

IN THE MATTER OF GODWIN OKRI AND [*SECOND RESPONDENT*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

[*NAME REDACTED*]

Mr. D. J. Leverton (in the chair)
Miss N. Lucking
Mrs V. Murray-Chandra

Date of Hearing: 11th and 12th September 2008
and 10th December 2008

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by George Marriott, a partner in the firm of Gorvins Solicitors of 4 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 13th June 2007 that Godwin Okri of Winman Okri Solicitors, 721 Ashton New Road, Manchester, M11 4GR and of Soorii Ayoola & Okri, 293 Plumstead High Street, London, SE18 1JX, solicitor, and [*SECOND RESPONDENT*] of Soorii Ayoola & Okri, 293 Plumstead High Street, London, SE18 1JX, solicitor, may be required to answer the allegations contained in the statement which accompanied the application and that such Order may be made as the Tribunal shall think right.

The allegations against the First and Second Respondents were that they had been guilty of conduct unbecoming a solicitor in that:-

- (1) they acted in a conveyancing transaction contrary to Rule 6(a)(i) of the Solicitors Practice Rules 1990;
- (2) they acted in a conveyancing transaction contrary to Rule 6(a)(ii) of the Solicitors Practice Rules 1990;
- (3) they proceeded with a transaction knowing that the consideration passing was at an undervalue;

- (4) they ignored the Solicitors Regulation Authority's green card warning on property fraud;
- (5) they breached the Money Laundering Regulations 2003 by failing properly to ascertain the identity of their client;
- (6) they failed to ensure that their client gave her instructions freely and without due influence from others;
- (7) they assisted a third party in securing property at a substantial undervalue and, in the case of the Second Respondent, to the detriment of his client;

By a supplementary statement dated 18th April 2008 additional allegations against both Respondents were that:-

- (8) they failed to inform their lender client that the seller had not been the registered proprietor of the properties for less than six months contrary to Rule 6(3) Solicitors Practice Rules 1990;
- (9) they acted in circumstances of conflict of interest;
- (10) they failed to notify their institutional lender client that they were acting for seller, buyer and lender contrary to Rule 6(3);

In relation to the First Respondent only, the additional allegations in the supplementary statement dated 18th April 2008 were that:-

- (11) he failed to inform his lender client that he did not have control over all the purchase moneys contrary to Rule 6(3) of the Solicitors Practice Rules 1990;
- (12) he breached Rule 13(1)(a) Solicitors Practice Rules 1990 by failing to ensure proper supervision of staff and direction of client matters;

With regard to allegations (3),(4),(6) and (7) the case was put against both Respondents on the basis that they had been dishonest.

The application was heard at the Court Room, Gate House, 3rd Floor, 1 Farringdon Street, London, EC4M 7NS when George Marriott appeared as the Applicant and, on 11th and 12th September 2008 the First Respondent appeared and was represented by Richard Nelson, and the Second Respondent appeared and was represented by George Foreman. At the hearing on 10th December 2008, the First and Second Respondent appeared in person and represented themselves.

At the outset of the hearing, the Applicant stated it had been agreed with the Respondents that the Tribunal should deal with allegations (1)-(7) first and then subsequently decide whether the Tribunal considered it was necessary to pursue allegations (8)-(12). The evidence before the Tribunal included the admissions of the First Respondent in relation to allegations (1), (2), (3) and (5) but denied the remaining allegations and denied the allegation of dishonesty together with the Second Respondent's admission to all the allegations against him but a denial of the allegation of dishonesty. The Second Respondent also alleged duress. The Tribunal also had before it a witness statement from the Second Respondent together with

letters from Oxley's NHS Foundation Trust dated 10th and 20th October 2008 also relating to the Second Respondent.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Order that the Respondent, Godwin Okri of 721 Ashton New Road, Manchester, M11 4GR, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Order that the Respondent, [*SECOND RESPONDENT*] of 293 Plumstead High Street, London, SW18 1JX, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 10th day of December 2008.

The Tribunal further Orders that the Respondents do pay the applicant's costs, excluding the costs of the supplementary statement dated 18th April 2008, to be assessed if not agreed and to be apportioned as to 2/3 to be paid by the First Respondent and 1/3 to be paid by the Second Respondent.

Interim Costs Order

The sum of £7,000 to be paid by the First Respondent Mr. Okri and £3,000 to be paid by Second Respondent.

The facts are set out in paragraphs 1-33 hereunder:

1. The First Respondent, Godwin Okri, was born in 1964 and admitted to the Roll on 1st September 1998. He practised on his own account as Winman Okri Solicitors at 721 Ashton New Road, Manchester, M11 4GR. At the material times, he was also a Partner in Soorii Ayoola & Okri, practising from 293 Plumstead High Street, London, SE18 1JX. From 31st December 2006, he was the sole principal in that firm.
2. The Second Respondent, [*SECOND RESPONDENT*], was born in 1967 and admitted to the Roll of Solicitors on 15th January 2003. At the material times, the Second Respondent was an Assistant Solicitor with Soorii Ayoola & Okri at 293 Plumstead High Street, London, SE18 1JX. On 15th March 2006, the Second Respondent became a Partner in that firm but he resigned his partnership on 23rd June 2006 and thereafter reverted to an Assistant Solicitor.
3. At the material times, the First Respondent was a Partner in the firm where the Second Respondent was an Assistant Solicitor.
4. The background to this case was that in 1951, Captain and Mrs B purchased a property in Bournemouth in their joint names. The title was unregistered and in 1952, their only child Mrs DG was born. In 1985 Captain B died and his widow, Mrs B became the sole owner of the property by virtue of survivorship. In 1992 Mrs B transferred the property by way of gift to her daughter Mrs DG. The transfer was not registered with the Land Registry.
5. The daughter, Mrs DG divorced her husband, Mr G in 2002. Mrs B, who was an elderly lady aged 96 years of age continued to live at the property. At the time of the matter complained of, Mrs B was 93 years old. It appeared the transfer of property from Mrs B to her daughter Mrs DG was an attempt to mitigate a future tax liability.

6. Doctor Neville James was at the material times the controller of a company called Styllpoint Ltd. He described himself as “Trust Protector” and in all instructions from him and communications to him, he was referred to as “Big Fish”. This name is used in these findings.
7. Prior to the matter complained of, Big Fish, had referred at least 11 conveyancing transactions to the Second Respondent, and in a number of those transactions the First Respondent, from his Manchester firm (Winman Okri) acted for the other party in the transaction. In all the transactions referred to the Second Respondent, bridging finance was used through a company called H. Finance where other solicitors BBW acted.
8. By a fax dated 24th August 2004 from Big Fish, the Second Respondent was instructed to act for Mrs B in relation to the sale of her property in Bournemouth. The First Respondent was instructed to act for Tracy Barrett who was the purchaser of the property in Bournemouth from Mrs B.
9. Tracy Barrett was an employee of or was associated with Big Fish. Neither the purchaser nor the seller were existing clients of either the First or Second Respondent.
10. Also by a fax sent by Mr G (Mrs DG’s divorced husband) Mrs B instructed the Second Respondent to act in the sale of her property in Bournemouth. The letter of instruction requested the Second Respondent to “issue any undertakings request received from (Big Fish) as per his request”. The document was witnessed by Mr G. Similar instructions were given by Tracy Barrett. The fax header from Big Fish referred to “my instructions re: [property in Bournemouth]”.
11. The Second Respondent wrote to Mrs B interpreting his instructions that he should accept instructions for the future from Big Fish. He set out his firm’s charges for the conveyance to be £1,500 + VAT in a letter dated 19th August 2004 to Mrs B. Following receipt of a fax from Big Fish on the same day, requesting completion take place on 25th August (which was only six days from the date of instructions) the Second Respondent telephoned Big Fish to indicate the time scale was not feasible.
12. The Second Respondent’s file had no documents concerning Mrs B as required under the Money Laundering Regulations 2003. The First Respondent’s file had a copy of a passport photograph of Ms Barrett and a utility bill. Neither document was certified as a true copy of the original and there was no evidence on the First Respondent’s file that he had ever met his client.
13. By an attendance note dated 24th August 2004, the Second Respondent recorded receipt of a memorandum of sale for £300,000 from Big Fish. It shortly became apparent that title to the property was unregistered and the Second Respondent communicated thereafter solely with Big Fish. There was nothing on his file to indicate he received any instructions from Mrs B concerning the sale of the property in Bournemouth other than the initial faxed letter of instruction.
14. The Second Respondent then received correspondence from the First Respondent dated 24th August 2004 confirming the First Respondent acted for the purchaser Tracy Barrett and the consideration was confirmed as £300,000. The First Respondent in a phone call from Ms Barrett acknowledged the seller had instructed his other firm but stated that he could act if Ms Barrett consented. She did apparently consent but there

was no document to confirm this other than the First Respondent's telephone attendance note.

15. By a letter dated 25th August 2004 the Second Respondent requested Mrs B to provide the Title Deeds, and to complete the Seller's Property Information Form and Fixtures and Fittings Form. It is not known whether the Deed of Gift made by Mrs B transferring the property to her daughter Mrs DG was received by the Second Respondent when he requested the Title Deeds.
16. By a letter dated 27th August 2004 the Second Respondent wrote to the First Respondent enclosing a draft Contract for approval. On 31st August 2004 the Second Respondent approved the Transfer.
17. On 31st August 2004, Big Fish wrote to the Second Respondent pressing completion and warning him that "you have no authority whatsoever to divulge to any third party information with regard to the source and application of our funds". A further letter dated 1st September 2004 from Big Fish criticised the Second Respondent's handling of the conveyance.
18. On 1st September 2004 the Second Respondent wrote to Mrs B asking what arrangements she had made to give vacant possession on or before completion. Mrs B did not respond but Mr G did by a telephone call on 1st September 2004 indicating there was another vacant property for Mrs B to move into. On 1st September 2004 the Second Respondent recorded receipt of a fax from Big Fish complaining that the process was taking too long and that a way should be found to satisfy BBW Solicitors. These were the Solicitors acting for H Finance Limited who were to provide bridging finance for the funds for the purchase of the property in Bournemouth. On the same day, Big Fish expressed his dissatisfaction with the Second Respondent's work leading the Second Respondent to write to him indicating he was awaiting a date for Mrs B to confirm when she could give vacant possession. Big Fish also demanded that upon completion the balance of funds be transferred to an account under his control by a faxed letter dated 6th September 2004.
19. By a memo dated 6th September 2004 the Second Respondent required an authority from Big Fish before he could transfer the proceeds from the sale of the property in Bournemouth as requested.
20. On 7th September 2004 the Second Respondent attempted to speak to Mrs B but was unsuccessful. In fact he spoke to Mr G and recorded in his telephone attendance note Mr G's disappointment that in view of the authority given to Big Fish, why was it necessary to speak to Mrs B.
21. BBW Solicitors acting for H Finance Ltd provided the First Respondent with a draft completion statement on 8th September 2004. The completion statement showed that out of a gross loan of £162,000 only £142,496.88 was available for the purchase.
22. The First Respondent wrote to Tracy Barrett on 9th September 2004 informing her of this and referring to an earlier telephone call in which Tracy Barrett had said she needed to speak to Big Fish concerning how the balance of the purchase price (£157,503.12) was to be provided.

23. A fax from Big Fish in reply dated 9th September 2004 signed by Tracy Barrett and Big Fish was sent to the Second Respondent, although the actual letter was meant for an employee of the First Respondent. This fax does not appear in the files submitted by the Second Respondent but it was addressed to him. The letter states among other things:-
- “You must now have the contract changed to reflect only £150,000 being the contract value, otherwise you are increasing our cost by way of stamp duty and you will be delaying the programme even further”.
24. The fax also emphasised that Big Fish was the only person the Second Respondent could take instructions from. There was also a note of a telephone call from Tracy Barrett to the First Respondent on 9th September 2004 confirming the reduction in price.
25. On 9th September 2004 Big Fish also notified the Second Respondent that the consideration for the sale of the property in Bournemouth was halved to £150,000. The Second Respondent recorded this in a letter dated the same day to Mrs B. On the same day, the First Respondent confirmed in an attendance note and also in a letter to the Second Respondent that the consideration had been reduced. The Second Respondent secured through insurers a policy to cover a Deed of Gift indemnity reflecting the fact that the property was sold at an undervalue. Other than writing to Mrs B, the Second Respondent received no confirmation from her that the price was halved or that she wished to proceed.
26. Contracts were exchanged on 10th September 2004 reflecting the revised purchase price of £150,000. The signed Transfer was sent to BBW Solicitors and they forwarded to the Second Respondent the sum of £149,996.88 on 10th September 2004 allowing completion on another property called S House. There was nothing on the Second Respondent’s file to indicate he had been instructed by Mrs B to purchase S House or indeed whether it was so purchased.
27. By a fax dated 13th September 2004, the Second Respondent required confirmation from Mrs B authorising the transfer of the sum of £89,889.50 to the R client account in respect of the purchase of S House. On 16th September 2004 he again wrote to her confirming that £56,276.02 of the sale price was transferred to Big Fish and £91,739.36 was used towards the purchase of S House. The Second Respondent confirmed his costs were £1,981.50. The letter addressed to Mrs B was sent to another address and marked care of Big Fish. Nothing on the file indicated the Second Respondent received any confirmation from Mrs B. According to the Land Registry records Tracy Barrett became the freehold owner of the property in Bournemouth on 22nd October 2004. Mrs B continued to live at the property and Tracy Barrett secured a mortgage from an institutional lender but no payments in respect of the mortgage were ever made.
28. In 2005 Mrs B’s daughter, Mrs DG contacted another firm of solicitors called HK Solicitors on Mrs B’s behalf in connection with demands for payment under the terms of a mortgage registered on the Bournemouth property in favour of Tracy Barrett. HK Solicitors requested the Second Respondent’s file of papers and the Second Respondent released a limited number of papers. From the papers released, it appeared:-

- There was no client care letter recording the price at which the property was to be sold or giving details of costs;
- There were no correspondence or attendance note recording the price at which the property was to be sold;
- There was no indication that the Second Respondent had questioned why Mrs B gave instructions to “issue undertakings as requested by Styllpoint Limited”;
- There was no indication that the Second Respondent questioned why Mrs B instructed his firm which was based in South London when she lived in Bournemouth;
- There was no indication that the Second Respondent made any attempt to speak to her or visit her to confirm her instructions;
- There was no correspondence between the Second Respondent’s firm and the First Respondent’s firm;
- The additional enquiries before Contract were not signed by the First Respondent;
- Although the property was unregistered, there was no reference to the work which would have to be done to deduce title;
- There was no Contract;
- The attendance note dated 1st September 2004 showed the Second Respondent received a telephone call from Mr G confirming Mrs B was making arrangements to vacate the property;
- There was no indication that the Second Respondent had made any attempt to speak to Mrs B about this directly;
- There was no indication that the Second Respondent confirmed instructions to transfer completion money to a bank account controlled by Big Fish;
- The financial statement showed that the fees were £1,762.50;
- There was no indication that an invoice was issued or sent to Mrs B;
- While there was a copy of an indemnity insurance showing the property was sold at an undervalue, there was no indication that the Second Respondent sought any explanation about this from Mrs B or that he verified her instructions with her;
- There was no indication that the Second Respondent reported to Mrs B to confirm completion of the sale or that the Second Respondent liaised with anyone concerning transfer of possession from Mrs B to the purchaser on completion day;

29. HK Solicitors complained to the Solicitors Regulation Authority on 27th July 2005 and the Solicitors Regulation Authority wrote to the Second Respondent by a letter dated 23rd December 2005 seeking his explanation. The Second Respondent replied by a letter dated 30th January 2006 in which he acknowledged the price was halved and that he believed Mr G was independent of Styllpoint Limited. He asserted the following:-

- There was no conflict of interest as the vendor and purchaser were different people represented by different firms;
- The Transfer stated the purchase price was £150,000 and that was the consideration;

- The vendor's firm and the purchaser's firm acted as independent solicitors;
 - The transaction was legal, as Mrs B had signed a letter of authority witnessed by Mr G;
 - The Second Respondent was not involved in any fraud;
 - So far as the Second Respondent was concerned the property was sold with vacant possession and that had been confirmed by Stylpoint and by Mr G;
 - That it was a condition precedent that the file of papers would be forwarded to BBW who acted for the mortgagee.
30. By a subsequent letter dated 13th March 2006 to the SRA, the Second Respondent confirmed he always considered the Green Card warning and that it was not unusual for a purchase price to be reduced and that he was instructed by the purchaser's solicitors to send the papers to BBW Solicitors.
31. By a letter dated 6th April 2006, the SRA wrote to the First Respondent asking for an explanation of the various matters. The First Respondent replied on 5th May 2006 denying there had been a breach of Practice Rule 6 as both parties to the transaction were represented by two separate offices and the purchaser appointed him directly to act on her behalf. He also asserted the consideration was £150,000 and with regard to instructions given by the vendor, he referred to the Second Respondent's responses.
32. Following a referral to adjudication, the First Respondent through his solicitor's letter dated 30th June 2006 to the SRA stated the following:
- He had received instructions to act on behalf of the purchaser through a third party and obtained evidence of her identity;
 - The Second Respondent also received instructions to act from the third party. The First Respondent was aware that the Second Respondent was acting on behalf of the seller and understood that there was no breach as the transaction fell within Rule 6(2)(b) Solicitors Practice Rules 1990;
 - He accepted that there was a significant price reduction;
 - He agreed the lenders were separately advised and represented;
 - He accepted it was sold at an undervalue and notepaper was issued incorrectly and by error by the Second Respondent;
 - That the transaction simply gave a suspicion of fraud;
 - If a fraud existed, then it was not a transaction at arms length and therefore Rule 6 did not apply.
33. The Second Respondent also replied through his solicitors by a letter dated 30th June 2006, enclosing the Second Respondents file of papers relating to the transaction. The letter on behalf of the Second Respondent stated as follows:-
- He had been first introduced to Big Fish of Stylpoint Limited in 2003 having been referred by a client of his Principal. He understood Stylpoint Limited to be an estate agent, a broker and a property developer but H Finance was engaged;
 - H Finance were represented by BBW Solicitors;
 - Stylpoint Limited provided the majority of instructions;

- He took comfort from the fact that the First Respondent acted for the purchaser;
- Big Fish threatened him with physical violence and he completed the transaction under duress;
- He was involved in nine other conveyancing transactions where Big Fish provided the instructions, three of which completed and six did not and where Winman & Okri acted in the same transaction for the other party;
- He had consulted the First Respondent concerning his inability to speak to Mrs B, or to verify the price reduction, and was told respectively that a letter to her was sufficient; and a signed Transfer was also sufficient;
- The whole conveyancing file had not been sent to HK Solicitors as he did not have it and/or due to a misunderstanding;
- He then gave his explanation as to how he had dealt with the transaction;

The Submissions of the Applicant

34. The First Respondent admitted allegations (1),(2),(3) and (5) but denied the remaining allegations of (4),(6) and (7) and denied dishonesty. It had been agreed between the parties that at this stage, allegations (8),(9),(10),(11) and (12) would not be pursued and the Tribunal could decide whether to deal with these allegations later if it was considered necessary. The Second Respondent admitted all the allegations but also denied the allegation of dishonesty.
35. The Applicant submitted that both solicitors were gateways to prevent fraudulent transactions from taking place. He submitted that in spite of the unusual features of the instructions, the Second Respondent made no attempt to talk to Mrs B to check her instructions were correct. He did attempt to contact Mrs B on 7th September 2004 but was unable to do so and still proceeded regardless. It was submitted that upon receipt of the Title Deeds, the Second Respondent should have realised that Mrs B purchased the property with her husband 53 years previously, that she was a widow, and by virtue of her longevity of ownership, she was potentially an elderly and vulnerable client.
36. It was submitted by the Applicant that, apart from on one occasion, the Second Respondent did not try to meet or speak with his client and he took no steps to secure her identity. The Second Respondent must have been aware that Mrs B was an elderly widow and that she was vulnerable. He must have known that Big Fish was controlling the transaction and indeed, he took all his instructions from Big Fish.
37. The Applicant submitted that the Second Respondent should have recognised this was a suspicious transaction at the outset, and that the transaction became even more suspicious when the consideration was halved. It was submitted the Second Respondent had received no instructions with regard to disbursing the money other than from Big Fish, and he proceeded to disburse the money in accordance with Big Fish's instructions.
38. The Applicant indicated that Mrs B was still living in the property at Bournemouth some time after completion and indeed, continued to live there now. Mrs B had

become alarmed when she received post addressed to Tracy Barrett and eventually, she opened the letters which referred to mortgage arrears.

39. By this time, the mortgage company had a charge on the property which had been registered and they had now agreed to take the property once Mrs B died or went into a nursing home.
40. In relation to the First Respondent, the Applicant submitted he had been taking instructions from and updating Big Fish who, on the face of the transaction was not his client. It was submitted that the First Respondent knew or ought to have known that the transaction in favour of Tracy Barrett was improbable and suspicious and that she worked for or was associated with Big Fish.
41. It was further submitted that the First Respondent should have considered the halved consideration as very suspicious and that the advice he gave to his assistant solicitor, assuming it had been given as asserted by the Second Respondent, was wrong and very suspiciously wrong. This was the advice that communication by letter with his client was sufficient and that the Second Respondent could accept the signing of the Transfer with a reduced figure from his client as sufficient.
42. It was also submitted by the Applicant that the First Respondent did not take any proper steps to secure Tracy Barrett's identity and that he must have known his firm could not also act for the buyer and that there was a conflict of interest between himself and his client. The Applicant submitted that the First Respondent was required to supervise both offices, those of Winman Okri at 721 Ashton New Road, Manchester and those of Soorii Ayoola & Okri at 293 Plumstead High Street, London. It was impossible for the First Respondent to be based at both offices and to properly supervise matters at both.
43. It was further submitted that this was an odd transaction in that an elderly widow in Bournemouth had instructed a London firm to act on her behalf and, Tracy Barrett who lived in London had instructed a Manchester firm to act on her behalf.
44. The Applicant referred the Tribunal to a letter dated 23rd August 2004 from Tracy Barrett to the First Respondent which was addressed "Dear Godwin" which was a personal term and therefore indicated Tracy Barrett knew the First Respondent well. The letter referred to a "disposal" but in fact Tracy Barrett was purchasing a property in Bournemouth. The letter was also bizarrely witnessed and this alone should have alerted the First Respondent and put him on notice that things were not as they should have been. The letter did not indicate whether Tracy Barrett was the buyer or the seller but simply referred to a "disposal".
45. Equally, the Tribunal were referred to a letter dated 19th August 2004 from the elderly widow, Mrs B to the Second Respondent which addressed him as "Dear Emmanuel" again implying Mrs B knew him well. The style of the letter was similar to the one sent to the First Respondent and also had been witnessed in the same way. This was a case where the Second Respondent had never met Mrs B and there were other features of the file which were rather bizarre. On 19th August 2004 an attendance note records the receipt of a letter from Styllpoint instructing the Second Respondent to commence searches and that exchange of contracts and completion should take place on 25th August 2004. The Applicant submitted that it was bizarre to make an attendance note in respect of receiving a letter and again, the fact that exchange of contracts and

completion was to take place six days later should have rang alarm bells immediately. There was still no attempt to speak to Mrs B to confirm instructions. Any instructions that appeared to have been given from Mrs B came through Mr G in any event.

46. Regarding the identity documents on the file, the Second Respondent had no documents relating to identity and the Money Laundering Regulations 2003 on his file, and the First Respondent simply had a copy of a passport but this was not certified. Whilst the Applicant accepted that certifying such a copy was not a requirement, he submitted that given the background and nature of this transaction, accepting documentation in this way was not satisfactory.
47. Another feature was that on the Contract Tracy Barrett's surname had been spelt "Barrett" but the copy of her passport spelt her surname "Barratt". Given that the identity documents had been provided by Big Fish, the Applicant submitted it was not satisfactory for the Contract to refer to a different spelling of the surname.
48. The Applicant referred to a number of rather odd attendance notes on the Second Respondent's file in which he recorded receipt of documents which was rather bizarre. It was also bizarre that there were a number of letters being written by the Respondents to each other to confirm they had been instructed and the letters were written in formal terms even though the Respondents were familiar with each other.
49. The Applicant referred the Tribunal to Rule 6(2) of the Solicitors Practice Rules 1990 which read as follows:-
 - “(a) A solicitor must not act for seller and buyer....
 - (i) without the written consent of both parties;
 - (ii) if a conflict of interest exists or arises; or
 - (ii) if the seller is selling or leasing as a builder or developer;
 - (b) Otherwise, a solicitor may act for a seller and buyer, but only if:-
 - (i) both parties are established clients; or
 - (ii) the consideration is £10,000 or less and the transaction is not the grant of a lease; or
 - (iii) there is no qualified conveyancer in the area whom either the seller or the buyer could reasonably be expected to consult; or
 - (iv) seller and buyer are represented by two separate offices in different localities and
 - (A) different solicitors, who normally work at each office, conduct or supervise the transaction for seller and buyer and
 - (B) no office of the practice (or an associated practice) referred either client to the office conducting his or her transaction; or
 - (v) the only way in which the solicitor is acting for the buyer is in providing mortgage related services.....”
50. The Applicant submitted that there were specific exemptions which would allow a solicitor to act for seller and buyer but none of those exemptions applied in this case. The Applicant submitted that the basic point was why would a client in Bournemouth instruct a firm in London and why would a client in London instruct a firm in

Manchester in relation to a conveyancing transaction. This alone should have rung alarm bells in both Respondents' heads.

51. The Applicant submitted that if any further warning were required, then the letter dated 31st August 2004 from Big Fish to the Second Respondent should have undoubtedly given him the warning that the transaction was suspicious. In that letter Big Fish had said "you have no authority whatsoever to divulge to any third party information with regard to the source and application of our funds". This was then followed with complaints about the time the transaction was taking and instructions to send the proceeds from the sale of the property to an account of Big Fish's company. It is clear that Big Fish was not the client in this transaction and therefore had no authority to criticise the Second Respondent.

52. Equally, the Applicant submitted that the First Respondent's file was redolent of an individual who was desperate to complete a transaction as quickly as possible when he was clearly not entitled to do so. The Applicant submitted that by any yard stick this was an extremely bizarre transaction and indeed, when the Second Respondent wrote to Mrs B on 16th September 2004 to confirm the transaction had been completed, and to give details of the completion, the letter was sent care of Big Fish. There was no evidence that Mrs B had ever received the letter or indeed that the letter had ever been sent to the address where Mrs B was actually living. The Applicant referred the Tribunal to the case of Twinsectra v Yardley and others [2002] UKHL 12 with regard to the issue of dishonesty. The test laid out in that case was that the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people and, secondly, ought the Respondents to have realised that by these standards their conduct was dishonest. The Applicant submitted the Tribunal had to look carefully at the issue of dishonesty against both Respondents separately, as well as consider the issue of dishonesty separately for each respective allegation where it had been alleged. The Applicant submitted that the test had been made out on each individual allegation and against each respective Respondent. The Applicant submitted that both Respondents were intelligent professionals who were solicitors and who had guidance from the Solicitors Practice Rules 1990 and could have been and indeed should have been in no doubt that this transaction was suspicious by any standard.

53. The Applicant referred the Tribunal to Blackstone's Criminal Practice 2008 which dealt with defences involving other excuses and justifications. In particular, with reference to duress, the Applicant referred the Tribunal to the judgement of Lord Wilberforce in the case of DPP for Northern Ireland v Lynch [1975] AC 653 (pg 679-680) in which he said:

"[It] is something which is superimposed upon the other ingredients which by themselves would make up an offence, i.e. upon act and intention.....the victim completes the act and knows that he is doing so; but the addition of the element of duress prevents the law from treating what he has done as a crime."

54. The Applicant then referred the Tribunal to the case of Hasan [2005] 2 AC 467 in which the defence of duress was dealt with. The Applicant submitted the Tribunal were required to consider 3 headings when looking at duress which were as follows:-

(1) The type of threat required;

All the decisions recognising duress as a defence have concerned threats of death or grievous bodily harm.

(2) The cogency of the threat.

The Tribunal were referred to the judgment of Lord Lane CJ in the case of Grahame [1982] 1 WLR 294 (pg 300) which stated the objective approach was to consider:-

“(1) Was the defendant, or may he have been, impelled to act as he did because, as a result of what he reasonably believed [the threatener] had said or done, he had good cause to fear that if he did not so act [the threatener] would kill him or.... cause him serious physical injury?

(2) If so, have the prosecution made the jury sure that a sober person of reasonable firmness, sharing the characteristic of the defendant, would not have responded to whatever he reasonably believed [the threatener] said or did by taking part [in the offence]”.

The Applicant also referred the Tribunal to the case of Hudson [1971] 2 QB 202 in which the Court of Appeal had stated “It is essential to the defence of duress that the threat shall be effective at the moment when the crime is committed”.

(3) The offences and persons excluded from the defence.

55. The Tribunal were then referred to the letter dated 30th June 2006 from the Second Respondent’s solicitors to the SRA in which they stated:-

“the pressure grew during the transaction and *[SECOND RESPONDENT]* tried not to compromise his professional standards despite Dr James’s [Big Fish] attempts to make him do so. The result was quite tragic, Dr James issued ultimatums to *[SECOND RESPONDENT]* and this was followed by a series of threats made by Dr James to kill *[SECOND RESPONDENT]* and his family. Once the first threat was made, Dr James repeated his threats every time he wanted something from *[SECOND RESPONDENT]* threatening to “come round and blow your head off” to “kick off your ass” and to “remove your head”. *[SECOND RESPONDENT]* certainly took the threats extremely seriously and had no doubt that Dr James intended what he meant. Faced with a decision under extreme duress he decided that he could not risk his own life and more importantly the life of his wife and two children and he completed the transaction (a) under sufferance and (b) attempting in the best way that he could to ensure that as much of the transaction was completed as properly as possible.”

56. The Applicant submitted that whilst there appeared to be a threat to kill *[SECOND RESPONDENT]* and his family, this was the only evidence available and it could not be known whether this was true or false. There had been no actual assault but simply a threat.
57. The Applicant then referred the Tribunal to the witness statements submitted by *[SECOND RESPONDENT]* on the morning of the hearing which stated at paragraph 13:

“As I explain in much greater detail in this statement, by the time I should have been aware of this, I was acting under extreme duress, in fear of my families life and of my own. As I explain in detail later, on several occasions, a man describing himself as Dr Neville James, physically assaulted me and threatened to kill my family and myself if I did not act as instructed in the transaction.”

The Applicant submitted that from a threat in 2006, this had suddenly turned into a physical assault in the statement provided yesterday by *[SECOND RESPONDENT]*. The Applicant reminded the Tribunal that there had been 10 conveyancing transactions that the Second Respondent had been dealing with where instructions had come from Big Fish. The Applicant submitted that acting throughout all of these transactions would have given the Second Respondent sufficient time to reflect, time to speak to the Ethics Department of the Law Society, and indeed, time to discuss the matters with his boss. In fact it appeared the Second Respondent had not taken any of these steps. The Applicant reminded the Tribunal that these 10 transactions had taken place on dates between June 2000 to June 2004 which was a lengthy period of time. This particular transaction had concluded in September 2006. The Applicant submitted that with this background, the defence of duress raised by the Second Respondent did not get off the ground. He submitted that the Second Respondent’s version of events did not satisfy the criteria referred to in Hasan when looking at the defence of duress but, the test of dishonesty set down in the case of Twinsectra was satisfied.

The Submissions of the First Respondent

The oral evidence of the First Respondent

58. The First Respondent confirmed that at the material times he was a partner of both firms Winman Okri Solicitors and Soorii Ayoola & Okri. He accepted that he faced the allegations in a dual capacity of both solicitor and the person with responsibility for supervision of the two associated practices. He indicated that he wanted to give oral evidence in order to stress that there had been no dishonesty on his part and he wanted to give his side of the story.
59. The First Respondent confirmed he had come into contact with Styllpoint Ltd at the end of December 2003 when he had visited the London office of Soorii Ayoola & Okri solicitors. Big Fish had been introduced to him by the Second Respondent who had said that another partner at the practice had introduced Big Fish to the firm. The First Respondent confirmed he had only met Big Fish twice and that physically, Big Fish was about six foot, six inches tall and a very strong man. He confirmed he was physically imposing.
60. In relation to this particular transaction the First Respondent indicated he was instructed to act for Tracy Barrett who had telephoned him saying Big Fish had recommended the First Respondent to her. The First Respondent confirmed he had never met Tracy Barrett prior to this but at the end of August 2004 he did meet her at their London office. He confirmed he had only met her once when she had bought her identification documents to the office. The First Respondent recalled meeting her in person and took copies of her passport himself. He indicated he did not discuss her employment with her and that he had no way of knowing she was connected with Styllpoint. He had not enquired about her employment as he did not consider it was

necessary at the time and indeed, the lender was represented by another firm. The First Respondent confirmed that the instructions for him to act for Tracy Barrett had also been confirmed by a fax from Styllpoint Ltd.

61. The Respondent indicated that at the time he had checked Rule 6 of the Solicitors Practice Rules 1990 and his interpretation of the Rule at the time was that the London office could act for one party. Although he did not have the written consent of his client, the First Respondent thought he could continue to act as separate solicitors in separate offices were acting in the transaction as stated under Rule 6(b)(iv). He also indicated that another solicitor, TA, was supervising the London office but accepted that TA was not in fact qualified to supervise the London office.
62. The First Respondent was asked what steps he had taken to ensure separation and he responded that TA was supervising the Second Respondent. The First Respondent said he wanted to create a “Chinese wall” to ensure the two matters were totally separate. The First Respondent had no access to the Second Respondent’s file and wanted to ensure compliance with the Rules. He confirmed he had every intention to comply with the Rules.
63. When asked about the spelling error relating to Tracy Barretts name, the First Respondent indicated that the name had been spelt properly on the Land Registry documents and as the other letters and documents had been typed by secretaries, these may simply have been spelling errors.
64. The First Respondent was referred to 9th September 2004 when the purchase price of the property was reduced to £150,000. The First Respondent confirmed he wrote to his client on the same day advising her of the shortfall in money after the advance from BBW Solicitors. The First Respondent indicated that Tracy Barrett contacted him on the same day and confirmed the purchase price was in fact £150,000. The First Respondent indicated that up until this point, so far as he was concerned, the transaction had been a normal transaction.
65. The First Respondent confirmed he had never received any fees for acting on this transaction and that he had started proceedings to recover his fees. He indicated he had acted for Styllpoint Ltd on another matter and they had not paid his fees on that matter either.
66. The Respondent confirmed that when Tracy Barrett telephoned him to advise him that the price had been reduced from £300,000 to £150,000, he was surprised and he informed her that he needed to notify the other side and the lenders solicitors. The First Respondent confirmed that that is what he did and in fact the lender’s solicitors wrote back to him simply indicating that the Contract needed amending. There was no suggestion that the transaction could not proceed. When the First Respondent informed BBW solicitors of the reduction in the price, he said that they wrote to him saying they already knew about the reduction in price and that they had in fact thought that was the price from the outset. They had been surprised to receive a Contract indicating the price was £300,000.
67. The First Respondent indicated he then asked the Second Respondent to confirm the reduction in price with his own client. The First Respondent indicated that he did not see the letter of 9th September 2004 from Tracy Barrett to Mr Ablud Kaihiva at Winman Okri Solicitors until after completion. This letter made reference to the

reduction in price, short term bridging loan and stated instructions were to be taken from Big Fish. The First Respondent indicated that when he spoke to his client there had been no reference to this letter. Tracy Barrett had been pleasant with him during their conversation and the First Respondent indicated he did not know anything about the short term bridging facility. The First Respondent confirmed that until 9th September 2004, he had thought the purchase price was £300,000. The First Respondent said he was not aware of any further mortgage and that that particular letter had not been addressed to him so was not brought to his attention.

68. The First Respondent confirmed that BBW Solicitors had witnessed his client's signature to the transfer, they had completed the Stamp Duty forms and had registered the transfer. The funds had been paid direct to Soorii Ayoola & Okri even though the First Respondent had asked for the funds to be sent to him first. The First Respondent confirmed he did not actually complete the transaction himself. The First Respondent also confirmed that he had always written to Tracy Barrett and had taken instructions from her. He had thought Big Fish and Styllpoint Ltd were simply estate agents or property people and was sure he had never acted for anyone except Tracy Barrett. The First Respondent asserted he had acted honestly at the time.
69. On cross-examination by the Applicant, the First Respondent confirmed he had not had a valuation report and had simply been told the price was £300,000. He did not therefore agree that the sale at £150,000 was an undervalue. When asked about his reference to "true consideration" and "incorrect consideration" in his letter to the SRA dated 5th May 2006, the First Respondent stated that he meant by these terms the actual money which had passed between the parties and not the value of the property.
70. The First Respondent confirmed that his first meeting with Big Fish had been at the end of December 2003. He was asked when was his second meeting to which he indicated he could not remember but he thought it was August 2004. When asked about the circumstances of that meeting, the First Respondent indicated it was in relation to a debt matter that another client had instructed him on. The First Respondent was bringing an action against Big Fish who was the second claimant. In the proceedings the judge had decided Styllpoint Ltd had no locus standi so they dropped out of the proceedings. The First Respondent confirmed that the meeting was after December 2003 but he thought it was before the transaction with Mrs B. He agreed that the meeting had taken place some time between December 2003 and August 2004. The First Respondent also confirmed Styllpoint was still a client of his and that he received instructions on behalf of Styllpoint from Big Fish. The First Respondent was aware that Big Fish was not a director of Styllpoint Ltd and when he was asked what he understood as Big Fish's title "Trust Protector" to mean, the First Respondent said he had never heard this title before and simply thought Big Fish was an employee of Styllpoint Ltd.
71. The First Respondent accepted that the instructions relating to Tracy Barrett were not the first set of instructions referred to him or his London firm from Styllpoint Ltd and that there had been a number of other transactions although the First Respondent had not acted on all of them. He was unable to say whether BBW Solicitors had acted for the same lender on the other instructions without seeing the files of papers. The First Respondent confirmed that the instructions on the other transactions were in the same fashion, i.e. a fax from Big Fish. He could not remember whether he had met each client in each of the other transactions and accepted that the file of papers before the

Tribunal was indeed his file of papers relating to the instructions to act for Tracy Barrett.

72. The First Respondent referred to his letter to Tracy Barrett dated 9th September 2004 in which he had referred to “our last meeting”. He was then referred to the letter dated 9th September 2004 from Tracy Barrett to Mr Ablud Kaihiva in which she had referred to “when I attended your offices in Plumstead, to sign the TR1 Form.....”. The First Respondent asserted that these letters proved that he had had a meeting with Tracy Barrett and that the purpose of this had been to sign the Transfer and to bring her passport into the office because he had asked her to. The First Respondent confirmed he copied Tracy Barrett’s passport but could not recall whether he certified it.
73. The First Respondent was then referred to the copy of Tracy Barrett’s passport. On the copy on the file, it was clear that the passport had been faxed from Big Fish’s fax machine and the First Respondent was asked why would he have asked Tracy Barrett to come into the office with her passport if he already had a faxed copy on his file. This fax was dated 27th August 2004. The First Respondent indicated that he accepted there was no evidence on his file that Tracy Barrett had come into his office with a copy of her passport but he indicated that in a busy solicitors practice, he may have photocopied the passport from her, put it on his desk and then lost it and asked Big Fish to fax it again.
74. The First Respondent confirmed he was aware the London firm were acting for the seller. He had become aware of this due to a fax received from Big Fish dated 24th August 2004 advising him of the vendor’s details and her solicitor’s details. The First Respondent could not recall whether the style of letters he received from Tracy Barrett was similar to the style of letters he had received on other transactions Big Fish had been involved in and referred to him. The First Respondent denied he was aware BBW Solicitors provided expensive bridging loans.
75. The First Respondent denied he had always supervised the Second Respondent and that in fact there had been other people who had supervised him. He confirmed he did not obtain the written consent of both parties to act in this transaction as, when he had read the Rules, his understanding was that he could act where separate offices were representing the separate parties. The First Respondent was then referred to his attendance note dated 24th August 2004 recording a telephone call with Tracy Barrett in which he had stated, “I then told her that I would only be able to act for her if she consents because I am also a partner at SAO. Ms Barrett said she was aware of my connection with SAO and that she consented for me to act nevertheless.” Having read this the First Respondent confirmed he had told Tracy Barrett that she needed to consent to the firm acting for both parties in the transaction although the First Respondent maintained that he did not think that it was necessary to get the consent of both parties. The First Respondent confirmed that Mr Ablud Kaihiva was a junior solicitor based at the Manchester office. However the First Respondent maintained that he had no knowledge of the letter addressed to Mr Kaihiva dated 9th September 2004 from Tracy Barrett. The First Respondent was referred to the Second Respondent’s witness statement in which the Second Respondent indicated he was scared to talk to the First Respondent. He was asked why the Second Respondent would feel scared to talk to him, to which he responded fear had a different impact on different people.

76. The First Respondent maintained that his letter of instruction had allowed him to contact and communicate with Styllpoint Ltd and his client had authorised him to take instructions and give updates to them. It was put to the First Respondent that he was acting for Styllpoint Ltd and not for Tracy Barrett to which the First Respondent replied “Styllpoint Ltd just meddled in the matter”. The First Respondent was referred to a letter from Styllpoint Ltd requesting a “progression report” and he admitted he had written back and provided such a report. He maintained his letter of instruction confirmed that the same fax number for Styllpoint Ltd was the fax number for his client and therefore by providing a progression report to Styllpoint Ltd he had provided a report to his client. The First Respondent maintained that when he had received instructions, he did not know who Big Fish was and that he had done what he could to ensure his client was kept up to date. He had written to his client at the fax number she had given him which also happened to be the fax number of Styllpoint Ltd. The First Respondent admitted all the faxes were going to Big Fish and that he had replied to faxes received from Styllpoint Ltd but maintained that as this was the fax number his client had given him and he knew his client had access to it, he was in fact sending information to his client and she would be aware of whatever was written on those faxes.
77. When the First Respondent was asked why he did not write to Tracy Barrett at her home address, he replied this was because they tended to do things by fax. He also indicated that Tracy Barrett would telephone him to say she had received his fax and would write to him to confirm this.
78. The First Respondent admitted Tracy Barrett always had the same fax number as Big Fish. He said that this happened on occasions when the client would go to the estate agent and ask the solicitor to fax the estate agent with any information and details in order to speed matters up. The First Respondent was reminded that his response was addressed to Styllpoint Ltd and in fact gave information concerning contact with the lender. The First Respondent maintained this was to speed matters up.
79. The First Respondent was then referred to another faxed letter to Styllpoint Ltd dated 6th September 2004 in which he had stated “if you see it fit you may contact Mr C to speed up this matter”. There was then another fax to Styllpoint Ltd of the same date which stated “time is of the essence”. The First Respondent was then referred to an attendance note on his file dated 9th September 2004 in which he had stated “Ms Barrett telephoned our office today to say that she got my fax of today.....”. It was put to the Respondent that he was suggesting this was proof Tracy Barrett had received three faxes which had been sent three days earlier to her. It was put to the First Respondent that he was lying. The First Respondent denied that he was lying and said that his attendance note was simply proof that Tracy Barrett was receiving the faxes being sent to that fax number. He denied he had been taking instructions from Styllpoint Ltd rather than Tracy Barrett and maintained the letters to Styllpoint Ltd were simply update letters being sent to the estate agent who wanted progress reports.
80. The First Respondent was then referred to his letter to Tracy Barrett dated 9th September 2004 in which he had stated.... “you said you needed to speak to Dr James”. He was asked whether he wasn’t alarmed to be told this by Tracy Barrett to which he responded he simply thought Big Fish would contact the lender if the mortgage offer had to be changed. The First Respondent was then referred again to his attendance note of 9th September 2004 with Tracy Barrett in which he had recorded “she said that she agreed with the vendor to purchase the property for

£150,000 and that in any event, the vendor is not expecting any moneys from the sale because of the commercial arrangement the vendor has with Styllpoint Ltd”. The First Respondent was asked did alarm bells not ring when he saw the reference to “commercial arrangement” to which he replied he simply thought this was the reduction in price and he had said he would notify the lender’s solicitors and the vendor’s solicitors which he had done.

81. It was put to the First Respondent that in notifying the vendor’s solicitors he was simply writing to his own employee at the London office and telling him to reduce the price. The First Respondent replied this was not the case and that in fact he was writing to check and confirm the correct price. He did not want to meddle in any commercial agreement involving the vendor but simply wanted to clarify the true purchase price.
82. It was put to the First Respondent that he had wanted the transaction to proceed as the instructions came from Big Fish/Styllpoint Ltd and in fact the First Respondent could not have cared less about the fraud that was going on. The First Respondent replied he did care and he was trying to minimise the fraud. It was put to the First Respondent that he could have spoken to Mr TA, the supervising partner at the London office, and asked him to check the true position but he did not do so. The First Respondent indicated that the Second Respondent seemed to be aware of what was going on and he had thought the Second Respondent had taken instructions.
83. It was put to the First Respondent that he was lying, he knew what was going on, he knew he was reporting to Big Fish, he knew Big Fish was meddling with the transaction and that the entire transaction was redolent of fraud. The First Respondent replied he did not just stand by, he wrote to the Second Respondent, he wrote to the lender’s solicitors and everyone was aware of what was going on. The First Respondent indicated he wanted to minimise the fraud which is why he had written to the lender’s solicitors and to the Second Respondent.
84. The First Respondent maintained he had never received the letter dated 9th September 2004 from Tracy Barrett addressed to Mr Ablud Kaihiva until after completion and he was unable to say whether he had done anything about the letter after it was brought to his attention.
85. The First Respondent was referred to the letter from the Second Respondent’s solicitors to the SRA dated 30th June 2006 in which he stated “[*SECOND RESPONDENT*] did not tell Mr Okri about the death threats for he feared to tell anyone. However, he did raise certain items in each transaction where he became concerned and Mr Okri did not seem perturbed and this comforted [*SECOND RESPONDENT*]. For example, in the sale of [Bournemouth property], [*SECOND RESPONDENT*] told Mr Okri from the beginning that he could not contact the client to speak to her. Mr Okri’s response was to say that he should write to the client and that would be sufficient. Further when the price was reduced in the same transaction, [*SECOND RESPONDENT*] told Mr Okri that he could not contact his client to verify the reduction. Mr Okri advised [*SECOND RESPONDENT*] that it was sufficient merely to ensure that she had signed the transfer”.
86. The First Respondent was asked whether he agreed with what was said to which the First Respondent said he did not agree. He had told the Second Respondent to try and contact his client by getting her instructions over the telephone or by a letter. The First

Respondent was asked why he had told the Second Respondent this when Mr TA was supposed to be supervising the Second Respondent. The First Respondent said this must have been because he was at the London office at the time and the Second Respondent had raised it with him while he was there. The First Respondent denied he had told the Second Respondent that it was sufficient to rely on a signed transaction and that he told the Second Respondent to contact his client to clarify the position.

87. It was put to the First Respondent that, on the allegations he was denying, he knew this was a transaction proceeding at an undervalue, he had completely and dishonestly allowed the transaction to go through at an undervalue, he had assisted Big Fish in getting a property at an undervalue and that he had been dishonest. The First Respondent denied all of these allegations.
88. On cross-examination by the Second Respondent's solicitor, the First Respondent accepted that it was possible the Second Respondent had only been informed of the reduction in price on 9th September 2004. He maintained he had told the Second Respondent to contact his client to take instructions. He indicated that whatever the Second Respondent had said to the SRA was simply his interpretation of what had happened. The First Respondent admitted he knew the Second Respondent had concerns regarding the transaction and that these concerns had been raised with the First Respondent. He accepted that he had his own concerns about the price reduction. The First Respondent was referred to his letter to the Second Respondent dated 9th September 2004 in which he had stated "I write further to our telephone conversation of today in which I informed you that we have been advised that the purchase price is £150,000, not £300,000 as we originally thought. Kindly confirm this from your client and, if appropriate, send us an amended TR1 showing the true purchase price." It was put to the First Respondent that this letter did not raise anything about concerns and that in this letter the First Respondent should have insisted the Second Respondent should get his client in to the office and set out any concerns that they had. The First Respondent replied that his letter clearly said "if appropriate" and this was an indication to the Second Respondent that he should confirm what the true position was. The First Respondent admitted alarm bells had rung in his head and he was trying to alert the Second Respondent by telling him to confirm the true purchase price with his client. The First Respondent maintained that his letter was sufficient evidence of his concern and his attempt to alert the Second Respondent to these concerns. He also indicated that a supervising partner was responsible for the Second Respondent.
89. When the First Respondent was asked what he had done to check the Second Respondent had confirmed the correct purchase price with his client, the First Respondent replied that when he had received the signed Transfer form back from the Second Respondent, he assumed the Second Respondent had clarified matters with his client.
90. It was put to the First Respondent that he had not taken any steps to check Mrs B had been contacted and this was because he had never told the Second Respondent to contact her. The First Respondent again referred to his letter of 9th September 2004 to the Second Respondent. The First Respondent was asked who had responsibility to transfer the completion funds. He replied the Second Respondent had this authority. It was put to the First Respondent that he had authorised the transfer of funds and that only he had authority to transfer the completion money which he had done. The First

Respondent denied this and said there was simply a CHAPS transfer form which was faxed. The First Respondent was asked which of his concerns had he raised with the supervising partner Mr TA. The First Respondent replied the reduction in price had been raised and Mr TA had said he would discuss the matter with the Second Respondent.

The Further Submissions of the First Respondent

91. Mr Nelson, on behalf of the First Respondent indicated this was a complicated case. The standard of proof required to prove dishonesty was high and the Tribunal had to be satisfied beyond a reasonable doubt that the First Respondent had been dishonest. Mr. Nelson submitted that it was necessary to establish the First Respondent's state of mind when the affairs had taken place. This was quite a long time ago and since these events, there had been an opportunity to analyse the documents at length and consider both sides of the transaction. Mr Nelson submitted that there was an inference in the correspondence that a fraud had taken place against Mrs B who was the victim. Mr Nelson submitted that the starting point was to establish what fraud had taken place. Whilst the focus was on best practice, it was inevitable that human failings would be encountered. Individuals working to high standards under extreme pressure could make assumptions quite easily and forget to challenge the obvious. In this case, the assumption was that Mrs B, due to her age was a victim. She was trying to sell a property but it turns out that she did not own the property. It appears that there was a real prospect that the Deed of Gift was effective and therefore the property was not in Mrs B's ownership at the relevant time in any event.
92. The Tribunal were referred to a letter from Mrs B's solicitors, HK solicitors, dated 9th September 2008 in which they asserted the property had been stolen from either Mrs B and/or her daughter. It was submitted that even her own solicitors could not say outright that property had been taken from Mrs B. The letter admits the signature in a letter dated 19th August 2004 from Mrs B to the Second Respondent contains her signature and in view of this, Mr. Nelson submitted that there could not be an assumption that there had been a fraud. The signature showed that Mrs B had abrogated to a third party.
93. Mr. Nelson submitted that this was a strange start to the story and what seemed to be inconceivable was in fact actually true. At some stage there appeared to be criminality but it had not been proved that there was fraud at the time of this conveyance. It was submitted that the Tribunal must be satisfied that there was a fraud and that the First Respondent had knowingly become involved in it. It was apparent that issues which were previously taken as inconceivable had turned out to be true. The picture had changed since the Law Society started their investigation. It turned out Mrs B did sign the authorities and transfer form, she knew that she was only due to receive £150,000.
94. The First Respondent was adamant he had not been dishonest and wanted to give evidence. He had been vehement in his responses and the only issues were with his misinterpretation of acting at all.
95. The first communication he received was from Tracy Barrett and on receiving a fax with all the parties details, he realised that Soorii Ayoola & Okri Solicitors were instructed as well. The First Respondent had given evidence that he thought he could act in this transaction, he had tried to maintain a separate approach and referred to a "Chinese wall". There was no dispute that he should not have done this and he now

accepted the position but he should be judged on the contents of his own file. He had seen the client, taken two forms of identification, and this confirms the client did exist and was who she said she was. There had been no allegation that Tracy Barrett was a fictitious person and as far as the First Respondent was concerned, this was a legitimate transaction.

96. There had been a question of authority and who was the First Respondent's clients and who he should have kept informed. It was clear from the letter dated 9th September 2004 that the First Respondent needed mortgage moneys to complete, the price had dropped and that Mrs Barrett did not intend to place him in the position he was placed in. She had agreed to purchase the property for £300,000 and the First Respondent did not know any different, and indeed the correspondence confirmed this. When it became apparent that the price had been reduced, the First Respondent was alarmed, although he did not have a discussion with Tracy Barrett about the funding. However, not knowing of her financial position did not make him dishonest. His immediate reaction when the purchase price changed was to think that the principal victim would be the lender but he was not instructed to act for the lender in this transaction. However he did inform the lender's solicitors.
97. The First Respondent had satisfied any doubts that may have arisen. The Transfer had the parties signature on it, Mrs B was expecting to receive £150,000 at the time of the transaction and a further £150,000 was to be paid to her estate when she died. Mr. Nelson submitted that this did not mean there had been fraud from the outset. A police investigation was ongoing and people had been charged as a result. The First Respondent was a witness in those proceedings indeed, both Respondents were witnesses, and neither had been charged.
98. The property had been used to raise finance, there had been a commercial agreement between Mrs B and her family, and Big Fish and whether that commercial agreement was in force and legitimate at the time of completion was not clear.
99. The First Respondent accepted he had made the wrong decision to act on behalf of Tracy Barrett in this transaction but he maintained he had taken proper ID documents, he had met Mrs Barrett and she had not been a fictional character.
100. In terms of the structure of the actual transaction, it was admitted by the First Respondent this appeared to be sloppy. There were issues where closer attendance notes would have been invaluable and indeed, the First Respondent had taken no part in completion at all. The decision had been taken away from him and completion took place between BBW Solicitors and Soorii Ayoola & Okri solicitors. The First Respondent had confirmed in evidence that he was not involved with completion and after it had taken place his participation in the transaction ceased, he simply faded out of the picture.
101. It was accepted by the First Respondent that he had taken a number of very poor decisions but he maintained he had not been dishonest. He had been naïve, he had been under protective of a junior colleague and he had delegated supervision of the Second Respondent to Mr TA. Mr TA had been qualified to supervise the Second Respondent albeit not qualified to supervise the office. It was accepted that it was rather unsatisfactory for a nineteen month post-qualified experienced solicitor to be supervised by a twenty four month post-qualified solicitor but it was submitted that it

was still possible for staff to supervise junior staff even when they were unable to supervise an office.

102. It was also submitted that the SRA's Green Card warning on property fraud was only a guide and a warning. The key issue was what was in his mind at the time. The First Respondent was not denying he had made mistakes but he did deny he was dishonest. He had never formed an intention to be dishonest or ignored an intention, he did what he thought was right. He did what he thought he needed to do and he accepted he had under protected and under supported his junior colleague. However there had been no intention of dishonesty.

The submissions of the Second Respondent

103. Mr Foreman, on behalf of the Second Respondent confirmed the Second Respondent admitted all the allegations, save the allegation of dishonesty. The Tribunal were referred to the Second Respondent's witness statement and in particular the threats that had been made to the Second Respondent by Big Fish. It was submitted that at the time the threats had been made, the Second Respondent did not inform the Law Society as he feared for his life. He had been a salaried partner for approximately three months from March 2006 until June 2006 and he had only accepted the offer of partnership as he wished to advance his own career. There had been no complaint from Mrs B and the Second Respondent had thought the transaction had concluded. When the Law Society wrote to him about the transaction, the Second Respondent felt it was not appropriate for him to continue being a salaried partner and therefore resigned.
104. Mr. Foreman pointed out that in the initial letter sent to the Law Society on the Secnd Respondent's behalf dated 30th June 2006, the physical assault had indeed been mentioned. He had stated in that letter "in addition to the threats to kill, Dr James rang constantly to apply pressure to [SECOND RESPONDENT], he came to the office to scream at him, he raised his hands to [SECOND RESPONDENT]'s throat as if to strangle him and he boasted that there is no one who crosses his path and gets away with it".
105. This particular transaction had been the last transaction with which the Second Respondent had dealt and in all the other transactions the Second Respondent had spoken to and seen all his clients. This was the only transaction where he did not do so and it was important to bear this in mind as by the time the Second Respondent dealt with this transaction with the property in Bournemouth, he had no reason to believe that he would not see his client. There was no evidence of fraud on any of the other transactions.
106. The Second Respondent had decided not to give evidence today and the Tribunal were referred to a letter from the Second Respondent's GP dated 10th October 2008. This letter confirmed the Second Respondent had been suffering from depression with fleeting suicidal thoughts and psychotic symptoms. The Second Respondent was not fit and ready or in a state of mind to be able to give evidence today. It had been difficult for Mr Foreman to take instructions from the Second Respondent and indeed, he had broken down in Court earlier. This was the reason he had not given evidence at the moment.

107. Mr. Foreman submitted that the Tribunal could look at the defence of duress by taking into account the contents of the Second Respondent's statement and the submissions made today. The Second Respondent had been admitted for a short time before the threats started. Big Fish had threatened him and assaulted him and this had caused the Second Respondent to suffer from nightmares and insomnia.
108. When the Second Respondent's file had been sent to HK solicitors, the Second Respondent had informed them that the file was incomplete as most of the file had been sent to BBW Solicitors.
109. The Second Respondent had received a letter from the seller recording the instructions and confirming she was happy for instructions to be taken from Big Fish. It was further submitted that failure to see the client in person and take her instructions was not evidence of dishonesty. Indeed the Second Respondent had sought assurance from the First Respondent throughout and he did send a client care letter to Mrs B confirming she had authorised him to take instructions from Big Fish. This was posted to Mrs B's home address and there was no reason to believe she would not have got it.
110. Mr. Foreman submitted that when the Second Respondent received the Title Deeds, they did not include the Deed of Gift and therefore the Second Respondent did not know anything about the Deed of Gift until the Law Society investigation. The Second Respondent had dealt with this conveyancing transaction as was usual and he had made a number of attempts to speak to Mrs B but was very anxious about the threats to kill him. He tried to slow down the transaction and indeed, the Tribunal were referred to the letter dated 31st August 2004 from Styllpoint Ltd to the Second Respondent and the letter dated 1st September 2004 from Styllpoint Ltd to the Second Respondent as evidence that the Second Respondent was being bullied. The Second Respondent kept trying to delay completion, while being faced with threats of death to himself and his family and the Tribunal was asked to bear in mind he was a young inexperienced solicitor.
111. The Tribunal asked why the Second Respondent had not gone to the police to which Mr. Foreman submitted the Second Respondent was in fear of his life and had no confidence in the police. He was a young man who was traumatised and felt he could not turn to anyone. He had not been working at the firm very long, this was a high level of trauma with threats of death and he did not feel he could turn to the Law Society or to the First Respondent about them.
112. It was submitted on behalf of the Second Respondent that taking into account his characteristics, he did what an ordinary reasonable solicitor would have done in his shoes. He had written to the seller about completion and asking her about vacating the property. He had not been told Mrs B would remain in the property and he was certainly not party to Big Fish's plans. He did not know that Mr G was Mrs B's son in law and throughout the transaction he had been led to believe that Mr G was her live in carer.
113. There were a number of letters which were clearly aggressive and showed that Styllpoint Ltd/Big Fish was desperate to get the money. The Second Respondent had concerns, he wanted additional authority, he was frightened and he was trying to do the right thing. He tried to contact Mrs B again on 7th September 2004 but was unsuccessful. He then spoke to the First Respondent and explained his concern that he had not spoken to his client, Mrs B. He was informed by the First Respondent that he

should get a signed Transfer. The First Respondent had admitted in his evidence that the concern was raised but he could not remember what he had actually said to the Second Respondent.

114. The First Respondent had admitted he had concerns about the price reduction, and concerns about the transaction but he did not raise any of these with the Second Respondent. It was admitted on behalf of the Second Respondent that the First Respondent's evidence was not credible on this issue.
115. Regarding the letter dated 9th September 2004 from Tracy Barrett to Mr Ablud Kaihiva the Second Respondent had not seen this letter and indeed, the First Respondent had admitted he had not seen this letter either, until after completion. If that were the case, then clearly the First Respondent could not have passed a copy of this letter to the Second Respondent and the first time the Second Respondent saw this letter was during the Law Society investigation.
116. Mr. Foreman submitted that although the First Respondent claimed he did not take part in completion, his attendance notes showed he was fully aware of what was going on. The Second Respondent wrote to Mrs B at the end to clarify the outcome.
117. This was a case where an inexperienced solicitor at a firm of solicitors had had threats made against him and nobody to turn to. He had tried to conduct the conveyancing transaction as normal, he had received written instructions which were confirmed to be correct, he had tried to contact the seller but been unable to do so and once the First Respondent had said a signed Transfer would be sufficient after the price was reduced, the Second Respondent took comfort from the First Respondent's involvement. It was also apparent that the lender's solicitors were happy with the reduction and although the Second Respondent tried to delay completion, he was also dealing with constant threats of intimidation.
118. The Tribunal were referred again to Blackstone's Criminal Practice 2008 and the test of duress set out therein. It was submitted that if duress could be established, this would vitiate consent and that the Second Respondent only had to show that the threat was so real he had no choice but to act as he did. Mr. Foreman submitted that a threat to kill is the type of threat necessary to satisfy the test and the cogency of the threat was an objective approach. In this case, the frequency and explicitness of the threats meant it was reasonable for the Second Respondent to do what he did. It was easy to say that he could have reported matters but he did not have the confidence of protection by police if he had reported the matter to them. He was dealing with a six foot six inch man and it was within the bounds of reasonableness that with his characteristics, the Second Respondent acted as he did. At that time he had repeated threats to kill made against him, Big Fish had placed his hands around the Second Respondent's throat, he had threatened to wipe out his generation and the Second Respondent feared him so much that he did not talk to anybody. It was submitted that it was reasonable to say that in this situation, the Second Respondent could be so traumatised that he would go into a cocoon and lose the will to live.
119. Mr. Foreman submitted that in terms of the type of threat required, the Second Respondent believed he would die if he didn't complete the transaction. Regarding the cogency of the threat, the Second Respondent was young and inexperienced and taking this into consideration, with the physical size of Big Fish, the explicitness and reality of the threats, it was reasonable that a reasonable person would act as the

Second Respondent had done. He believed he may have died if he hadn't completed the transaction and he was dealing with a very dangerous and evil man. Finally the Second Respondent had not volunteered to put himself in this position. It was submitted that if the Tribunal were unsure in relation to these questions, then the defence of duress would apply and the Second Respondent was not dishonest.

120. It was submitted that the Tribunal should not take at face value that there had been a fraud. Initially it had looked like the property had been sold without the owner knowing but it now turned out that the owner was indeed aware of the sale, she had signed the relevant paperwork, she had consented to the transaction and had wanted to sell the property at £150,000. It may be the case that this was just a theft by Big Fish from Mrs B's daughter. It was apparent that something had gone wrong but it was not clear what that was and indeed, there was a possibility that Mrs B had not been telling the truth herself.
121. The Second Respondent did admit all of the allegations save dishonesty but wanted to remind the Tribunal that he was only an assistant solicitor at the time, Mrs B had confirmed she freely provided written instructions to the Second Respondent to accept instructions from an intermediary, she signed a Transfer confirming her authority to sell at £150,000, he believed he had taken identity documents although accepted there was nothing on his file and he had tried to make contact with Mrs B albeit unsuccessfully. He accepted that the transaction had caused detriment to Mrs B, but it was only after the transaction that it had become apparent she did not own the property.

The Applicant's response to the Second Respondent's submissions

122. The Applicant indicated that the Second Respondent had not previously informed the Law Society that he had been told Mr G was Mrs B's live in carer. He had simply said to the Law Society he "assumed" that Mr G was a live in carer.
123. In relation to the issue of duress, the Applicant referred the Tribunal to the case of Onobrakpeya [9752/2007] where it had been accepted that the burden was on the prosecution to establish to the criminal standard that the defendant did not commit the crime, with which he is charged, under duress. The Applicant reminded the Tribunal that the Second Respondent had terminated his instructions to Big Fish on a number of other matters once this particular transaction had been completed. The Applicant submitted that if the Second Respondent completed this transaction under duress, then why had he not completed the other transactions under duress as well. There were approximately six transactions which did not complete and all of those retainers were terminated as soon as this particular transaction was completed. The Applicant submitted that this simply did not make sense.
124. The Applicant referred the Tribunal to the exhibits attached to the Second Respondent's witness statement which contained an extract from the Second Respondent's medical records dated 9th September 2008. The Applicant submitted that there was no reference in these medical records to the symptoms referred to in the Second Respondent's witness statement i.e. nightmares, lack of sleep and deep anxiety causing him to visit his GP. There was reference to the incidents being reported to the police but the report was two years after the event and there was no written evidence of threats made after the completion of the transaction on this particular purchase.

125. The Applicant submitted that the Second Respondent had not proved sufficiently that he was under duress and therefore he had admitted dishonesty and was dishonest.

The Tribunal's findings

126. At the opening of this Application it was confirmed that the First Respondent admitted allegations (1), (2), (3) and (5). He denied the remaining allegations (4), (6) and (7) and in addition denied the dishonesty alleged.
127. The Applicant further stated that it was agreed that the Tribunal should deal with the allegations in the main statement first and then consider whether it was necessary to pursue the allegations in the supplemental statement.
128. It was also confirmed that the Second Respondent admitted all the allegations against him but denied the dishonesty alleged.
129. The First Respondent ran a practice, Winman Okri in Manchester and was also a partner in Soori Ayoola and Okri, a practice in Plumstead, London. The Second Respondent at the material time was an Assistant Solicitor in the Plumstead office.
130. The First Respondent was admitted in September 1998 and the Second Respondent in January 2003. The day to day running and supervision of the Plumstead office at the material times was left to a two year qualified Assistant Solicitor (Mr. Alabi).
131. The allegations in this case relate to a three week period from 19th August to 10th September 2004 during which a property in Bournemouth, was sold by a Mrs B to a Ms Tracy Barrett.
132. The Second Respondent was instructed by fax letter of 19th August 2004 to act for Mrs B as Vendor and the First Respondent was instructed by fax letter of 23rd August 2004 to act for Tracy Barrett a purchaser. It is relevant that the 19th August letter signed by Mrs B came from the fax of a Mr. G and stated "I would further ask that you issue any undertakings request received from Mr. N. James on Styllpoint Ltd. Headed paper as per his request. I expect you to inform me if you have insurmountable problems or significant changes as a matter of course." The 23rd August letter was in identical terms.
133. Mr. N. James (who communicates under the name of "Big Fish") was known to the First Respondent. He had first met him in the Plumstead office at the end of December 2003 having been introduced to him by the Second Respondent. There was a further meeting with Mr. James and it seems clear that the First Respondent acted for him in another unconnected matter.
134. As part of the transaction, Tracy Barrett had obtained bridging finance from H (valid for three months only) for £162,000 at an APR of 18.84%. The purchase price was to be £300,000. The sale and purchase proceeded but on the day before completion was due to take place, the First Respondent was notified by Tracy Barrett that the sale price of the property was to be reduced to £150,000 and the transaction to completed at that figure on 10th September. The matter was apparently completed between the solicitors of H and the Second Respondent only, and on 13th September the sum of £89,899.50 was transferred to an unrelated Client Account and £56,276.02 was

transferred to Big Fish. Tracy Barrett became the legal owner of the property in Bournemouth, by registration completed on 22nd October 2004.

135. It subsequently transpired, according to a letter from HK Solicitors dated 9th September 2008 (solicitors for Mrs B), that in fact Mrs B had before the sale of the property given it by Deed of Gift to her daughter, Mrs DG and that Mrs B had no title to sell or mortgage at that time. It further appears that Tracy Barrett subsequently remortgaged the property to Bank of Scotland for £300,000 out of which she discharged the bridging finance. Despite evidence of fraud, the Land Registry confirmed that the Bank of Scotland could rely on Tracy Barrett's registration of the property in her name. By subsequent arrangement with the Bank of Scotland Mrs B. (now aged 96 years) was allowed to remain in the property until her death when the Bank of Scotland would then take the property. In the meantime the mortgage interest would be rolled up. Mrs B. had continued to live in the property throughout and is still living there but the house has been lost to the daughter Mrs DG. It also appears from the letter from HK that Mrs B. was aware of the sale, had signed documents sent to her address and thought she was to receive £150,000 on completion and that her Estate was to receive a further £150,000 on her death. She did not receive any money at all as a result of what happened. We are now told that persons have been charged as a result of a Police investigation into this matter.
136. It is necessary to look at the conduct of both Respondents relating to this bizarre transaction.

The First Respondent

137. He met Tracy Barrett only once in the Plumstead office at the end of August 2004. He made no attempt to take full instructions from her regarding the proposed purchase. He made no enquiries about the balance of purchase monies to be provided by her, or to advise her with reference to the purchaser or enquire into her financial circumstances. He says that he took a copy of her passport when he met her but it is clear from the file of papers disclosed that uncertified copies of her passport were sent by fax by Big Fish on 27th August to the Plumstead office. The Tribunal had the advantage of seeing the First Respondent give evidence and be cross-examined and were unimpressed by his evidence. He gave contradictory evidence and his explanations were not credible. The whole transaction was suspicious from the very beginning. Tracy Barrett's fax number was the same fax number as Big Fish and the First Respondent communicated direct with Big Fish about the transaction and gave him progress reports, notwithstanding his previous statement that he always communicated only with Tracy Barrett as his client. The suddenly halved purchase price was highly suspicious and no proper steps were taken to enquire further into it. The First Respondent claims that he misunderstood the Rule dealing with acting for vendor and purchaser and failed to appreciate any conflict of interest between himself and the client. Importantly, when the Second Respondent asked for help and advice because he could not contact his client, and had never met her, the First Respondent merely stated that the Second Respondent could rely on her signed Transfer form, - this at a time of a suddenly reduced figure giving rise to even greater suspicions about the whole transaction.
138. Having regard to the First Respondent's evidence, and to the correspondence and other documents produced, we find the disputed allegations (4), (6) and (7) proved.

139. The question of the dishonest conduct of the two Respondents in dealing with this transaction is the only allegation of dishonesty. It is clear that this transaction and the way in which it proceeded had all the hallmarks of a fraudulent enterprise. Alarm bells should have rung in the mind of the First Respondent. By his admitted and proven actions the First Respondent is clearly guilty of serious conduct unbecoming a solicitor. It is especially in property transactions that the compliant solicitor, who does not ask questions, who does not make proper enquiries and who does the bidding of third parties not part of the immediate transaction, is essential in assisting a fraud to take place. Was this solicitor guilty of dishonest conduct? The test is that laid down in the case of Twinsectra (H of L) decision. Was this Respondent's conduct dishonest by the ordinary standards of reasonable and honest people and ought he to have realised that by these standards his conduct was dishonest? This is not a case in our view where it can be said that there was only "naïve behaviour" or a "closing of eyes" or a "failure to appreciate". Having carefully considered the events of this transaction and the evidence and conduct of the First Respondent, we have come to the conclusion that his conduct was dishonest and that he ought to have realised that his conduct was dishonest. His dishonest conduct enabled a fraud to be perpetrated on Mrs B and her daughter whereby a property was transferred to another party at an undervalue.

The Second Respondent

140. This Respondent never met his client, Mrs B. She was, at the time, a 93 year old widow living in Bournemouth yet she apparently chose to instruct a firm in Plumstead instead of a local solicitor. The Second Respondent was informed that the purchaser was represented by the First Respondent through the associated Manchester office. His initial letter of instruction has already been referred to. This Respondent had been qualified for only 19 months when he was instructed. He was aware from the very first letter that Big Fish was involved. This Respondent has admitted all the allegations against him and he chose not to give evidence to the Tribunal. It is quite clear from the lengthy statement made by this Respondent that he completely failed to take any proper instructions from an elderly, vulnerable client. He should have insisted on either going to see the client at her home or arranged for a local solicitor to go and see her to make absolutely sure that she fully understood the sale of her house and that it was what she wanted; where was she to live in the future; when she was to move and how and what her overall financial and family position was. Further, he allowed himself to be bullied and threatened throughout this transaction by Big Fish and in his statement says that apart from threatening himself and his family, Big Fish on one occasion also put his hands around the Second Respondent's neck whilst threatening him. As a result he says that he suffered fear, nightmares and deep anxiety. There are various threatening letters from Big Fish on the file and it is clear that he was driving this transaction and was desperate to have it completed and the bridging finance paid over to him and/or for an unrelated property transaction.
141. The Second Respondent has denied dishonesty and has also pleaded Duress as a defence to it. We now consider whether the Twinsectra test of dishonesty is satisfied when considering the Second Respondent's conduct in the transaction. Given the admissions made by the Second Respondent, the complete involvement of Big Fish and his threats to get the transaction completed quickly, the sudden reduction in purchase price and the complete failure to obtain proper instructions or to meet the client and notwithstanding the references provided, we are satisfied that the dual test in Twinsectra is met. We find that by the ordinary standards of reasonable and honest

people, that he was dishonest and that he ought to have realised that by these standards his conduct was dishonest.

142. We now have to consider whether the defence of Duress to dishonesty is made out. The duress in this case is caused by the threats of physical violence to the Respondent and his family and we have been referred to the criminal case of R. v. Hasan (H of L) in which are set out the questions to be asked when considering such a defence. We have also been referred to Blackstones Criminal Practice 2008 and the note and cases referred to on the defence of duress. These cases deal with serious criminal offences, but we have considered carefully what is said in these cases. We have also considered the case of Pao On and Others and Lau Yiu Long and Others [1980] AC 614 where it was stated per curiam in relation to recognising economic duress “it must be shown that the payment made or the contract entered was not a voluntary act”.
143. The burden of proof is on the Applicant to prove that the Second Respondent did not act as he did under duress. We have also been referred to the decision in H. O. Onobrakpeya of 29th May 2008. What should the Respondent have done, faced with these threats to himself and his family? He should, in our view, have told Mr. TA and Mr. Okri immediately, and asked for help and advice as to what he should do. He could have notified the Police and asked for help and protection; he could have spoken to the Law Society help line and obtained help and advice; he could have refused to go on acting for the client. In the event he did nothing but effectively caved in and completed the transaction at the insistence of Big Fish. We do not think that a reasonable solicitor of similar age and background in this Respondent's position would have done nothing and would have acted as he did. As the Respondent chose not to give evidence we were additionally not able to consider any answers that he might give in the witness box. It is also significant that immediately the transaction was completed, the Second Respondent stopped acting for Big Fish in all other transactions in which he was involved and which were outstanding. He subsequently informed the Police. In these circumstances we find the Applicant has proved to the criminal standard that this Respondent did not act as he did under duress and his actions were voluntary. In summary we find all the allegations proved, including the allegations of dishonesty against both Respondents.
144. The Tribunal do not consider it necessary in the circumstances to deal with the allegations made in Supplementary Statement.

Mitigation of First Respondent

145. The First Respondent indicated that while he respected the Tribunal's decision, he may have been negligent but he still felt he was not dishonest. He had met the client face to face, this had been a normal transaction from the outset and when the price had been reduced, he took the necessary steps required to notify the lender's solicitors and the other side. He had tried to get an explanation from the client.
146. The First Respondent asked the Tribunal to bear in mind he had been the only one to give oral evidence and had tried to give an explanation to the Tribunal. Mrs B's initial complaint had now changed and it turned out that she was fully aware of the price reduction and what was going on. The First Respondent submitted that whilst he admitted his conduct was wrong and he may have been negligent, he still believed he had not been dishonest.

147. When the Tribunal reminded the First Respondent that a finding of dishonesty had already been made, the First Respondent indicated he felt this was a lighter element of dishonesty. There had been no personal gain to himself in the transaction, he had tried to take sufficient steps as appropriate, he was sorry for what had happened and apologised to the Tribunal and asked the Tribunal to exercise leniency.

Mitigation on behalf of the Second Respondent

148. The Second Respondent apologised sincerely for what had happened. He reminded the Tribunal that Mrs B admitted she had known about the nature of the transaction. Big Fish had subsequently been arrested and charged by the police and this had not been an easy time for the Second Respondent and his family and children. He had found it extremely difficult to cope, he had not benefited a penny from this transaction and indeed, the Tribunal were referred to the letter dated 10th October 2008 from his GP which confirmed he had suffered severe depression with suicidal thoughts and psychotic symptoms.
149. The Second Respondent submitted he was a very careful person, he liked to cross his t's and dot his i's and he would never do anything that he knew was not right or was dishonest or unlawful. He asked the Tribunal to consider the references that had been placed before the Tribunal on his behalf and to take these into account when making their decision. The Second Respondent submitted that there were different categories of dishonesty and this particular incident was at the bottom level.

Costs

150. The Applicant submitted a schedule of costs in the sum of £39,967. He indicated there was probably another £1,000 to be added to that for the additional attendance required on 10th December 2008, which had not been included when the schedule was prepared. Accordingly, he asked the Tribunal to consider awarding the Applicant's costs in the total sum of £40,980.
151. The Applicant also requested the Tribunal to make an Order for a payment to be made by the Respondents now, particularly bearing in mind the amount of the costs. The Applicant submitted that if the Respondents were unable to pay, then it would be up to the SRA to decide whether they wish to pursue the matter any further. The Applicant submitted it was in the interests of the Respondents and the public that an Order for payment of costs be made today.
152. The First Respondent indicated he was not currently working and was applying for state benefits. He had two children, his wife was suffering from cancer and he had no idea how he would be able to pay the costs.
153. The Second Respondent indicated his bank account had been in overdraft for the last 3 months. His wife was studying, he had children and it had not been easy for him.

The Tribunal's decision

154. The Tribunal had listened carefully to the submissions of the parties and taken into account the mitigation put forward by both Respondents.

155. Regarding the First Respondent, the Tribunal's findings set out at length the reasons behind the Tribunal's findings and commented on the First Respondent's evidence and indeed the part he had played in the transaction. The First Respondent had given contradictory evidence and his explanations had not been credible. He was clearly the more senior of the two Respondents in terms of supervision and experience and therefore was more culpable. In view of this, the Tribunal felt that the only sanction appropriate was to Strike Off the First Respondent.
156. Regarding the Second Respondent, the Tribunal felt that there was a different level of culpability. The Tribunal took into account the very good character references provided on behalf of the Second Respondent and bore in mind that the Second Respondent's level of qualification and experience was much less than the First Respondent. It appeared he was a junior partner, he had not been admitted for very long and he was dealing with the transaction under considerable pressure from Big Fish and very little support or guidance from the First Respondent. Notwithstanding the finding of dishonesty, the Tribunal felt that the Second Respondent was less culpable than the First Respondent and therefore decided the appropriate sanction was to suspend him for a period of two years.
157. The Tribunal Ordered that the Respondent, Godwin Okri of 721 Ashton New Road, Manchester, M11 4GR, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Ordered that the Respondent, [*SECOND RESPONDENT*] of 293 Plumstead High Street, London, SW18 1JX, solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 10th day of December 2008.

The Tribunal further Ordered that the Respondents do pay the Applicant's costs, excluding the costs of the supplementary statement dated 18th April 2008, to be assessed if not agreed and to be apportioned as to 2/3 to be paid by the First Respondent and 1/3 to be paid by the Second Respondent.

Interim Costs Order

The sum of £7,000 to be paid by the First Respondent Mr. Okri and £3,000 to be paid by Second Respondent.

Dated this 10th day of March 2009
On behalf of the Tribunal

D J Leverton
Chairman