On 3 July 2013 a signed authority on file requested the practice pay £50,000 to Mr S for "loan to [S]". The monies were transferred from the firm's client bank account to Mr S's bank account in relation to a new loan being made by

EDL to Mr S. The practice did not negotiate the loan and there was no loan agreement on file (although the Respondent stated the practice drafted the loan agreement).

(d) On 3 July 2013 a signed authority on file requested £90,000 to be paid from the EDL client account ledger to the TN Ltd client account ledger to "repay loan by [TN Ltd] to [K Ltd]. Pay [D]". However the payment was made direct from the firm's client bank account to Mr D's bank account and was not transferred to the client account ledger of TN Ltd. The transaction related to the repayment of the loan to WB by EDL (as set out above) as did the subsequent entry on the client account ledger of £16,500 dated 24 July 2013 referenced "[E] for Ref T N". There was no written authority on the client file authorising the transfer of £16,500 to TN Ltd.

(e) There was an inter-ledger transfer of £400,000 dated 5 July 2013 from the EDL's client account ledger to the client account ledger related to the purchase of a property in Romford by Mr Q. The signed authority on the file referred to "company share purchase". Mr Q was buying shares in EDL in his personal capacity and not (i) through EDL; (ii) connected with EDL; or (iii) in relation to the sale or re-mortgage of 3 H Rd.

(f) On 18 September 2013 there was an inter-ledger transfer of £68,000 from the client account ledger of EDL to the client account ledger for Mr R. The transfer authority referred to "partnership loan" and reference to IP Ltd. The Respondent advised the transfer related to a new loan to Mr R but a Companies House search indicated that the sole director of IP (London) Ltd (the ultimate beneficiary of the loan) was Mr R and he had no connection with EDL or with the sale or re-mortgage of 3 H Rd. There was no loan documentation on the file or evidence to verify the loan.

72. Four other transactions took place involving funds totalling in excess of £300,500 being received or paid by the practice where the payment or receipt of the funds had no relationship to the transaction upon which the practice was retained.

73. The Respondent accepted he could have accounted to clients for the money available to distribute and let them distribute it but he chose to distribute the funds. On various occasions Nationwide did not inform the relevant lender that the source of the balance to complete the transactions came from a third party. For those transactions in respect of which the Respondent was directly involved, the Respondent was responsible and for those transactions where Nationwide employees were involved, the Respondent was responsible in his role as Partner of Nationwide and/or in his role as COFA of Nationwide.

K Ltd – sale of Land on S Rd

74. The client account was in the name of Mr R but the practice was acting for K Ltd (for whom Mr R was the sole director and shareholder). On 18 September 2013 (prior to the completion of the sale on 8 October 2013) £68,000 was transferred to the client account ledger from the EDL client account ledger. A further £15,000 was also transferred to the client account ledger from the client account ledger of TN Ltd.

These monies together with the £17,830 deposit received on the sale of the property at auction created a client account ledger balance of £100,830. The monies were transferred before the sale completion because IP (London) Ltd needed £100,000 at short notice and therefore on 18 September 2013 £100,000 was transferred to the company.

75. The practice only opened one matter file for TN Ltd in which a number of individual loan agreements were filed and the practice operated a single client account ledger against which the lending activity to each of the individual borrowers was posted.

Witnesses

76. The following witnesses gave evidence:

- Gary Page (SRA Forensic Investigation Officer)
- Hardeep Sangha (SRA Forensic Investigation Officer)
- Naresh Kumar Chopra (the Respondent)

Findings of Fact and Law

77. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

78. **Allegation 1.1 - Contrary to Principles 2, 4 and 6 of the SRA Principles the Respondent allowed 9 conveyancing transactions to be undertaken by Lillywhite Williams LLP (Lillywhite Williams) and Nationwide Solicitors LLP (Nationwide) between 11 September 2013 and 21 January 2014 where such transactions were:**

1.1.1 contrary to section 1.12 of the Council of Mortgage Lenders' Handbook in that the work of one practice was being done by employees of the other;

1.1.2 undertaken by solicitors employed by Nationwide in the name of Lillywhite Williams contrary to Rule 1 of the SRA Practice Framework Rules; and/or

1.1.3 misled lenders as to which firm undertook the transactions

It was alleged the Respondent had acted dishonestly.

78.1 The Respondent denied this allegation.

78.2 Mr Soloman, on behalf of the Applicant, submitted the Respondent had repeatedly undertaken conveyancing transactions at both Nationwide and Lillywhite Williams on behalf of a number of lenders without their knowledge. In at least 9 transactions, Nationwide was not a member of the lenders' conveyancing panel and instructions had been sent to Lillywhite Williams not to Nationwide. Employees of Nationwide had repeatedly signed Certificates of Title where instructions had been sent by lenders to Lillywhite Williams.

78.3 Mr Soloman submitted that as a matter of law, the firms of Lillywhite Williams and Nationwide were two separate legal entities. During his interview with the Forensic Investigation Officer, Mr Page, the Respondent had stated:

> "...we were signing them as Lillywhite Williams and we were employees, consultants or owners of Lillywhite Williams."

Mr Soloman submitted that this did not entitle solicitors employed by Nationwide to carry out work for Lillywhite Williams.

78.4 Mr Soloman referred the Tribunal to the comments of Mr IL, a former partner of Lillywhite Williams, during his interview with Mr Page, in which he stated that when he discovered mortgage instructions given to Lillywhite Williams were being taken out of the office he:

> "…. had a strong word with Mr Chopra and I said that an [sic] absolutely no circumstances whatsoever were Lillywhite Williams & Co's mortgage instructions to be taken out of this office, which is obviously what was happening."

78.5 The Tribunal's attention was drawn to a number of Lillywhite Williams' Certificates of Title which had been signed by employees of Nationwide and the Respondent. The Tribunal's attention was also drawn to an email dated 4 June 2014 purportedly from Lillywhite Williams to clients on which the actual email address for the sender of the email was from:

> "[a]@nwsolicitors.com".

78.6 Mr Soloman submitted that the lenders had been misled as to who had carried out the conveyancing work. Nationwide were not on the lenders' panels whereas Lillywhite Williams were and had received instructions from lenders. In each case only one file was ever opened and it moved physically between the offices of the two firms, or employees of Nationwide would attend the offices of Lillywhite Williams to work there on the files.

78.7 Mr Soloman submitted that as Nationwide were not on the lenders' panels, it was obvious that they were not entitled to carry out the work on the mortgage aspect of such conveyancing transactions. He submitted the Respondent was consciously aware of this and knew that Nationwide should not be doing this work but yet he allowed it to happen. Mr Soloman submitted it was inconceivable that the Respondent could believe taking files out of the offices of Lillywhite Williams in order to conduct the work at Nationwide was legitimate. Furthermore, the

Respondent had hidden his involvement with Lillywhite Williams from the SRA as, Mr Solomon submitted, it was part of his plan to use Lillywhite Williams to conduct mortgage transactions when he was not entitled to do so.

78.8 Mr Soloman submitted the Respondent had provided no coherent or plausible explanation for his conduct. Whilst the Respondent claimed Lillywhite Williams was part of Nationwide, he must have known, as a canny businessman and a solicitor who set up third party companies regularly, that Lillywhite Williams was not and could not be "part of" Nationwide.

78.9 In relation to the case law, Mr Soloman referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

78.10 On the matter of integrity, Mr Soloman submitted that clearly if the Respondent was found to have acted dishonestly, then that would amount to acting with a lack of integrity. However, if the Respondent was not found to have acted dishonestly, then the Tribunal needed to consider whether he had nevertheless acted with a lack of integrity. Mr Soloman referred the Tribunal to the case of SRA v Chan & Others [2015] EWHC 2659 (Admin) in which Lord Justice Davis had stated:

> "....want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case".

78.11 Mr Soloman noted that the case of Malins v SRA [2017] EWHC 835 (Admin) had been decided during January 2017 and April 2017 whilst this case was part heard. That case dealt with the issue of lack of integrity but this authority went against the grain of a number of previous accepted authorities. In Malins v SRA Mr Justice Mostyn had stated:

> "In my judgment, ...the legal and dictionary definitions of the words honesty and integrity are aligned and that they are synonyms. It means that dishonesty and integrity are antonyms. This would explain why the SRA principles do not additionally require a solicitor to act with honesty. This is because it is the same thing as integrity. Want of integrity and dishonesty are not only the same thing but must be proved to the same standard, in my judgment."

78.12 Mr Soloman referred the Tribunal to the authorities of Scott v SRA [2016] EWHC 1256 (Admin) and Newell-Austin v SRA [2017] EWHC 411 (Admin) which both confirmed the test was an objective test. In the latter case, Mr Justice Morris referred to the case of Hoodless and Blackwell v FSA [2003] FSMT 007 and concluded as follows:

> "1) Integrity connotes moral soundness, rectitude and steady adherence to an ethical code: see Scott...

> 2) No purpose is served by seeking to expatiate on the meaning of the term. Lack of integrity is capable of being identified as present or not by an informed tribunal by reference to the facts of a particular case: see Chan...
>
> 3) Lack of integrity and dishonesty are not synonymous... A person may lack integrity even though not established as being dishonest. An example might, depending on the particular facts, be the position of a solicitor taking money out of a client account and from time to time making good any deficiency, when convenient: see Scott...
>
> ... it is clear that, by contrast with the test of dishonesty, the test of "lack of integrity" is an objective test alone... There is no requirement that a solicitor must "subjectively" realise that his conduct lacks integrity."

78.13 Mr Soloman submitted that the case of Malins v SRA was contrary to every previous case and, he submitted, it was wrong. Mr Soloman stated he understood that case was subject to an appeal and submitted it should not be followed.

78.14 Mr Soloman also reminded the Tribunal that the Respondent had made admissions of acting with a lack of integrity in relation to Allegation 1.3 even though he disputed he had acted dishonestly. That admission had been based on the test set out in the case of Hoodless and Blackwell v FSA and if the Tribunal was to apply the test in Malins v SRA, this would be against the Respondent's interests.

78.15 The Tribunal heard evidence from the two Forensic Investigation Officers who had conducted the investigation, Mr Gary Page and Mr Hardeep Sangha. Mr Page confirmed that the funds from mortgage lenders were received by Lillywhite Williams and there had been movement of files between Lillywhite Williams and Nationwide. On cross-examination Mr Page confirmed the files were hard copy files and that the mortgage instructions had been addressed to Lillywhite Williams.

78.16 Mr Page stated that during his investigation, it was apparent that the parties believed ownership of the conveyancing department had passed to the Respondent from Lillywhite Williams under the Heads of Terms Agreement. Mr Page stated that the Respondent had acted as if he owned the business and that it was agreed the Respondent would work part-time for Lillywhite Williams on a retainer of £2,500 per month. Mr Page accepted that at times staff had been seconded from one practice to the other for conveyancing purposes. Mr Page stated there was no evidence of correspondence on the file informing the client that Nationwide was carrying out the work and nor was there anything on the file to indicate that one firm was outsourcing the work to another firm.

78.17 Mr Sangha, in his evidence, accepted it had taken nine months from the start of the investigation to interview the Respondent and stated this was because the investigation was ongoing. He had requested documents from the firm and he had then revisited the firm at various intervals to review further documents.

78.18 The Tribunal then heard evidence from the Respondent. He provided details of his career history and how he became involved with Nationwide. The Respondent stated he had always done conveyancing work alongside his lending business.

78.19 On cross-examination, the Respondent confirmed he was aware that Nationwide was not on the panel for a number of lenders who had instructed Lillywhite Williams. However, the Respondent stated he owned Lillywhite Williams and so the two firms were practically one and the same, although he accepted that they were technically separate as a matter of law. The Respondent stated that from 1 October 2013, Lillywhite Williams became part of Nationwide. As a result of this, the Respondent maintained Nationwide was automatically able to conduct conveyancing for any lender on whose panel Lillywhite Williams was appointed.

78.20 The Respondent accepted that technically it was wrong to transfer client files from one entity to another without the client's knowledge but he maintained that Nationwide clients were aware that they would need to go to Lillywhite Williams in order to obtain a mortgage with certain lenders.

78.21. The Respondent stated that from 1 October 2013, the agreement he had reached with the partners of Lillywhite Williams was that they would set up an LLP and once that was approved, he would be registered as a member of Lillywhite Williams. However, for whatever reason, the partners of Lillywhite Williams kept delaying. Then in May 2014 they informed him that they would no longer trade as Lillywhite Williams LLP and were reverting back to their own original partnership. The Respondent stated that towards the end of 2014 he removed their details from the Companies House Register for Lillywhite Williams LLP and had added his own.

78.22 The Respondent stated that lenders were fully aware that Nationwide staff were signing Certificates of Title for Lillywhite Williams. He stated the Certificates of Title would have the name of the fee earner who worked for Nationwide and the lender would call the office or look on the SRA website to verify where the fee earner worked. The Respondent stated he had informed all his staff at Lillywhite Williams that if they were to receive any telephone calls from lenders, they were to inform the lenders that Nationwide was part of Lillywhite Williams.

78.23 The Respondent accepted on cross-examination that neither the SRA nor the insurers of Lillywhite Williams were informed he was working there. He also accepted that mortgage lenders had not been informed that he or the Nationwide employees who had signed Certificates of Title were not employees/consultants of Lillywhite Williams prior to their signing the Certificates of Title. The Respondent stated the lenders would subsequently be informed during a telephone call between the lender and Lillywhite Williams when the lender called to query the signature.

78.24 When the Respondent was asked specifically about a particular employee of Nationwide, Ms J, a trainee solicitor who had signed Certificates of Title, he stated she had also worked and received a salary from Lillywhite Williams prior to October 2013. He stated that she had worked for two days at one firm and then three days at the other firm. The Respondent claimed Ms J had signed Certificates of Title on the instructions of one of the partners at Lillywhite Williams prior to October 2013 and had signed Certificates of Title on the Respondent's instructions after October 2013. He stated Ms J had been "helping out" one of the partners at Lillywhite Williams.

78.25 The Respondent stated that files were taken out of the office of Lillywhite Williams to Nationwide offices "for someone to look at". He said that a file would be brought to Nationwide for instructions when Mr IL at Lillywhite Williams, was not in the office as Mr IL only worked 3 days a week. He denied he had been told by Mr IL not to remove files from Lillywhite Williams' office.

78.26 During cross-examination, the Respondent stated that there were some files where Nationwide were acting on behalf of the client on the purchase, and Lillywhite Williams were acting for the lender. He maintained therefore that the firm that was on the relevant lender's panel had signed the Certificate of Title. He also stated there were some files that had been transferred from Nationwide to Lillywhite Williams when Nationwide was not on the relevant lender's panel.

78.27 The Respondent was asked about an email sent purportedly from Lillywhite Williams on 4 June 2014 which showed an email address for the sender of "[a]@nwsolicitors.com". The Respondent stated he did not understand how this had happened. He stated he had asked the relevant fee earner, who was a trainee solicitor, about it and said she had given him an explanation although he could not now remember what that explanation was. The Respondent was then referred to his email dated 23 June 2014 to Mr Page on this particular issue in which he had stated:

> "Email dated 4 June 2014 from [AC]..... Please see attached email dated 4th June 2014 from LW [Lillywhite Williams] to [AC] at NWS [Nationwide]. The email you refer to is simply a [sic] automatic standard computer generated response from NWS to LW. That response was not from LW."

78.28 The Respondent stated the email was indeed an automatic response set up by Nationwide. However, he said that he did not know how or why the fee earner would set that up and that it was nothing to do with him. He said AC was a trainee solicitor who set up her own email account and he did not know why she had set it up to appear as if it was sent by Lillywhite Williams as there was no reason for her to do so. The Respondent stated AC also worked at Lillywhite Williams and had her own Lillywhite Williams' email account in addition to her Nationwide email account.

78.29 On further questioning by Mr Soloman, the Respondent stated that prior to May 2014, clients had been informed that Nationwide were taking over Lillywhite Williams. He accepted that in June 2014 it had not been legitimate for Nationwide to hold themselves out as Lillywhite Williams. He stated that between October 2013 to May 2014, Nationwide had been informing clients that Lillywhite Williams was part of Nationwide as he believed that was the case. He also accepted that the email sent by AC purporting to be from Lillywhite Williams but using a Nationwide email address had been improper as AC should have used the email created for her.

78.30 In closing submissions, Mr Barnett, on behalf of the Respondent, agreed with the submissions made by Mr Soloman in relation to the cases to be applied when considering the test for acting with a lack of integrity. Mr Barnett accepted it was not for the Tribunal to state the test in Malins v SRA was wrong but it should not be followed in this case. The test to be followed was that set out in Newell-Austin v SRA.

78.31 Mr Barnett referred the Tribunal to his "Closing Submissions on behalf of the Respondent" and submitted there must be cogent evidence of dishonesty and the Tribunal should disregard the documents provided by members of staff from both firms as they had not given evidence before the Tribunal and their evidence had not been tested. The Respondent had made it clear that he was always under the impression that both Lillywhite Williams and Nationwide were treated as the same firm.

78.32 Mr Barnett submitted the Applicant's case on lack of integrity was not made out. He submitted both partners, Mr IL and Mr AW, from Lillywhite Williams had a purpose of their own to serve in giving an exculpatory account to the Forensic Investigation Officers. The Respondent had given evidence explaining he had a member of staff who worked for both firms and that he had told AC not to use the email purporting to be from Lillywhite Williams again. Mr Barnett submitted the Respondent had been out of his depth but that his motives had been to conduct the transactions, and his practice, in accordance with sound professional and commercial principles.

78.33 The Tribunal carefully considered the evidence it had heard together with all the documents provided. The Tribunal accepted the evidence of the Forensic Investigation Officers who it found to be credible.

78.34 In relation to the Respondent's evidence, the Tribunal did not find him to be a credible witness. The Respondent was evasive and contradictory at times, not answering questions squarely and appeared to go to some lengths to avoid questions by reframing the questions or answering different questions. The Tribunal did not consider him to be a reliable or straight forward witness. Questions were clearly put to him but he deflected or evaded them. Where concessions were made, this was often after lengthy and repeated cross-examination.

78.35 The Respondent's case was that he owned both Lillywhite Williams and Nationwide and his staff worked at each firm intermittently. Files were taken from one firm to the other and the documents provided showed junior staff at Nationwide were working on files at Lillywhite Williams, which the Respondent stated was on secondment. The crucial issue was that Nationwide were not on the lenders' panels but Lillywhite Williams were.

78.36 The Tribunal had been provided with copies of a Certificate of Title dated 11 September 2013 which had been signed on behalf of Lillywhite Williams by Ms J who worked at Nationwide. A further Certificate of Title dated 8 January 2014 which had been signed on behalf of Lillywhite Williams was signed by Ms S who was also an employee of Nationwide. Another Certificate of Title dated 14 January 2014 signed on behalf of Lillywhite Williams had been signed by the Respondent himself. These Certificates gave no indication that any of these signatories were employees or the owner of Nationwide.

78.37 There was a further issue of the email being used by one of the Nationwide employees which clearly gave the impression that it was being sent by Lillywhite Williams. Whilst the email appeared to be from Lillywhite Williams, it was clear from the email address that it was being sent by an employee of Nationwide.

78.38 The Tribunal noted the Respondent's replies to Mr Page during an interview on 18 June 2014. During that interview the Respondent stated:

> "....We've passed our clients to Lillywhite Williams, Nationwide Solicitors clients as it were because they're on the panel, etc, and obviously we've lost both clients as well, they've kept those clients..... so when we signed these certificates..... We were signing them as Lillywhite Williams and we were employees, consultants or owners of Lillywhite Williams."

78.39 The Tribunal did not accept the Respondent's explanations that employees of Nationwide were also employees, consultants or owners of Lillywhite Williams. It was nonsense to suggest they were the same entity when it was quite clear they were two separate firms and the Tribunal noted that neither Lillywhite Williams' insurers nor the SRA had been informed of this. Whilst the Tribunal accepted the Respondent may have treated both firms as one because he owned them, this did not mean he could allow employees of Nationwide to hold themselves out as being employees of Lillywhite Williams. There was no substance to the Respondent's assertion that the lenders would telephone the firm to check that the signatory of a Certificate of Title was employed at Lillywhite Williams. The Tribunal was satisfied the Respondent had been using Lillywhite Williams to allow him to service Nationwide clients who could not get a mortgage as Nationwide were not on the relevant lender's panel. He would therefore continue to conduct their work at Nationwide under the name of Lillywhite Williams whilst the reality was that they were actually Nationwide clients and remained so.

78.40 The Tribunal was satisfied that work in Lillywhite Williams was being done by employees of Nationwide and this was contrary to section 1.12 of the Council of Mortgage Lenders Handbook and Rule 1 of the SRA Practice Framework Rules. The Tribunal was further satisfied that the Respondent had misled lenders as to which firm undertook the transactions. The Respondent had failed to act in the best interests of each (mortgage lender) client in breach of Principle 4 of the SRA Principles and he had behaved in a way that did not maintained the trust the public placed in him or in the provision of legal services in breach of Principle 6 of the SRA Principles.

78.41 Before considering whether the Respondent had acted with a lack of integrity, the Tribunal considered the issue of dishonesty. The Tribunal was satisfied that allowing transactions to be undertaken by employees of Nationwide when the lenders believed those transactions were being undertaken by employees of Lillywhite Williams would be regarded as dishonest by the ordinary standards of reasonable and honest people.

78.42 The Tribunal was satisfied this had been a deliberate course of conduct by the Respondent designed to deceive lenders who thought the work was being carried out by Lillywhite Williams which was on their respective panels. The reality was that work was being carried out by the Respondent and staff at Nationwide, which was not. The Respondent knew that there were a number of Nationwide clients for whose mortgage lenders he was unable to act through Nationwide, as Nationwide was not on the client's lender's panels. He had deliberately used Lillywhite Williams to allow him to service those clients knowing full well that Nationwide was unable to do the work. The Respondent had given various elaborate, often contradictory, excuses

during the course of his evidence as to why he had acted as he had but the Tribunal did not accept his explanations as they were implausible and were not credible.

78.43 The Tribunal was satisfied that the Respondent had intentionally misled lenders knowing full well that Nationwide was not entitled to do the work being carried out. He had taken no steps to inform those lenders that work was being done by Nationwide employees or that Nationwide had, as he claimed to believe, taken over Lillywhite Williams. Indeed, by using the name of Lillywhite Williams, the Respondent had concealed the true position from lenders. The Tribunal was satisfied the Respondent therefore realised that his conduct was dishonest by the ordinary standards of reasonable and honest people and found he had acted dishonestly.

78.44 Having found the Respondent had acted dishonestly, there could be no doubt that he had also acted with a lack of integrity and had breached Principle 2 of the SRA Principles 2011. In light of this it was not necessary for the Tribunal to make any determination in relation to the relevant definition of lack of integrity or the appropriate case law to be followed.

78.45 The Tribunal found Allegation 1.1 proved in its entirety.

79. **Allegation 1.2 - Contrary to Rules 14.3 and 14.5 of the Solicitors Accounts Rules 2011 and Principle 8 of the SRA Principles 2011 in relation to diamond and fine art transactions (24 in relation to Nationwide and 21 in relation to Lillywhite Williams) the Respondent provided banking facilities through a client account and transfers or withdrawals from a client account were not in respect of instructions relating to an underlying legal transaction. It was alleged the Respondent had acted dishonestly.**

Allegation 1.3 - Contrary to Principles 2, 4 and 6 of the SRA Principles, in the period 9 December 2013 to 17 June 2014 the Respondent participated in and lent his credibility as a solicitor to 24 dubious transactions concerning diamonds and fine art in relation to Nationwide and 21 dubious transactions in relation to Lillywhite Williams in the period 23 January 2014 to 25 April 2015 where there was no legitimate basis for his involvement as a solicitor. It was alleged the Respondent had acted dishonestly.

79.1 The Respondent admitted Allegation 1.2 but denied fees had been paid by purchasers. He also denied that he had acted dishonestly. The Respondent admitted Allegation 1.3 but denied he had acted dishonestly.

79.2 Mr Soloman submitted these were high value transactions where investors had been tempted to invest for returns. The Respondent had provided banking facilities through his client account which, Mr Soloman submitted did not relate to an underlying transaction. Both Nationwide and Lillywhite Williams had held deposits in their accounts relating to escrow transactions for diamonds and fine art. Such schemes were notoriously used by fraudsters. The terms on which the monies were held made it clear that the monies were to be held and distributed by the relevant firm in accordance with the relevant suppliers' instructions and Mr Soloman submitted no legal advice had been provided.

79.3 Mr Soloman further submitted there had been no legal elements contained in these transactions and there was no good reason for the Respondent to involve himself in these transactions. Nor had the purchasers been made aware that fees were being charged by the relevant firm, and investors were not aware of the deductions. Mr Soloman submitted the Respondent had provided no coherent explanation as to why he had acted in these transactions and nor had he made any attempt to verify their authenticity. Initially the Respondent had informed the SRA that no legal advice had been given but now was claiming legal advice had been provided. Mr Soloman submitted this was indicative of dishonest conduct.

79.4 Mr Soloman submitted the Respondent, over a significant period of time, had lent his credibility as a solicitor to 45 dubious transactions which were the type notoriously associated with fraud. This was conduct that no reasonable solicitor would have undertaken and was dishonest.

79.5 The Forensic Investigation Officer, Mr Page, in his evidence, confirmed the Respondent had received a transaction fee in relation to these matters. On cross-examination, he confirmed he had not interviewed or taken statements from any of the purchasers, but said that he had interviewed a representative of Company A. From the information provided to Mr Page, he stated purchasers had made payments for the diamonds and were not aware they were paying solicitor's fees. Mr Page stated purchasers had not been made aware that there would be a fee for handling the money. Mr Page confirmed he had seen some of the bills submitted to brokers on the ledgers but confirmed he did not look at the actual invoices. He could not recall any bills addressed to the purchasers.

79.6 The Respondent on cross-examination stated that he had not been aware at the time that solicitors could not provide banking facilities. He stated he had not been aware of literature warning that these types of transactions were well known scams or that the process was a potential fraud. The Respondent stated he kept himself aware of notices published by the SRA on property matters but did not look at any money laundering notices as he did not deal with compliance issues. The Respondent stated that he had now read the warning notices and accepted these transactions were similar to other dubious transactions.

79.7 The Respondent stated he had never dealt with escrow transactions before and that he had spoken to the SRA Ethics and Guidance department who had informed him that as long as he had carried out money laundering checks and was drafting the agreement, the work was permissible. The Respondent stated he had drafted the Escrow Agreement and that he had used a template precedent sent to him by another firm. The Respondent maintained that while he had added his own firm's name, the identity of the broker and purchaser, and the amount involved, this was still drafting and he considered it to be legal work.

79.8 The Respondent stated that legal advice was provided to the brokers and this consisted of advice on the money laundering checks that had been done. File notes had been made of this advice. The Respondent accepted there were no engagement letters or client care letters on the files, and that on some Lillywhite Williams' files there were no bills when there should have been. However he stated it had been left to Lillywhite Williams to raise their own bills.

79.9 The Respondent stated that the process was that the purchaser paid the money, his firm would account to the broker and any balance left over was retained in client account until it was transferred to office account.

79.10 The Respondent stated that only one of the purchasers had contacted him as he had not received his diamond and on that occasion the Respondent had told him to contact the broker. He denied he had not responded and stated that he did not have access to his emails in order to be able to produce a copy. The Respondent stated he had obtained a copy of a number of Certificates confirming the authenticity of the diamonds before sending funds to the suppliers. He now accepted that the purchasers may have been victims of fraud.

79.11 Mr Barnett, in his closing submissions, submitted the Respondent had "blundered" into these transactions having taken comfort from the fact that he was using a template from another firm which was also carrying out this type of work. Mr Barnett submitted the lack of integrity admitted by the Respondent had been at a low level. The Respondent had telephoned the SRA Ethics helpline and had been reassured. He had genuinely believed the firm was conducting an underlying legal transaction. Mr Barnett submitted it had not been alleged that any of the investors relied on any publicity material or advertisement which stated that Nationwide or Lillywhite Williams were solicitors.

79.12 On the matter of dishonesty, Mr Barnett submitted that even if the Tribunal found the Respondent had not done the legal work, this did not mean he was dishonest. He submitted no claim had been made by any of the escrow investors.

79.13 The Respondent admitted he had breached Rules 14.3 and 14.5 of the Solicitors Accounts Rules 2011 and that he had breached Principles 2, 4, 6 and 8 of the SRA Principles 2011 in relation to these allegations.

79.14 The Tribunal had no doubt that the Respondent's involvement in these transactions lent a veneer of respectability to them. The Tribunal had been provided with a number of witness statements from various investors who all made it clear it had been explained to them that the monies would be paid into a solicitor's client account and they were of the view that this would afford them safeguards. The investors also stated that they had not been offered or given any legal advice.

79.15 The Respondent had been charging brokers approximately £200 to complete a template with brief details and had thereby allowed his firm to be used to add credibility to these transactions. The fees had been paid from the funds received from investors. The Tribunal was satisfied that the Respondent had not read the warning notices issued by the SRA when he should have done. Had he done so, he would have realised these transactions were dubious. The Tribunal was satisfied the Respondent had acted with a lack of integrity and that this was a serious breach as his involvement had induced investors to become involved in these schemes.

79.16 In relation to the issue of dishonesty, the Tribunal took into account the Respondent had made his admissions with the benefit of hindsight as he now realised it was wrong to allow his firm's client account to be used as a banking facility. The Tribunal also noted the Respondent was earning a modest amount of money on each transaction,

albeit for little work. He had not read the relevant warning notices and had not been aware that these transactions were potentially scams. He said that he did not realise he was providing banking facilities or appreciate the dubious nature of the transactions themselves, at that time. The Tribunal did not find the allegation of dishonesty proved to the requisite standard as it was not satisfied that the Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Respondent was not a participant in the actual scam transactions but had simply allowed his client account to be used to facilitate them. The extent of his involvement was to charge a small fee for each transaction where he filled out a template form and allowed his client account to be used for the movement of funds.

79.17 The Tribunal found Allegations 1.2 and 1.3 proved both on the Respondent's admissions, his evidence and on the documents provided, but did not find the Respondent had acted dishonestly in relation to either allegation. The Tribunal did not find that the Respondent had misled purchasers as to the bills he was to deliver. The purchasers said that they did not think that any part of their money was to go to the company receiving the money, but the Tribunal considered that as the people paying the money were not charged by the Respondent it was obvious that the company receiving the money would be paying the Respondent, and the mechanism used did not of itself constitute misconduct.

80. **Allegation 1.4 - The Respondent acted in circumstances where there was a conflict (or a significant risk of a conflict between him and various clients) in breach of Rule 3 and Outcomes 3.6 and 3.7 of the SRA Code of Conduct in relation to various property transactions in the period November 2012 to September 2013. It was alleged the Respondent had acted dishonestly.**

80.1 The Respondent admitted Allegation 1.4 but denied he had acted dishonestly.

80.2 Mr Soloman submitted the Respondent was a joint owner with his wife and children of TN Ltd. Despite this, he had acted for TN Ltd as lender and borrower in various transactions, which created a clear conflict of interest. There was no informed consent from the other parties in writing or otherwise.

80.3 Mr Soloman submitted there had been an obvious conflict of interest as it was quite clear that a solicitor could not act for both parties in a property transaction. The Respondent in his Answer dated 31 August 2016 had stated Nationwide were only acting for the lender, TN Ltd and not the borrower. This indicated that the Respondent clearly knew there would be a breach of Rule 3 if he had acted for both parties. Having said this in his Answer, the Respondent subsequently abandoned that position. Mr Soloman submitted the Respondent had systematically breached these rules over a period of time and this indicated he had acted dishonestly.

80.4 The Forensic Investigation Officer, Mr Sangha, confirmed TN Ltd was owned by the Respondent and his wife was a shareholder of the company. She was also one of the directors and shareholders of DT Ltd.

80.5 The Respondent's evidence was that these were in house transactions between him, his wife and his business. He stated that where others were involved, they had obtained advice from their own solicitors.

80.6 The Respondent admitted he had breached Rule 3 of the SRA Accounts Rules 2011 and Outcomes 3.6 and 3.7 of the SRA Code of Conduct in relation to these property transactions. It was not clear to the Tribunal why dishonesty had been alleged in relation to this particular allegation. The Rule 5 Statement did not set out in any detail why it was alleged the Respondent's conduct in this regard had been dishonest and nor did Mr Soloman address this specific point with sufficient clarity in his submissions. Accordingly the Tribunal did not find dishonesty proved on Allegation 1.4 as the Tribunal concluded acting for both parties in these circumstances without their consent would not be considered dishonest by the ordinary standards of reasonable and honest people.

80.7 The Tribunal found Allegation 1.4 proved on the Respondent's admissions and on the documents provided but did not find the Respondent had acted dishonestly. What the Respondent did was to run all the matters relating to a family company, and for his wife's personal affairs, through one client ledger account and one file. This is plainly wrong: while no one in the family company was misled, there should have been different files for different matters and, as alleged in Allegation 1.5, the client account was used as a bank account for the family company, all on one ledger.

81. **Allegation 1.5 - The Respondent failed to comply with the restrictions on transfers between clients laid down in Rule 27.2 of the Solicitors Accounts Rules 2011 in transferring £4,479.40 from one client ledger account to another client ledger account simply to close one of the client ledger accounts. It was alleged the Respondent had acted dishonestly.**

Allegation 1.6 - The Respondent breached Rule 20.1 of the Solicitors Accounts Rules 2011 in the period July 2013 to September 2013 in withdrawing approximately £513,500 in relation to 7 transactions from a client account for a purpose other than to pay to or on behalf of the client and/or for failing to obtain client instructions in respect of the same. It was alleged the Respondent had acted dishonestly.

81.1 The Respondent admitted Allegations 1.5 and 1.6 but denied he had acted dishonestly.

81.2 In relation to Allegation 1.5, Mr Soloman submitted the Respondent had transferred money from one client account to another simply to close one of the client ledger accounts without the authority or written agreement of both clients. Mr Soloman reminded the Tribunal that the Respondent in his Answer initially stated that TN Ltd and DT were the same company and these were inter-company transfers for the same client rather than different clients.

81.3 In relation to Allegation 1.6, Mr Soloman submitted the Respondent had withdrawn a total of £513,500 from client accounts in respect of 7 transactions for purposes other than payment on behalf of the client, and without obtaining the clients' written instructions.

81.4 Mr Soloman submitted the Respondent in his Answer appeared to be blaming others stating that the accounts and client ledgers were not his responsibility. However, Mr Soloman submitted the breaches were so clear that the Respondent must have known that what he was doing was wrong. Mr Soloman submitted the Respondent had tried to conceal his conduct by not telling Mr AW or the SRA. He had systematically acted in this way at two separate firms.

81.5 The Forensic Investigation Officer, Mr Sangha, confirmed TN Ltd was owned by the Respondent and his wife was a shareholder of the company. She was also one of the directors and shareholders of DT Ltd.

81.6 The Respondent during his evidence stated that during the period 1994 to 2002, he had joined the family business and during this time, there had been occasions when friends had approached him to loan money to them as they were having difficulties getting funds from the bank. He started to do this, charging interest and realised it was a lucrative business. He obtained a licence to conduct this type of business and continued to do so when he went back into legal practice, ensuring borrowers obtained independent legal advice when interest was charged. The Respondent stated he only offered short term bridging loans for a period of about 30 days.

81.7 The Respondent stated his business all came from friends or people that he knew, he had never advertised his business or approached anyone. Nationwide would draw up the Legal Charge, an offer letter and a Certificate which the borrower's own solicitor would advise on and complete. The documents would then be returned to Nationwide by the borrower's solicitor.

81.8 The Respondent produced a number of documents relating to Mr S on 11 January 2017 to confirm this position. He stated he had only been able to obtain these documents the previous evening. He stated that when he became a partner at Nationwide, he had decided to archive the old TN Ltd files by scanning them onto discs and then destroying the originals. The information was backed up onto a hard drive which he kept at home. However, the Respondent stated this became corrupted so he had been unable to access the information. The Respondent confirmed Mr S had also been a client of Nationwide but not in relation to this particular transaction. He stated that when Mr Sangha had asked him for documents, he had not had this information. He stated that he had only found out the previous day that the funds had been sent by Nationwide. The Respondent accepted he should have mentioned the discs had been corrupted to the SRA earlier and stated there was no reason for him to withhold this information. He had obtained the documents by contacting the clients.

81.9 On cross-examination, the Respondent stated he had never previously informed the SRA that the hard drive he had referred to was corrupted. He stated that when Mr Sangha asked him for documents, they had been available on hard drive but were not at the offices of Nationwide at that time. The Respondent stated he had provided those files requested by Mr Sangha. He stated he had discovered the information was corrupted at around the beginning of 2015 but that Mr Sangha had never asked him for any of the documents that he had not provided.

81.10 The Respondent accepted no client care letter or bills had been sent to TN Ltd and that there was nothing on the Nationwide files to explain the loans. He stated the facility letters were on the TN Ltd files which were kept at his house. The Respondent stated that he made sure all formalities were complied with otherwise he appreciated his loan was in jeopardy and he would not be able to recover his funds. He would not lend money without securing the necessary documents otherwise his funds would be at risk.

81.11 The Respondent stated that although the loan was between TN Ltd and the borrower, TN Ltd could only transfer funds of up to £10,000 by a BACS transfer. Nationwide's account was used as solicitors could send out any amounts by BACS transfers. The Respondent stated that there was a legal transaction as an offer letter had been issued and a Legal Charge prepared. The Respondent denied he had been using Nationwide as a firm of solicitors to lend trust to the transactions.

81.12 The Respondent stated that on one occasion, a loan had been repaid by E. TN Ltd was lending money to D and the Respondent had taken a "shortcut in the ledger" by transferring the money from E to D, even though it was recorded as repaid on the TN Ltd ledger. He stated it had been "sheer laziness" to deal with the transactions in this way.

81.13 The Respondent confirmed Nationwide had acted on behalf of his wife's companies. He stated transfers had been made from TN Ltd to L Developments and both of these companies belonged to his wife. She had never refused to sign a transfer

81.14 The Respondent stated that although he had little knowledge of fraud and money laundering regulations, he had been subject to previous SRA inspections and had never been told there was a problem so he assumed it was acceptable to continue acting as he had. Auditors had also gone through his accounts and not raised any issues.

81.15 Mr Barnett, in his closing submissions, submitted these allegations were technical breaches of the Solicitors Accounts Rules as most of the transfers concerned the Respondent's wife who was the underlying client as director and shareholder of the companies involved in the transactions. The Respondent had failed to ensure his wife signed the necessary authority letters as transferor but this had not been necessary as his wife had been transferring money between her own businesses and/or herself. In any event, all the transactions were properly recorded in Nationwide's ledgers and in the accounts of both companies.

81.16 The Respondent had admitted he had breached Rule 27.2 and Rule 20.1 of the Solicitors Accounts Rules 2011. The Tribunal having considered all the evidence concluded the Respondent had failed properly to identify the correct client and had simply used one account for all the transactions. He had effectively used his firm's client account as if it were his family company account, moving money around as and when he needed to in the quickest way. The Respondent had effectively driven a coach and horses through the Solicitors Accounts Rules but he had not deceived any party and indeed had insisted borrowers obtain independent legal advice.

81.17 On the issue of dishonesty, the Tribunal had not been provided with any evidence of any disadvantage or loss to any party, or of any advantage to the Respondent. He had breached the Solicitors Accounts Rules which was a very serious matter but the Tribunal was not satisfied that transferring funds from one client ledger to another simply to close one of the client ledger accounts would be regarded as dishonest by the ordinary standards of reasonable and honest people. Nor was the Tribunal satisfied withdrawing funds from the client account for a purpose other than to pay to or on behalf of the client and/or failing to obtain client instructions in the context of these companies which were family companies would be regarded as dishonest by the ordinary standards of reasonable and honest people.

81.18 The Tribunal found Allegations 1.5 and 1.6 proved on the Respondent's admissions, evidence and the documents provided but did not find he had acted dishonestly in relation to either allegation. The essence of the allegation is that the Respondent did not treat his client account as a solicitor's client account, but as an account from which to fund a loan book for multiple short term loans, as if it was the bank account of the family company, and this is precisely what he did.

Previous Disciplinary Matters

82. The Respondent had appeared before the Tribunal previously on 25 November 1993.

Mitigation

83. Mr Barnett referred the Tribunal to a number of character references that had been provided. He submitted that the Respondent was aware he was in a precarious position but this was a case where the Tribunal could impose a suspension. The Respondent had previously been struck off the Roll by the Tribunal on 25 November 1993 and had been restored to the Roll on 1 July 2004. The Respondent had been working in a cash rich retail business and had used the funds for his loan business. As the amount of work increased, he decided to apply for restoration in 2004 and, Mr Barnett submitted it was clear from the Tribunal's decision in July 2004 that the Respondent had made a compelling application.

84. The Respondent felt that the SRA had been unhappy with his restoration and Mr Barnett stated that a number of allegations of dishonesty had been made without any merit. Mr Barnett stated there had also been an intervention when further dishonesty allegations had been made but not pursued. Since that intervention the Respondent had not worked as a solicitor. He was currently contesting the intervention which had cost him a great deal of money. Mr Barnett submitted the SRA was seeking to make the Respondent bankrupt and as a result of this, there had already been a substantial deterrent effect on him.

85. Mr Barnett submitted that whilst the Tribunal had found dishonesty proved in relation to Allegation 1.1, there had been no loss to clients.

86. The Respondent gave further evidence to the Tribunal in relation to mitigation. He reiterated that the grounds of the intervention related to a host of dishonesty allegations which had not been pursued. At the time of the intervention, the Respondent stated Nationwide had taken over both Daybells Solicitors and

Lillywhite Williams so there were three firms with a combined turnover of over £2.5 million. The Respondent stated that Nationwide had approximately £2m in its client account. The Respondent stated the costs of the intervention were £415,700 and there were unbilled surplus funds of approximately £589,000 being held by the SRA.

87. The Respondent stated that although the SRA had initially refused to accept he was a member of Lillywhite Williams and said they would not pursue costs against him, he had now received a letter from them stating he was a member of Lillywhite Williams and needed to pay the costs. On cross-examination the Respondent stated that he had applied to set aside the Statutory Demand served on him by the SRA and this was due to be heard on 8 June 2017.

88. The Respondent also advised that he received a monthly payment from TN Ltd in the sum of £6,000. He confirmed he owned properties in London and Manchester which were rented and that he currently lived in his wife's property.

Sanction

89. The Tribunal had considered carefully the Respondent's further evidence, his submissions and the references provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

90. The Tribunal considered the Respondent's culpability to be high as he had had direct control over his actions. His motivation in repeatedly misleading the lenders over a long period of time on transactions where instructions had been sent to Lillywhite Williams but the work was carried out by Nationwide had been deliberate and calculated to allow him to service Nationwide clients with mortgages from lenders panels from which Nationwide were excluded, which he would not otherwise have been able to do. He had also allowed his client account to be used as a banking facility thereby lending credibility to a large number of dubious transactions. He had shown a complete disregard for the Solicitors Accounts Rules 2011 by moving client funds around in an improper manner on numerous occasions.

91. The Respondent's conduct had caused serious harm to lenders who had been misled and to investors who had relied on the involvement of a solicitors practice when deciding to invest in the diamond and fine art schemes. He had also caused harm to the reputation of the legal profession. This was harm that the Respondent should have reasonably foreseen would be caused by his behaviour.

92. The Tribunal considered the aggravating factors in this case. The Tribunal had found the Respondent had acted dishonestly in relation to misleading lenders. The Respondent's conduct was deliberate, calculated and repeated over a long period of time. The Respondent knew or ought to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the profession. The Respondent has also previously appeared before the Tribunal and had been struck off. The allegations that were proved on that occasion related to the Respondent being convicted in the High Court for an offence of contempt of court in the course of his practice as a solicitor, and destroying and/or altering documents

relating to a transaction alleged to be the subject of mortgage fraud. This was considered to be conduct unbefitting a solicitor and was conduct that compromised or impaired the good repute of the solicitors' profession and/or his duty to the court.

93. The Tribunal then considered the mitigating factors. The Respondent had made some admissions albeit on the first day of the hearing, but the Tribunal was not satisfied he had demonstrated genuine insight or remorse. He had provided a number of testimonials although none of those made reference to the current disciplinary proceedings.

94. The Tribunal then considered each of the sanctions in turn. Given the finding of dishonesty, a serious lack of integrity and the numerous breaches of the SRA Accounts Rules 2011 and the SRA Principles 2011 the Tribunal concluded this case was too serious for No Order, or a Reprimand, or a Fine or a Restriction Order. Such sanctions would not be adequate for the misconduct found proved and would not protect the reputation of the profession particularly where the Respondent's culpability had been found to be high.

95. The Tribunal then considered the sanction of Suspension. The Respondent had not demonstrated genuine insight and his misconduct, which included a finding of dishonesty, was at the higher level. The Tribunal considered the Respondent's conduct exhibited a complete disregard of his obligations as a solicitor and the rules that were in place to protect the public. The Tribunal was of the view that a suspension would not be a sufficient sanction to protect the public or the reputation of the legal profession.

96. The Tribunal was also mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

97. The Tribunal was satisfied that there were no exceptional circumstances in this case. It also bore in mind the fact that the Respondent had previously been struck off the Roll and had already been given a second opportunity when he was restored to the Roll in 2004. The Tribunal concluded that the appropriate sanction to maintain the public's confidence in the profession, as well as protect the public was to strike the Respondent off the Roll of Solicitors. The Tribunal Ordered the Respondent be Struck off the Roll.

Costs

98. Mr Soloman requested an Order for the Applicant's costs in the total sum of £65,977.41. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Soloman submitted the Applicant had succeeded on all the allegations save for a number of dishonesty allegations. He reminded the Tribunal that the Respondent had only made admissions on the first day of the hearing which had still lasted three days.

99. Mr Barnett referred the Tribunal to the Respondent's Statement of Means and invited the Tribunal to take those into account when assessing costs.

100. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Admissions had only been made on the first morning of the hearing and the Respondent had failed to provide a witness statement which had inevitably increased the costs incurred as the Tribunal heard his evidence for the first time in the witness box. This had assisted the Tribunal in assessing how serious the Respondent's conduct had been. However, the absence of a witness statement from the Respondent together with his evasive and contradictory answers when giving his evidence had undoubtedly increased the length of the hearing unnecessarily.

101. The Tribunal considered the Respondent's evidence relating to the intervention was not relevant to this case. It was clear that the Respondent was the owner of two rental properties, he received a regular income each month and it appeared the SRA were holding funds due to him from his client account. He therefore had the means to meet a costs order.

102. The Tribunal was satisfied the costs claimed were reasonable and had been properly incurred. This had been a complex case which involved a number of different issues and had required three forensic investigations to be prepared. It was not appropriate for these costs to be borne by the profession. The Tribunal therefore made an Order that the Respondent pay the Applicant's costs in the sum of £65,977.41.

Statement of Full Order

103. The Tribunal Ordered that the Respondent, NARESH CHOPRA, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £65,977.41.

Dated this ~~1st~~ 5th day of June 2017
On behalf of the Tribunal

D. Green
Chairman