

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11630-2017

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ERNEST HEDWA MUGADZA

Respondent

---

Before:

Ms J. Devonish (in the chair)

Mr P. Lewis

Dr S. Bown

Date of Hearing: 6 September 2017

---

**Appearances**

Inderjit Singh Johal, barrister of Solicitors Regulation Authority of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Susanna Heley, solicitor of Radcliffes LeBrasseur, 85 Fleet Street, London, EC4Y 1AE for the Respondent.

---

**JUDGMENT**

---

## **Allegations**

1. The Allegations against the Respondent made by the Applicant were that:
  - 1.1 He failed to carry out any adequate enquiry in relation to Mr NK and Mr RW, to include any adequate enquiry into each person's employment history and Mr NK's right to work in the UK and his practising status before employing them to work at his firm, in breach of all or alternatively any of Principles 6 and 8 of the SRA Principles 2011 ("the Principles");
  - 1.2 Between 31 August and 12 September 2016 he received a total of £2,686,563.62 into his client bank account and authorised 10 payments from that account totalling £2,681,695.77 to third parties without making any enquiry about the size of the payments or the identity of the recipients, and thereby recklessly facilitated five conveyancing transactions that bore the hallmarks of mortgage fraud in breach of Rule 20 of the SRA Accounts Rules 2011 ("SAR 2011") and all or alternatively any of Principles 2,6 and 10 of the Principles;
  - 1.3 Between May and September 2016, he failed to exercise any or any adequate supervision or control over Mr NK, which permitted him to carry out conveyancing transactions that bore the hallmarks of mortgage fraud, as referred to in Allegation 1.2 in breach of all or alternatively any of Principles 6 and 8 of the Principles and Outcome 7.8 of the SRA Code of Conduct 2011 ("SCC 2011");
  - 1.4 He failed to comply and or ensure compliance with Money Laundering Regulations 2007 ("MLR 2007") in respect of at least one of the conveyancing transactions that bore the hallmarks of mortgage fraud, as referred to in Allegation 1.2, in breach of Principle 7 and Outcome 7.5 of the SCC 2011;
  - 1.5 He failed to maintain client ledgers, at least in respect of the conveyancing transactions that bore the hallmark of mortgage fraud, in breach of Rule 29 of the SAR 2011 and Principle 8 of the Principle;
  - 1.6 In his capacity as the Firm's COLP and COFA, he failed to ensure compliance with the SAR 2011 and the MLR 2007, and therefore breached Rules 8.5 (c) (i) and 8.5 (e) (i) of the SRA Authorisation Rules 2011;

## **Documents**

2. The Tribunal considered all the statements, exhibits and submissions presented to it including:

### **Applicant**

- Application and Rule 5 Statement with exhibit IJ/1 dated 23 March 2017
- Schedule of Costs

## Respondent

- Answer to Rule 5 Statement dated 9 May 2017
- Amended Answer to Rule 5 Statement dated 11 May 2017
- Witness Statement dated 4 September 2017

## Factual Background

3. The Respondent, was born in March 1953 was admitted to the Roll of Solicitors on 2 August 2004. The Respondent was the sole director of Denning Solicitors (“the Firm”) from 26 April 2016 until it was intervened into by the SRA on 13 October 2016. The Respondent had become the Compliance Officer for Legal Practice (“COLP”) and the Compliance Officer for Finance and Administration (“COFA”) of the Firm on 14 June 2016 and held that position until the intervention. The main areas of practice of the Firm were immigration law (65%), criminal work (10%) and corporate/commercial work (8%).
4. At the time of the hearing the Respondent held a current practising certificate which was subject to conditions.
5. As a result of reports received, the SRA’s Forensic Investigation department carried out an urgent inspection of the Firm on 20 September 2016. An Interim FI Report (“the Interim FIR”) dated 29 September 2016 was produced following the inspection, during which the Respondent was interviewed by Forensic Investigation (FI) officers, Claire Guile and Mohnish Dhanda.
6. The Interim FIR exemplified four suspected fraudulent conveyancing transactions at the Firm which caused a potential minimum cash shortage in client account of £2,392,415.77. The transactions were conducted by NK, who the Respondent had engaged as a non-practising consultant in May 2016. NK had been engaged on the recommendation of RW, who had been employed as an Office Manager from May 2016. The Interim FIR led to the intervention into the Firm on the 13 October 2016. A final FI report (“the final FIR”) dated 3 March 2017 was produced by Stephen Cassini which contained further information about the four suspected fraudulent transactions identified in the Interim FIR. The final FIR also exemplified a further suspected fraudulent conveyancing transaction which increased the overall cash shortage to £2,686, 563.62.

### Allegation 1.1

7. The Respondent employed RW as an office manager in May 2016. RW provided the Respondent with a copy of his passport, driving licence, bank statement and bank cards as proof of his identity. RW’s middle name was spelt differently on his passport and on his driving licence. The Respondent did not seek any reference, personal or professional, for RW before employing him.
8. The Respondent employed NK some three weeks after taking on RW. RW recommended NK to the Respondent as a non-practising solicitor. The Respondent took RW on as a consultant who had experience of conveyancing work and would bring in new clients to the Firm. NK entered into a verbal consultancy agreement with

the Respondent through which NK would receive 30% of the fees that he billed. The Respondent did not obtain any personal or professional references for NK. The Respondent by way of identity documents, obtained a copy of NK's expired passport, a BT utility bill and a copy of his practising certificate for the year 2014-2015. The Respondent told the FI Officers that he had initially been concerned with NK's right to work in the UK, but stated that he had seen a five year visa on NK's passport. The Respondent was unable to provide the FI Officers with a copy of the visa.

9. The FI Officer, Mr Dhanda was provided with a copy of NK's passport and he commissioned a World-Check verification report in respect of it. The result of that check was that the passport details contained within the copy provided to him were false, casting doubt on the genuineness of the passport. The final FIR stated that the Home Office had advised the SRA that they did not have a record of NK having leave to remain or work in the United Kingdom. They also advised that NK's passport was not genuine.
10. Mr Dhanda also obtained a copy of NK's practising certificate from the Respondent. The unique SRA reference number quoted on the certificate related to another individual, a practising solicitor, and not NK. The SRA number appeared to have been superimposed onto the practising certificate with NK's name.

#### Allegation 1.2

11. The Respondent was the sole signatory on the HSBC client account which was mainly used for conveyancing transactions. The Respondent informed the FI Officers that there was a two-part process for the approval of any payments from client bank account. The arrangement which the Respondent set up was that when payment was required in relation to conveyancing transactions, NK would produce the completion statement and show this to RW. RW had online banking access via a dongle and would generate a payment request online and inform the Respondent when he had done so. The Respondent would subsequently log into the client account and review the payment before authorising it. The Respondent provided a statement dated 21 September 2016 to the FI Officers in which he stated that at around late August/early September 2016, RW was away following a death in the family and that he had left his HSBC dongle with NK so that he could generate payment requests, which he did between 5-12 September 2016.

#### The Five Transactions that bore the hallmarks of Mortgage Fraud

##### 12. Transaction 1 – Property in London W8

- 12.1 NK acted for a Mr FGD in the purchase of the above property. The lender, Lendy Limited and its agent, Saving Stream Security Holdings Limited were represented by Clarke Willmott LLP. The Seller was represented by Moreland & Co.
- 12.2 The interim FIR recorded that on the 8 September 2016 the Firm received £1,743,364.10 from the Clarke Willmott LLP as loan monies for the purchase of the property. The Respondent authorised the following payments to third parties:

- (i) 9 September 2016- £145,612.35 to NM
- (ii) 9 September 2016 - £285,184.29 to ML
- (iii) 9 September 2016 - £803,127.11 to AGH
- (iv) 12 September 2016 - £509,440.35 to EVL

12.3 There was no evidence that any of the payments were made in respect of the transaction. The Respondent authorised the payments amounting to the entire loan monies received.

13. Transaction 2 – Property in London E17

13.1 NK purportedly acted for the owner, Mr RTR in the sale of the above property. The Respondent provided a file of papers to the FI Officers and relevant e-mails from his account. There was no client care letter on file or evidence of due diligence in order to confirm the identity of the client.

13.2 There were various documents found on file including:

- (i) a signed Abbey National Plc Mortgage Deed, dated 21 July 2004;
- (ii) a Leasehold Information Form purportedly signed by the seller on 9 August 2016;
- (iii) e-mails from NK to the buyers solicitors, Richard Pearlman LLP and to the purported owner, Mr RTR, both dated 9 August 2016;
- (iv) a copy of the mortgage redemption statement from Santander Plc dated 18 August 2016;
- (v) two completion statements - one showing the amount due from Richard Pearlman LLP and the other showing the amount due to the client;

13.3 A review of the documents revealed a number of anomalies:

- (i) the vendor's signatures did not appear to match on the Abbey National Plc Mortgage Deed and the Leasehold information form;
- (ii) the sale price varied in the e-mails sent by NK to the buyers solicitors (£250,000) and the owner (£370,000) on the same day; and
- (iii) the completion statement showed an amount payable of £195,985 which was described as a 'Santander Charge' yet the mortgage redemption statement from the Santander Plc showed a redemption amount to be £49,150.68.

13.4 On the 6 September 2016, £249,886.25 was transferred from Richard Pearlman LLP to the Firm. The Respondent authorised the following transfers to third parties:

- (i) 7 September 2016 -£195,985 to AAGT
- (ii) 8 September 2016 -£ 52,889.22 to PD
- (iii) 8 September 2016 £850- Firm's office account for its fees.

13.5 There was no evidence that any of the payments authorised by the Respondent were properly made in respect of the transaction. Richard Pearlman LLP sent a letter of complaint to the SRA dated 26 September 2016. The letter stated that although completion took place on 6 September 2016 they did not receive the transfer form from NK despite NK informing him in an e-mail on 15 September 2016, that he would send it by Recorded Delivery. The letter also made reference to the purchase monies not being used to redeem the mortgage nor the balance of the monies being sent to the seller and that the monies had instead been sent to two separate accounts as directed by NK.

#### 14. Transaction 3 – Property in London RM8

14.1 NK purportedly acted for the owner, Mr C in the sale of the property. On 12 September 2016, Mackerell Turner Garrett (MTG), solicitors for the buyers transferred the net proceeds of sale amounting to £259,213.27 to the Firm. The Respondent authorised the following payments:

- (i) 12 September 2016 -£162,500 to NM
- (ii) 12 September 2016 - £93,577.40 to AH

14.2 There was no evidence that any of the payments authorised by the Respondent were properly made in respect of the transaction.

14.3 On 19 September 2016, MTG wrote to the Respondent informing him that their client was unable to register their property or take possession of it despite completion on 12 September. MTG asserted that NK and the Respondent were in breach of undertakings to redeem the mortgage over the property and to send an executed transfer form. The letter also referred to an e-mail received by MTG purportedly from the Respondent dated 13 September 2016 in which he confirmed that they had sent Birmingham Midshires the redemption amount and would hold the remaining balance to their order as agreed. The letter made reference to another e-mail, again purportedly from the Respondent dated 5 September 2016 confirming that the TR1 (transfer form) was “in the post”.

14.4 It appeared to the Applicant that the e-mails received by MTG on 13 and 15 September were from NK and not from the Respondent as NK had access to the Respondent's e-mail account and he had conduct of the matter.

#### 15. Transaction 4 – Property in London N14

15.1 NK purportedly acted for the owners of the property, Mr B and Ms S, in the sale of the property. On 9 September 2016 the Firm received £144,100 as a deposit from the

buyer's solicitors, ABGM. On 12 September 2016, the Respondent authorised a payment of the entire amount received to FH, an unrelated third party.

- 15.2 The Respondent provided the FI Officer with copies of e-mails concerning the transaction. An e-mail dated 20 September 2016 from IA of ABGM recorded a conversation with the Respondent that day in which he confirmed that the £144,100 was received as exchange funds and that these were to be held by the Firm as stakeholder in accordance with the contract. The e-mail also recorded the Respondent's confirmation of the payment to FH and stated that he would obtain account details of the recipient. The Firm also received an e-mail dated 20 September 2016 from Shepherd Harris & Co, Solicitors for Mr B, the joint owner of the property in which they stated that Mr B had not instructed the Firm or indeed any solicitors in respect of the sale. Mr B reported the matter to the Police.

16. Transaction 5 – Property in London E6

- 16.1 The Firm acted in the purported sale of the above property for the sellers, IC and MUC in August 2016. Martin Shepherd Solicitors LLP acted for the buyers. The purchase price of the property was £290,000. Exchange took place on 30 August 2016 with completion the following day. On exchange the Firm provided Shepherd Harris LLP with a TA13, which stated that a charge, held by Santander PLC was secured on the property and was to be redeemed on completion. Martin Shepherd LLP transferred £290,000 to the Firm's client bank account on 31 August 2016.
- 16.2 Following receipt of the funds, the following payments were made on 31 August 2016 to unrelated third parties:
- (i) £130,000 to VS
  - (ii) £158, 595.51 to AAGT
- 16.3 There was also a transfer of £720 from the office to the client account, which resulted in the entire amount of monies received being used on the same day. The Firm did not redeem the mortgage and did not send a duly executed transfer form to Martin Shepherd LLP. A letter of complaint was made to the SRA by Martin Shepherd LLP on 20 September 2016.

Allegation 1.3

17. The Applicant's case was that in the context of the circumstances outlined in respect of Allegation 1.2 above, the Respondent had failed to exercise any or adequate supervision of NK.

Allegation 1.4

18. The Applicant's case was that in the context of the circumstances outlined in respect of Allegation 1.2 above, the Respondent had failed to ensure compliance with the MLR 2007.

Allegation 1.5

19. The Applicant's case was that in the exemplified transactions described in respect of Allegation 1.2 above, the Respondent failed to maintain client ledgers.

Allegation 1.6

20. The Applicant's case was that the Respondent had failed in his role as COLP and COFA to ensure compliance with the MLR 2007 and the SAR 2011.

**Witnesses**21. The Respondent

- 21.1 The Respondent confirmed that the contents of his Witness Statement were true to the best of his knowledge and belief. He denied that he had acted recklessly or that he had lacked integrity, as alleged in Allegation 1.2. He had not seen any risk that the transactions were facilitating transactions that bore the hallmarks of mortgage fraud. He admitted the remainder of Allegation 1.2 and all other Allegations in full. His Witness Statement set out in detail the circumstances in which he had become Director of the Firm.
- 21.2 He had believed that NK was a genuine, practising solicitor who had expertise in conveyancing. He therefore believed that the payment requests he submitted were also genuine. There was a two-stage process for authorising payments. NK would provide the completion statement and documentation to RW, who would in turn generate a payment request for the Respondent to authorise. The reason for this process was to ensure that the payments were correct. The Respondent agreed that at the time of the payments that formed the basis of the Allegations, RW was not in the office. He was asked, in cross-examination, how he had reassured himself that the payments were correct in the absence of this 'safety net'. He explained that the emails being sent to him by NK reassured him that there was no problem with the payments.
- 21.3 In response to a question from the Tribunal, the Respondent explained that the reason for having a two-stage process was to avoid the client account becoming overdrawn and so he wanted final approval of all payments.
- 21.4 The Respondent was asked how he could have been sure that there were sufficient funds in the client account in the absence of any ledgers. He told the Tribunal that he was able to link the money coming into the account with the payment being requested by NK. In addition he relied on the bank to ensure that the recipients were genuine, by which he meant that he had asked the bank to make sure that the funds were going to a genuine account. Furthermore, any incorrect payment could be reversed by the bank. The Respondent was expecting NK to bring the files into the office to match up the payments.
- 21.5 It was put to the Respondent that he knew that he was taking a risk in authorising the payments in those circumstances. He denied this, stating "I would never take this risk at all".

- 21.6 The Respondent was asked why he had not queried the significant variation in price that occurred in the transaction of the property in London E17. He told the Tribunal that he had believed that the buyer had been gazumped and that this explained the increase in purchase price. It did not ring any alarm bells and he did not feel the need to query it.
- 21.7 It was pointed out to the Respondent that the payments should have been going to banks and commercial lenders and that the fact they were not should have alerted him to a problem. The Respondent reiterated that he had faith in NK at the time and trusted that he was acting correctly.
- 21.8 In response to questions from the Tribunal, the Respondent explained that he had mainly conducted criminal and immigration work and had done very little conveyancing. His experience in conveyancing was limited to looking at completion statements and balancing the credits and debits. This was while he was working for a previous firm.
- 21.9 The Respondent accepted that he had been responsible for protecting client monies and he had failed to do so. He was devastated when he realised what had occurred and he offered his sincere apologies to the Tribunal and to his clients for his failings. He did not wish to supervise fee earners again in the future. His hope was that, going forward, he could use his skills as a criminal solicitor to engage with young people in East London as part of an effort to combat knife crime.

### **Findings of Fact and Law**

22. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written 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.
23. **Allegation 1.1 - He failed to carry out any adequate enquiry in relation to Mr NK and Mr RW, to include any adequate enquiry into each person's employment history and Mr NK's right to work in the UK and his practising status before employing them to work at his firm, in breach of all or alternatively any of Principles 6 and 8 of the SRA Principles 2011 ("the Principles");**
- 23.1 The Respondent admitted this Allegation in full. The Tribunal was satisfied on the evidence that the admission was properly made. The Tribunal found this Allegation proved beyond reasonable doubt.
24. **Allegation 1.2 - Between 31 August and 12 September 2016 he received a total of £2,686,563.62 into his client bank account and authorised 10 payments from that account totalling £2,681,695.77 to third parties without making any enquiry about the size of the payments or the identity of the recipients, and thereby recklessly facilitated five conveyancing transactions that bore the hallmarks of mortgage fraud in breach of Rule 20 of the SRA Accounts Rules 2011 ("SAR 2011") and all or alternatively any of Principles 2,6 and 10 of the Principles;**

### Applicant's Submissions

- 24.1 Mr Johal submitted that the Respondent had acted recklessly in failing to make any enquiries about payments he authorised. The transactions involved large amounts of monies which should have been going to lenders and banks and he failed to recognise he was paying unrelated individuals and companies. He had done so without sight of the relevant documents, files or ledgers. In doing so he was aware that there was a risk and had proceeded to adopt a high risk strategy. This met the definition of recklessness described in Brett v Solicitors Regulation Authority [2014] EWHC 2974 (Admin) which had affirmed that the correct test was that set out in R v G [2004] 1 AC 1034.
- 24.2 He had accepted in his interview that he was adopting a high risk strategy in making those payments. That recklessness meant that his actions had lacked integrity.
- 24.3 As to the definition of lack of integrity, the Tribunal was invited to apply the objective test by adopting the line of authorities that included Solicitors Regulation Authority v Chan and Ali [2015] EWHC 2659 and Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) and not following Malins v Solicitors Regulation Authority [2017] EWHC 835 (Admin), which held that integrity and dishonesty were essentially synonymous.

### Respondent's Submissions

- 24.4 The Respondent admitted breaching Rule 20 of the SAR 2011 and Principles 6 and 10 of the Principles. He denied acting recklessly or being in breach of Principle 2 of the Principles.
- 24.5 The Respondent had given evidence and been cross-examined on those matters and the Tribunal was invited to accept his evidence that he had not perceived there to be any risk involved in the transactions.
- 24.6 Ms Heley agreed with Mr Johal's submission as to the definition of recklessness. On the question of integrity she submitted that it was a character trait. The term 'integrity' suggested that someone was naturally inclined to do the right thing. A lack of integrity was something more than simply breaching the rules. It was not same as ignorance and required an element of moral turpitude, which Ms Heley agreed must be judged objectively. She cautioned against equating rule-breaking with lack of integrity.

### The Tribunal's Findings

- 24.7 The Respondent had admitted breaching Rule 20 of the SAR 2011 and Principles 6 and 10 of the Principles. The Tribunal was satisfied on the evidence that these admissions were properly made. The Tribunal found these parts of the Allegation proved beyond reasonable doubt. The disputed areas concerned recklessness and lack of integrity.

- 24.8 The Tribunal considered the question of recklessness, applying the test in R v G. The Tribunal had listened carefully to the Respondent's evidence on the issue as to whether he had been aware that there was a risk that the payments he had authorised were facilitating transactions that bore the hallmarks of mortgage fraud.
- 24.9 The Tribunal was required to consider the Respondent's state of knowledge at the time of the payments, not his recognition, in hindsight, that the transactions had indeed borne the hallmarks of mortgage fraud.
- 24.10 The Respondent had very limited experience in conveyancing. It was in this context that he had become director of the Firm, COLP and COFA and had engaged NK, who was to bring conveyancing clients to the Firm. The Respondent knew that he lacked experience in conveyancing matters and there was an obvious risk that he would be unable to adequately supervise NK's work in this area. He had compounded this risk by his admitted failure to carry out proper checks before employing NK.
- 24.11 The Respondent had set up a two-stage process for authorising payments precisely to ensure that there was no irregularity in the payments or breaches of the SAR. He had therefore appreciated that this was a risk, although the focus of his concerns was the possibility of the client account becoming overdrawn rather than mortgage fraud.
- 24.12 The risk intensified further when RW was away from the office, leaving NK solely responsible for generating the payment request for the Respondent's approval. The Respondent had again appreciated that a risk existed because he had, on his evidence, relied on the bank to alleviate some of that risk. The Tribunal was satisfied beyond reasonable doubt that the Respondent appreciated that there was a risk that the payments he had authorised were facilitating transactions that bore the hallmarks of mortgage fraud.
- 24.13 The Tribunal then considered whether, appreciating that a risk existed, the Respondent had acted reasonably in taking that risk. The Tribunal found that he had clearly not acted reasonably. The payments were not to lenders or banks but to unrelated third parties. In some cases the third party received funds in respect of more than one transaction. The Respondent authorised the payments without sight of ledgers, completion statements or the files. The Tribunal was satisfied beyond reasonable doubt that the Respondent's actions were reckless.
- 24.14 The Tribunal considered the matter of integrity. This Tribunal adopted the approach taken in Chan and Ali, a line of authorities most recently endorsed in Williams v Solicitors Regulation Authority [2017] EWHC 1478, which was to apply an objective test to the question of integrity.
- 24.15 The Respondent, as director, had ultimate responsibility for protecting client funds. This was reinforced by his role as COLP and COFA. Although he did not have conveyancing experience, he had 12 years post-qualification experience at the material time and would have understood the importance of protecting client money. Despite his high level of responsibility for such matters he placed significant reliance on the assurances of NK. On the Respondent's admission, he had not carried out any adequate enquiry into NK's suitability to be employed in a law practice. He had not sought references and he had not carried out the most basic checks with the SRA that

NK was even a solicitor. It was in this context that the Respondent authorised significant sums of money to be transferred to third parties unrelated to any of the transactions without sight of any adequate paperwork.

- 24.16 The Respondent had also ceded responsibility for ensuring the payments were genuine to the bank. The bank was in no position to ascertain whether payments related to a particular transaction.
- 24.17 The Tribunal had found that the Respondent had acted recklessly and it was satisfied beyond reasonable doubt that his reckless conduct together with his abdication of personal responsibility for ensuring that the payments did not facilitate mortgage fraud demonstrated a lack of integrity.
- 24.18 The Tribunal found Allegation 1.2 proved in full beyond reasonable doubt.
25. **Allegation 1.3 - Between May and September 2016, he failed to exercise any or any adequate supervision or control over Mr NK, which permitted him to carry out conveyancing transactions that bore the hallmarks of mortgage fraud, as referred to in Allegation 1.2 in breach of all or alternatively any of Principles 6 and 8 of the Principles and Outcome 7.8 of the SRA Code of Conduct 2011 (“SCC 2011”);**
- 25.1 The Respondent admitted this Allegation in full. The Tribunal was satisfied on the evidence that the admission was properly made. The Tribunal found this Allegation proved beyond reasonable doubt.
26. **Allegation 1.4 - He failed to comply and or ensure compliance with Money Laundering Regulations 2007 (“MLR 2007”) in respect of at least one of the conveyancing transactions that bore the hallmarks of mortgage fraud, as referred to in Allegation 1.2, in breach of Principle 7 and Outcome 7.5 of the SCC 2011;**
- 26.1 The Respondent admitted this Allegation in full. The Tribunal was satisfied on the evidence that the admission was properly made. The Tribunal found this Allegation proved beyond reasonable doubt.
27. **Allegation 1.5 - He failed to maintain client ledgers, at least in respect of the conveyancing transactions that bore the hallmark of mortgage fraud, in breach of Rule 29 of the SAR 2011 and Principle 8 of the Principle;**
- 27.1 The Respondent admitted this Allegation in full. The Tribunal was satisfied on the evidence that the admission was properly made. The Tribunal found this Allegation proved beyond reasonable doubt.
28. **Allegation 1.6 - In his capacity as the Firm’s COLP and COFA, he failed to ensure compliance with the SAR 2011 and the MLR 2007, and therefore breached Rules 8.5 (c) (i) and 8.5 (e) (i) of the SRA Authorisation Rules 2011;**

28.1 The Respondent admitted this Allegation in full. The Tribunal was satisfied on the evidence that the admission was properly made. The Tribunal found this Allegation proved beyond reasonable doubt.

### **Previous Disciplinary Matters**

29. On 20 December 2011 the Tribunal had ordered that the Respondent pay a fine of £15,000 and costs of £7,500 after his admission to the following Allegations, also made against two other Respondents;

- Contrary to Rule 32(1) of the Solicitors Accounts Rules 1998 they failed to keep accounting records properly written up at all times;
- Contrary to Rule 32(7) of the said Rules they failed to reconcile their client account in accordance with the requirements of the said Rule;
- Contrary to Rule 32(8) of the said Rules they failed to keep a central record or file of copies of bills and written notifications of costs;
- Contrary to Rule 32(9) of the said Rules they failed to retain accounting records in accordance with the requirements of the said Rule;
- Contrary to Rule 34 of the said Rules they failed to produce to a person appointed by the Authority records, papers and other documents necessary to enable preparation of a report on compliance with the Rules;
- They failed to notify the Authority of the closure of their firm;
- Contrary to Rule 13 of the Solicitors' Practice Rules 1990 they failed to ensure that the office from which they practised was properly supervised by a solicitor who had been admitted for at least three years;
- Contrary to the Solicitors' Indemnity Insurance Rules they failed to obtain run off indemnity insurance prior to the cessation of the firm.

30. The further allegation against the Respondent alone was that in breach of Rules 1(a) and (d) of the Solicitors' Practice Rules 1990 he had compromised or impaired his independence or integrity, and the good repute of himself and the solicitors' profession by allowing himself to be held out as a principal of EMG Law when he knew he was a partner in name only and it was not a genuine partnership.

31. The Tribunal read the Judgment of the previous findings.

### **Mitigation**

32. Ms Heley reminded the Tribunal that the previous findings, though dated January 2012, related to a case heard between May-December 2011. The Rule 5 Statement had been dated February 2009 and the conduct that formed the basis of the admitted Allegations had taken place in late 2006/early 2007, some 10 years ago. At

that time the Respondent had less than three years post-qualification experience and had not had the requisite experience to supervise.

33. The previous matter concerned a firm that had been set without proper structures in place. The Tribunal had criticised his conduct and fined him substantially. It had been the Respondent's first foray into management and had ended in disastrous failure. There had been no criticism of his handling of client matters. The Allegations related to Accounts Rules breaches and his dealings with the SRA and not his work as a solicitor.
34. The position in the case now before the Tribunal was that the Respondent had become involved in management for second time and again it had gone badly wrong.
35. The Respondent fully accepted that the Allegations were serious and that he was plainly not cut out for management. Once again no complaint had been made about matters on which he had worked for clients, despite two FIRs and an intervention into the Firm. In this case, as in the previous one, he had trusted people when he should not have done. These were errors of judgement which he regretted.
36. The Respondent had qualified in 2004 at age of 51. He was a criminal solicitor and was passionate about helping his clients. He had made admissions and had co-operated with the investigation. RW and NK were fraudsters who had gone to some effort to obtain a Practising Certificate number with which to deceive the Respondent. They had been setting him up for about four months, feeding him information which resulted in him making the transactions. They then disappeared and the Respondent had gone to the Police, his insurers and the SRA. He had attended the Tribunal to explain his actions.
37. Ms Heley conceded that the fraud was substantial and plainly damaging to reputation of profession. The Respondent was now 64, and he was a committed solicitor doing good work in community. Ms Heley invited the Tribunal to mark the misconduct by way of a suspension. If the Tribunal was minded to adopt this course she asked that it give consideration to suspending that suspension to allow the Respondent remain in practice for what remained of his career on the strictest of conditions. He was not cut out to manage but this did not mean he was a bad solicitor or that he was incapable of providing a good service to his clients. He had been manipulated by NK and RW and the Tribunal was invited to show compassion and impose a suspended suspension with conditions.

### **Sanction**

38. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
39. In assessing culpability, the Tribunal found that the Respondent's actions had come about as a result of his recklessness and were not planned by him. He had inadequate systems and safeguards in place which left him vulnerable to manipulation by RW and NK. In any case where client monies were not protected there was a breach of

trust as clients put their faith in solicitors to take the utmost care of their money and assets. The Respondent was the director and had sole responsibility for the misconduct that had occurred, though the Tribunal noted that he had sought to absolve himself of responsibility by reliance on the bank and NK to ensure that payments were properly made. Although his experience in conveyancing was virtually non-existent, he had 12 years' experience as a solicitor and it did not require extensive knowledge of conveyancing to appreciate that the Firm and the client account were not being properly operated.

40. The harm caused was substantial. The sums of money that had been misappropriated were very high and the consequent damage to the reputation of the profession was significant and serious.
41. The matters were aggravated by the fact that this was not a one-off but involved a total of ten payments across five separate transactions, albeit the Tribunal acknowledged that they took place over a short period of time. The Respondent knew that he was taking a risk, as discussed above, and therefore was aware that he was in breach of his obligations by proceeding to act in the way that he did. This was the second time that he had appeared before the Tribunal. In both cases it was his involvement in management despite a lack of experience and skill that had led to serious misconduct. The Respondent had not heeded the lesson of his previous appearance before the Tribunal.
42. The Tribunal had not heard evidence as to who had ultimately borne the losses, but it was reasonable to infer that clients, buyers, sellers and lenders were all at risk of a significantly negative impact as a result of the payments made.
43. The misconduct was mitigated by the fact that he had been deceived by RW and NK. The Respondent, on discovering the fraud had gone to the Police and notified his insurers. He had co-operated with the investigation by the SRA and had made substantial admissions in these proceedings. The Respondent's insight was limited as he had maintained that it was reasonable to have relied on the bank and the assurances he had been given by NK. However the Tribunal recognised that he had shown remorse for the consequences to the clients, as demonstrated by his fulsome apologies to them.
44. The misconduct was so serious that neither a Reprimand nor Fine would be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The Tribunal regarded the Respondent's recklessness and the lack of integrity, relating as it did to client monies, as so serious that the he should not be in practice.
45. The Tribunal considered a suspension. The misconduct was at a very high level and there was no point in the future that the Tribunal could identify when it would be appropriate for the Respondent to return to practice, having regard to the need to protect the public and the reputation of the profession. This was the Respondent's second appearance before the Tribunal and the Tribunal did not have confidence that imposing restrictions, in conjunction with a suspension, would be sufficient to protect the public.

46. The only appropriate sanction in the circumstances of this case was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.
47. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case, such that an indefinite suspension would be appropriate. The Tribunal had regard to the Respondent's personal mitigation but found that it did not amount to exceptional circumstances. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

#### **Costs**

48. The parties had agreed costs in the sum of £14,300. The Tribunal was satisfied that this was a reasonable and proportionate level of costs in all the circumstances and ordered the Respondent to pay the Applicant's costs fixed in that sum.

#### **Statement of Full Order**

49. The Tribunal Ordered that the Respondent, ERNEST HEDWA MUGADZA, 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 £14,300.

Dated this 20<sup>th</sup> day of September 2017

On behalf of the Tribunal



J. Devonish  
Chair

Judgment filed  
with the Law Society  
on 20 SEP 2017