SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10273-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHN WARNER SMITH First Respondent

and

ALICK ARLINGTON VOLIERE Second Respondent

Before:

Mr J C Chesterton (in the chair)
Miss J Devonish
Mr M Palayiwa

Date of Hearing: 17th and 18th March 2011

Appearances

Robin Havard, solicitor, of Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant.

The First Respondent, who was present, was represented by David Morgan, solicitor, of Radcliffes LeBrasseur, 5 Great College Street, London SW1P 3SJ.

The Second Respondent was not present and was not represented.

JUDGMENT

Allegations

1. The allegations in the Rule 5(2) Statement against the First and Second Respondents, John Warner Smith and Alick Arlington Voliere respectively, were that:

1.1 The First and/or Second Respondents conducted themselves in a manner that was likely to compromise their integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 ("SPR") and/or, where such conduct related to a period after 1 July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007 ("SCC").

1.2 The First and/or Second Respondents conducted themselves in a manner that was likely to compromise or impair their duty to act in the best interests of clients contrary to Rule 1(c) of the SPR and/or, where such conduct related to a period after 1st July 2007, Rule 1.04 of SCC.

1.3 The First and/or Second Respondents conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the SPR and/or, where such conduct related to a period after 1st July 2007, Rule 1.06 of SCC.

1.4 The First and/or Second Respondents purported to enter into a partnership, namely Sovereign Chambers LLP, but failed to carry out the responsibilities of a partner.

1.5 The First and/or Second Respondents misled the Solicitors Regulation Authority ("SRA") and/or third parties by holding themselves out as a partnership.

1.6 The First and/or Second Respondents permitted funds to be drawn from client account otherwise than in accordance with Rule 22(1) of the Solicitors' Accounts Rules 1998 ("SAR") leading to a cash shortage.

1.7 The First and/or Second Respondents had acted dishonestly.

First Respondent

2. The allegations against the First Respondent were that:

2.1 Between December 2006 and 20 November 2007 the First Respondent failed to supervise the Second Respondent adequately or at all.

2.2 He permitted himself to be held out as principal of the firm, Sovereign Chambers LLP, when, between December 2006 and 20 November 2007 he had little or no involvement with the firm's business nor carried out any of the responsibilities of a principal and partner in the firm.

Second Respondent

3. The allegations against the Second Respondent were that:

3.1 The Second Respondent effectively ran and thereby purported to supervise a practice at a time when he was neither qualified nor permitted to do so.

3.2 He failed to make full disclosure of his immigration status to the SRA.

3.3. Between December 2006 and 28 February 2008, the Second Respondent involved himself in a business undertaking, namely as a purported partner in a legal practice, when not entitled to do so.

3.4 The Second Respondent denied conducting applications on behalf of clients for work permits whereas he did undertake such work.

3.5 The Second Respondent breached an undertaking given in the course of a conveyancing transaction.

4. The additional allegations in the Rule 7 Statement made against the Second Respondent alone were that:

4.1 He failed to disclose to a client of the firm, namely the lender, all relevant information relating to a conveyancing transaction which was material to the lender's business.

4.2 He completed, and signed, documentation in the course of a conveyancing transaction which he knew, or should have known, was incorrect.

4.3 He failed to act in the best interests of the firm's lender client by failing to register at HM Land Registry within a reasonable time or at all, the mortgage on the Title to a property contrary to Rule 1.04 of SCC.

4.4 He failed to honour an undertaking in the course of a conveyancing transaction in breach of Rule 10.05 of SCC.

Documents

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

Applicant:

- Application in Form 1 dated 8 June 2009;
- Rule 5 (2) Statement dated 8 June 2009 with exhibits;
- Rule 7 Statement dated 19 February 2010 with exhibits;
- Schedule of Costs.

First Respondent

- Witness statement of First Respondent December 2010;
- Extract from medical records.

Preliminary Matter (1)

6. This matter was heard with cases 10049/2008 (SRA v Smith, [SECOND AND THIRD RESPONDENTS REDACTED] and Rahman) and 10431/2010 (SRA v Smith, Voliere and Dawodu). The Tribunal considered sanction in all three cases having heard all matters and made findings on the allegations in all matters.

Preliminary Matter (2)

7. In the absence of the Second Respondent the Tribunal had to determine whether the Second Respondent had been served with notice of the proceedings, and, if so, if it was appropriate to proceed with the case in his absence.

8. The Tribunal noted that at a directions hearing on 4 February 2010 the Tribunal had permitted substituted service on the Second Respondent by means of an advertisement in a national newspaper in the UK and in Canada. At that time the substantive hearing was listed to take place on 24 and 25 March 2010. That hearing did not take place. However, a directions hearing took place on 5 October 2010. The Applicant had applied for an order for substituted service against the Second Respondent and against Mr Dawodu, the Third Respondent in matter 10431/2010. The Tribunal had ordered that there should be substituted service of proceedings on the Second Respondent by means of advertisement in a national paper in the United Kingdom.

9. The Applicant produced a copy of the advertisement which had been placed which gave notice of the proceedings, including the date of hearing. The copy advertisement was placed on the Tribunal's file.

10. The Tribunal was satisfied that service of proceedings had taken place in accordance with its direction. Further, it appeared clear that the Applicant had taken all necessary and reasonable steps to try to trace the Second Respondent, but those attempts had been unsuccessful.

11. The Tribunal was satisfied that the proceedings had been served appropriately and that the Second Respondent had chosen voluntarily to absent himself from the proceedings. It was noted that he had played no active part in the proceedings.

Factual Background

12. The First Respondent was born in 1942 and was admitted to the Roll of Solicitors in 1967.

13. The Second Respondent was born in 1961 and was admitted to the Roll of Solicitors on 15 December 2006 via the Qualified Lawyers Transfer Test, having been a barrister prior to his admission as a solicitor.

14. At the material times both Respondents were members of a Limited Liability Partnership ("LLP") operating under the name of Sovereign Chambers LLP ("Sovereign"). Until 31 March 2008 the First Respondent was a member of Cavell Solicitors LLP ("Cavells"). The Second Respondent had also been a partner in the firm of Holden Haie during the relevant period.

15. The First and Second Respondents remained on the Roll as at the date of the hearing but neither held a practising certificate. On 2 October 2009 an Investigation Officer of the SRA attended the offices of Sovereign in order to carry out an inspection. A Forensic Investigation Report ("FIR") dated 8 February 2008 was produced, together with supporting documentation, and this report was relied on by the Applicant.

16. The Second Respondent informed the SRA's Investigation Officer that Sovereign had been set up on 15 December 2006 in the name of the First and Second Respondents. At the time the investigation began on 2 October 2007, SRA records showed that the First and Second Respondents practised in partnership as Sovereign from 59B Leytonstone Road, Stratford, London E15 1JA and had another office at 11 Mortham Street, London E15 3LS. At some point Sovereign also had an office at 67 West Ham Lane, London E15. The First Respondent's case was that he was not involved in Sovereign until 20 November 2007 (after the SRA investigation began) and at that point had began to practise at the 11 Mortham Street office. The First Respondent contended that he had been unaware that he had been held out prior to November 2007 as a member of Sovereign or that he had any supervisory or management functions with regard to that firm.

17. The SRA's Investigation Officer carried out an inspection of eleven matters conducted between 11 May and 20 September 2007. The First Respondent was denoted as the supervising partner on eight of these files, in which the client care letters were dated between April and August 2007. In a letter dated 6 May 2007 to Platform Funding Limited it was stated in a letter from Sovereign, "There have [sic] two partners in our firm and that we are on the Panel of Britannia as well as that of Platform". However, in a letter to the SRA of 21 November 2007 the Second Respondent confirmed that the First Respondent had not been practising with Sovereign until 20 November 2007.

18. The Second Respondent having been admitted in December 2006, he was not qualified to supervise a practice and there was no one involved in the firm who was qualified to supervise until the First Respondent's involvement began in November 2007.

19. The FIR, based on examination of the client's ledger and other records, showed that on the matter of PA there was an overpayment of £10,002, which led to a cash shortage on client account in that amount. The shortage occurred on completion of a property purchase on 19 July 2007 and was rectified on 26 November 2007, approximately four months later. Further, in that matter, a letter from HM Land Registry dated 9 December 2007 indicated that registration was incomplete, despite completion taking place in July 2007.

20. In the course of the SRA's investigation the Second Respondent produced documentation to indicate that he was pursuing an MA in Diplomatic Studies and that the course started on 14 January 2008 at the University of Westminster. A letter from the UK Border Agency to the Legal Complaints Service dated 17 June 2008 indicated that between 11 December 2002 and 28 February 2008 the Second Respondent was granted leave to remain in the United Kingdom as a student. Further correspondence, including an email from the Home Office of 6 August 2008 confirmed that throughout the material time, on the basis that the Second Respondent was allowed to remain as a

student, he should not have been conducting business or working on a self employed basis.

21. In a letter to the SRA of 21 November 2007 the Second Respondent stated that Sovereign had not used the office at 11 Mortham Street until November 2007 and that the firm had not conducted immigration (asylum, work permits, student or any other) matters. Correspondence and documentation provided by Work Permits (UK) showed that from 20 December 2006 (five days after Sovereign was set up) the Second Respondent conducted immigration work from the office at 11 Mortham Street.

22. An application for professional indemnity insurance for Sovereign for the practice year 2006/2007 showed the practice's main address as 11 Mortham Street.

23. From about December 2007 the Second Respondent acted on behalf of Mr WAK in the sale of 63 HR to Mr JP. He was represented by Bearing Sachs Solicitors LLP ("Bearing Sachs"). By letter of 19 December 2007 Bearing Sachs sent to the Second Respondent Requisitions on Title which, amongst other matters, requested details of the mortgages or charges secured on the property and requested an undertaking to redeem or discharge the mortgages and charges listed and send to the purchaser's solicitors form DS1 as soon as it had been received. In response Sovereign confirmed that there was a charge in favour of Oakwood Homeloans Limited ("Oakwood") and provided the requested undertaking. On 21 July 2008 Bearing Sachs complained to the SRA. Completion had taken place on 26 February 2008 but the Second Respondent had not complied with the undertakings given. The necessary documentation to confirm redemption of the Charge with Oakwood had not been sent to the purchaser's solicitors, which prevented the purchaser's solicitors registering Title and protecting the interests of the purchaser and the lender. In correspondence the Second Respondent referred to a dispute which arose regarding the amount required to redeem the mortgage with Oakwood and late provision of information from the lender. The Applicant's case was that whatever the difficulties may have been, the undertakings should have been honoured.

24. The First and Second Respondents were informed that the matters raised in the Rule 5 Statement were to be referred to the Tribunal by way of a letter of 18 December 2008.

25. The allegations in the Rule 7 Statement, against the Second Respondent alone, related to the purchase by the Second Respondent's client, Mr KO of 53 CR, London E13. The Second Respondent also acted in the transaction for the lenders KMC, subsequently ME. The file of papers relating to the transaction was produced to the SRA following service of a Notice pursuant to Section 44B of the Solicitors Act 1974 (as amended).

26. The vendor of the property was Ms AAO. In July 2007 Ms AAO contracted to sell the property to Mr OO (no relation) for £187,000. Ms AAO was represented by N&Co Solicitors. In September 2007, Mr OO exchanged contracts with Mr KO (no relation), the Second Respondent's client, who agreed to purchase the property for £239,995. Mr OO was represented by ES&Co Solicitors. Mr KO was represented by A&Co Solicitors until January 2008, at which point he instructed the Second Respondent.

27. Completion of the purchase by Mr KO took place by way of sub-sale from Mr OO in February 2008. Mr KO obtained a mortgage with KMC for £216,000. On 30 March 2008 KMC transferred its interest to ME. ME were not aware that Mr KO was purchasing from Mr OO, and understood he was purchasing from Ms AAO.

28. In parallel with this transaction, on 28 August 2007, D&ST agreed to purchase the property from Ms AAO for £182,000. Ms AAO was represented in that purported transaction by I&Co Solicitors. On 12 October 2007 contracts were exchanged between D&ST and Ms AAO and a deposit paid. The agreed completion date was 23 October 2007. Solicitors for D&ST sought an undertaking from I&Co that an existing charge on the property would be discharged on completion but did not receive an undertaking nor, in due course, a Notice of Discharge. On 30 October 2007 the solicitors for D&ST served on I&Co a Notice to Complete, but the transaction never completed. On 7 November 2007 D&ST entered a Notice on the title to the property recording a beneficial interest on the basis of the exchange of contracts on 12 October 2007. On 15 February 2008 proceedings were issued by D&ST for specific performance of the contract. On 4 July 2008 D&ST obtained summary judgment but that judgment was set aside on 11 December 2008 on the application of Ms AAO. At the time the Rule 7 Statement was made there were pending applications still to be adjudicated on by HM Land Registry.

29. The Second Respondent wrote to ES&Co acting for Mr OO on 3 January 2008 to confirm that he had been instructed in place of I&Co. By letter of 16 January 2008 ES&Co confirmed that completion must take place on 18 January 2008. Completion did not take place and by letter of 25 January 2008 ES&Co sent to the Second Respondent a Notice to Complete.

30. By letter of 1 February 2008 the Second Respondent requested confirmation from ES&Co that the purchase price was £215,995 and not £239,995 as originally stipulated, and that from that figure the sum of £17,800 should be retained. No reason was stated for the retention. The amount of the loan Mr KO was to obtain from KMC was £215,995, i.e. the figure the Second Respondent had mentioned in his letter of 1 February 2008.

31. On 4 February 2008 the Second Respondent signed the Certificate of Title which included confirmation of adherence to the annexe to Rule 3 of SCC. In a letter of the same date to KMC the Second Respondent confirmed that the property had good freehold title. By letter of 6 February 2008, two days after submission of the Certificate of Title, the Second Respondent wrote to ES&Co asking for confirmation that the charges on the Charges Register would be redeemed or "lifted".

32. By letter of 14 February 2008 (dated 14 February 2007 in error) the Second Respondent wrote to ES&Co endeavouring to recall the advance monies which had been sent to ES&Co on 7 February 2008 in order to complete the purchase, as a result of the purported failure on the part of ES&Co to adhere to an agreement that they would pay back to the Second Respondent's firm £17,800 and that £187,000 of the sum of £215,995 had been paid by ES&Co to N&Co, acting on behalf of the registered proprietor Ms AAO. The Deed of Transfer stated that the transfer of title was between Ms AAO and Mr KO.

33. The Second Respondent endeavoured to register the transfer dated 8 February 2008 and the mortgage with KMC. Subsequent correspondence with HM Land Registry confirmed the existence of a prior pending application of D&ST. By letter of 24 September 2008 HM Land Registry confirmed cancellation of the application for registration of title. Mr KO had not been registered as the proprietor nor had the mortgage with ME been registered as a charge on the property.

34. This matter was drawn to the attention of the SRA by letter dated 2 February 2009 from D&ST. By letter of 22 April 2009 the SRA wrote to the Second Respondent requiring him to produce his file of papers in relation to this matter. By letter of 1 May 2009 the Second Respondent sent to the SRA his file of papers, but did not include any financial information.

35. By letter of 25 June 2009 the SRA wrote to the Second Respondent requesting a detailed response to specific enquiries. The Second Respondent failed to reply. By letter of 9 July 2009 the SRA wrote again to the Second Respondent inviting him to respond within eight days of that letter. On 10 July 2009 the SRA received a letter from the Second Respondent, who at that time was also a partner in the firm Holden Haie, indicating his intention to provide a response within the next eight working days. The SRA received a telephone call from the Second Respondent confirming he would provide a response by 23 July 2009. The SRA heard nothing further from the Second Respondent and decided to refer this matter to the Tribunal.

Witnesses

36. None.

Findings of Fact and Law

37. **Allegation 1.1. The First and/or Second Respondents conducted themselves in a manner that was likely to compromise their integrity contrary to Rule 1 (a) of the Solicitors' Practice Rules 1990 ("SPR") and/or, where such conduct relates to a period after 1 July 2007, Rule 1.03 of the Solicitors' Code of Conduct 2007 ("SCC").**

37.1 This allegation was denied by the First Respondent. The Second Respondent had not indicated his position with regard to any of the allegations.

37.2 The allegation that the First and/or Second Respondent had conducted themselves in a manner that was likely to compromise their integrity related to the manner in which Sovereign was established and practised, the creation of a cash shortage in relation to the sale of 63 HR, the immigration status of the Second Respondent, the terms of a professional indemnity insurance application for the year 2006/2007 and a breach of undertakings in relation to the sale of 63 HR.

37.3 The Tribunal found, so that it was sure, that the Second Respondent had established Sovereign on the same day he was admitted as a solicitor, at a time when he was not qualified to supervise a practice. From December 2006 he used the First Respondent's name on Sovereign's letterheads and held the First Respondent out as the principal of the firm.

37.4 Although the Tribunal did not have the benefit of live evidence from the First Respondent, who was advised for medical reasons not to undergo the stress of giving evidence, it took into account what he said in his statement made in December 2010. The First Respondent's position was that he had had no involvement with Sovereign until he began practising from that firm's Mortham Street Offices in November 2007. Indeed, it was accepted by the Applicant that the First Respondent had not been engaged in the practice until about that time.

37.5 The position appeared to be that the First and Second Respondents had had some discussions about the First Respondent joining the Second Respondent in practice at some point. The Second Respondent had used the First Respondent's name without the authorisation of the First Respondent.

37.6 The lack of integrity on the part of the Second Respondent was very clear. Indeed, it appeared to the Tribunal that he had deliberately exploited a fellow solicitor for his own purposes. However, the Tribunal was greatly concerned that having been held out as a partner the First Respondent then went into partnership with the Second Respondent. The First Respondent's position was that he did not know he had been held out as a partner. Nevertheless, his name appeared on the letterhead of Sovereign from December 2006. He failed to carry out any, or any proper enquiries before beginning practice from Sovereign's Mortham Street offices. There must have been some sort of professional relationship between the First and Second Respondents during 2007 in order for the First Respondent to agree to work with the Second Respondent.

37.7 The cash shortage in relation to the sale of 63HR was created in July 2007. This was before the point at which the First Respondent had any proper involvement with Sovereign. The Tribunal noted that the cash shortage was remedied approximately a week after the First Respondent began to practice at Sovereign. So far as the Second Respondent was concerned, in making an overpayment such that a cash shortage was created, his conduct was such to have breached Rule 1.03 of SCC. However, the First Respondent was not involved in the creation of a cash shortage and in this respect, therefore, had not shown any lack of integrity.

37.8 The Tribunal found, so that it was sure, that the Second Respondent had been engaged in legal practice at a time when he was not permitted to undertake work or self employment as he was in the UK as a student. In carrying out the work when he knew he was not permitted to do so, the Second Respondent showed a lack of integrity which was clearly a breach of both Rule 1(a) of the SPR and Rule 1.03 of SCC.

37.9. So far as the First Respondent was concerned the Tribunal did not find that he knew the Second Respondent's immigration status. A solicitor carrying out checks before entering partnership with a fellow professional might be expected to carry out a thorough "due diligence" exercise. However, the First Respondent had not shown any lack of integrity in assuming that this part of the Second Respondent's status was in order.

37.10 The professional indemnity insurance application for 2006/7 gave the main address of Sovereign as 11 Mortham Street. It later became apparent from the Second

Respondent's own letters, that this address was not used until November 2007. Having found that the First Respondent did not practice with Sovereign until approximately 20 November 2007, the Tribunal could not find that he had been involved in submitting a professional indemnity insurance application which was in any way misleading. The First Respondent's position on when he began practising with Sovereign, and the office he used, had been consistent. However, the Second Respondent had given inconsistent and possibly misleading information to potential professional indemnity insurers and in so doing he had shown a lack of integrity.

37.11 The alleged impairment of integrity with regard to the breach of undertaking arose from the sale of 63HR. The undertakings were given by the Second Respondent and he failed to comply with the undertakings. It was noted that there had been some difficulties with the conveyancing transaction, but a solicitor is bound to honour an undertaking, at his/her own expense if necessary. Failure to honour an undertaking clearly compromises the integrity of a solicitor contrary to the SPR and/or SCC and this was clearly the case for the Second Respondent.

37.12 Whilst the First Respondent was a partner in the firm by the relevant time he was not personally involved in giving the undertaking or in failing to comply with it. Accordingly, this part of the allegation of a lack of integrity was not made out against the First Respondent. The Tribunal was satisfied so that it was sure, that the allegation had been proved in its entirety with regard to the Second Respondent. With regard to the First Respondent the allegation had been proved in relation to the manner in which he allowed his name to be used by the Second Respondent in the practice of Sovereign.

38. **Allegation 1.2. The First and/or Second Respondents conducted themselves in a manner that was likely to compromise or impair their duty to act in the best interests of clients contrary to Rule 1(c) of the SPR and/or, where such conduct relates to a period after 1st July 2007, Rule 1.04 of SCC.**

38.1 This allegation was denied by the First Respondent. The Second Respondent had given no indication of his position with regard to this allegation.

38.2 The allegation related to the formation and conduct of Sovereign; the creation of a cash shortage in the matter of PA; the immigration status of the Second Respondent; the submission of a professional indemnity insurance proposal; and breach of undertakings.

38.3 The First Respondent had not known that the Second Respondent was using his name on the letterheads of Sovereign from December 2006 and apparently did not know that his name had been used in this way, even when he joined the practice in November 2007.

38.4 The First Respondent had clearly failed to carry out any enquiries into the firm he had discussed joining and actually joined in November 2007. The fact that his name was used gave to clients, including lender clients, an assurance that Sovereign was a two partner practice. Indeed, the Tribunal noted that in May 2007 the firm specifically stated in a letter to a potential lender client that there were two partners. The First Respondent, in effect, allowed the Second Respondent a clear field to mislead clients,

including lender clients and the wider public. The manner in which the First Respondent had joined the practice was clearly such as was likely to compromise or impair his duty to act in the best interests of clients. The Tribunal noted in particular that on eight of the eleven files inspected by the SRA the First Respondent was named as the supervising partner. This gave assurances to clients which were unfounded, as the work was in fact being conducted by a recently admitted solicitor with no supervisor in place.

38.5 So far as the Second Respondent was concerned, it was clear to the Tribunal on the evidence that he had set up a practice without having proper supervisory structures in place. This was clearly not in the best interests of clients. Accordingly, this allegation was proved in relation to the establishment of the practice with regard to both Respondents.

38.6 The creation of the cash shortage in relation to the matter of PA occurred on 19 July 2007. This was at a time the First Respondent was not in practice with Sovereign. Allowing a cash shortage is clearly not in the best interests of clients. In creating a cash shortage on client account in the matter of PA on 19 July 2007 the Second Respondent clearly failed to act in the best interests of his purchaser client and, indeed, the lender. The transaction should not have completed where the firm held insufficient funds. The allegation was found to be proved against the Second Respondent, who had conduct of the transaction, but not against the First Respondent who had no involvement with the matter (save to the extent set out above that he appeared to be a partner in the firm).

38.7 In setting up and practising within a legal practice when he was not permitted to work because of his immigration status the Second Respondent conducted himself in a way which was likely to compromise and/or impair his duty to act in the best interests of clients. Clients instructed the Second Respondent when he had no right to practice because of his immigration status.

38.8 So far as the First Respondent was concerned, he did not know about the Second Respondent's immigration status. There was therefore nothing with regard to his conduct in this regard which was in breach of Rule 1(c) SPR and/or Rule 1.04 of SCC.

38.9 The Second Respondent completed a professional indemnity insurance application for 2006/7 which gave potentially misleading information about the firm's practice. In doing so the Second Respondent put at risk the proper provision of insurance for the firm which in turn could have had an impact on the Compensation Fund. Any action which puts at risk proper insurance must amount to compromising or impairing the ability of a solicitor to act in the best interests of clients.

38.10 The First Respondent was not involved in making the insurance proposal and there was no evidence that he had any knowledge of it. Accordingly, the Tribunal could not find that in this regard he had breached Rule 1(c) of the SPR and Rule 1.04 of SCC.

38.11 The breach of undertaking in the matter of 63HR was a failure on the part of the Second Respondent. The First Respondent did not give the undertaking, so he did fail

to comply with it. Accordingly, the Second Respondent's conduct fell short of that expected in this regard but that of the First Respondent did not.

38.12 Overall, therefore, the Tribunal found the allegation to have been proved against the First and the Second Respondents. In the case of the Second Respondent, the allegation was proved with regard to each of the different matters in which it was alleged he had breached the SPR and/or SCC but in the matter of the First Respondent the breach was with regard to the formation and operation of the partnership rather than the other matters.

39. **Allegation 1.3. The First and/or Second Respondents conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the SPR and/or, where such conduct relates to a period after 1st July 2007, Rule 1.06 of SCC.**

39.1 This allegation was denied by the First Respondent. The Second Respondent had given no indication of his position with regard to the allegation.

39.2 Again, the allegation arose from the formation and operation of Sovereign; the creation of a cash shortage in the matter of PA; the immigration status of the Second Respondent; the professional indemnity insurance application; and the breach of undertaking allegation.

39.3 The First Respondent's conduct in allowing his name to be used by the Second Respondent's practice, albeit without the First Respondent's knowledge initially, and subsequently joining the practice without any proper enquiry was clearly conduct that was likely to compromise or impair the good repute of the solicitors' profession. The public should be able to trust that solicitors' practices are properly constituted, with appropriate supervision arrangements in place. The First Respondent knew, or with proper enquiry should have known, that the Second Respondent had been carrying on practice without there being appropriate supervisory arrangements prior to the time that the First Respondent joined the practice which was in November 2007.

39.4 The First Respondent was not engaged in the practice at the time the cash shortage was created in the matter of PA, and the Tribunal noted that the cash shortage was finally remedied shortly after the First Respondent joined the practice during November 2007.

39.5 The First Respondent did not know the Second Respondent's immigration status and that he was not permitted to practise as a result of that status. He had no direct involvement in or knowledge of this matter. Similarly, the First Respondent did not know about the professional indemnity insurance application which had given potentially misleading information. Further, he was not the solicitor who gave the undertaking which was breached in the matter of 63HR.

39.6 The Tribunal was satisfied so that it was sure that the First Respondent's conduct in relation to the partnership was such as to compromise or impair the good repute of the solicitors' profession and this allegation had thus been proved against the First Respondent. The allegation was not proved with regard to the other conduct which was alleged.

39.7 In setting up a practice which used the First Respondent's name without the authority of the First Respondent, and which was likely to mislead clients and the public, the Second Respondent had clearly acted in a way that would compromise or impair the good repute of the solicitors' profession. He had allowed the creation of the cash shortage of a little over £10,000 in dealing with a conveyancing transaction. He had undertaken work when he was not permitted to do so under the terms of his immigration status. The professional indemnity insurance application for 2006/7 had been misleading or at least potentially misleading. The Second Respondent had failed to comply with an undertaking given in the course of a conveyancing transaction. In all of these regards the Second Respondent's conduct was such as would compromise or impair the good repute of the profession.

39.8 Accordingly, this allegation had been proved against the First Respondent with regard to the operation of Sovereign, and with regard to the Second Respondent had been proved in all respects.

40. **Allegation 1.4. The First and/or Second Respondents purported to enter into a partnership, namely Sovereign Chambers LLP, but failed to carry out the responsibilities of a partner.**

40.1 This allegation was admitted by the First Respondent, and the Tribunal found it to have been proved. The Second Respondent had given no indication of his position with regard to this, or any other, allegation.

40.2 The Second Respondent had created the practice on the day he was admitted as a solicitor. At that point the Second Respondent was the only principal of the firm. However, the Second Respondent used the First Respondent's name on the firm's letterhead as the principal of the firm. The firm carried out work in the period to November 2007 when there was no solicitor in the practice who was qualified to supervise. However, the First Respondent had been denoted as the supervising partner on eight of eleven files inspected by the SRA, where the client care letters were dated between April and August 2007.

40.3 The Tribunal found that the partnership between the First and Second Respondents was a sham. The objective of the First and Second Respondents purporting to be in partnership was to give the appearance of legitimacy to the Second Respondent's practice and also to persuade lenders to instruct them on the basis that they were more likely to instruct partnerships than sole practitioners. All work done in the practice until about November 2007 was unsupervised and the practice was not properly managed by a person qualified to supervise.

40.4 On commencing practice with the firm the First Respondent failed to note that he had been held out as a partner for a considerable period of time before then.

40.5 The First Respondent had admitted in his witness statement that the relationship between himself and the Second Respondent was, "Loose and unsatisfactory as the terms of the partnership were never incorporated in a formal partnership deed." It was clear to the Tribunal that the First Respondent had worked at the 11 Mortham Street Office whilst, for a period at least, the Second Respondent worked from a property at West Ham Lane. There was no evidence before the Tribunal that the First

Respondent had carried out any management or supervisory functions within the practice and the partnership was thus not a true partnership.

40.6 The Tribunal found that the Second Respondent had established a practice which he knew was a sham. He held the First Respondent out as a partner at a time when there had been discussions between the First and Second Respondent but the First Respondent had not agreed to become a partner in the firm. The evidence clearly showed that the practice was, to all intents and purposes, a sole practice operated by the Second Respondent. The First Respondent merely lent his name to the practice; initially the use of his name was unknown to the First Respondent but subsequently he agreed that he would join the practice.

40.7 This allegation, which was admitted in part by the First Respondent, was found to have been proved against both Respondents.

41. **Allegation 1.5. The First and/or Second Respondents misled the Solicitors Regulation Authority ("SRA") and/or third parties by holding themselves out as a partnership.**

41.1 This allegation was denied by the First Respondent. The Second Respondent had given no indication of his position with regard to this allegation.

41.2 The First Respondent had been held out as a partner in Sovereign for approximately eleven months before he joined the practice. Throughout that period third parties (clients, lending institutions, insurers etc) had been misled that a partnership existed. The Tribunal found this allegation proved against the First Respondent to that extent but did not find that he had misled the SRA as the SRA holds details of where solicitors practice.

41.3 The Second Respondent had misled both the SRA and third parties by setting up what appeared to be a partnership but was in reality a sole practice. The allegation had been proved against both Respondents.

42. **Allegation 1.6. The First and/or Second Respondents permitted funds to be drawn from client account otherwise than in accordance with Rule 22(1) of the Solicitors' Accounts Rules 1998 ("SAR") leading to a cash shortage.**

42.1 This allegation was admitted by the First Respondent. The Second Respondent had given no indication of his position. The shortage on client account in issue had occurred in July 2007. The First Respondent's statement noted that he accepted responsibility as a partner although he denied that he personally permitted funds to be withdrawn from client account as alleged. It appeared to the Tribunal that the admission was misconceived. The First Respondent did not know the cash shortage was being created and, on his own case, had not been a partner at July 2007. As he did not know, and was not a partner at the relevant time, he could not have "permitted" the creation of the shortage. It was correct that the shortage had been in existence at the time the First Respondent became a partner, but the shortage at that point had been reduced to a little under £3,000 and was eliminated completely a week after the First Respondent began practice with Sovereign. Accordingly, the Tribunal was not satisfied that this allegation had been proved against the First Respondent.

42.2 The Second Respondent had had conduct of the matter on which the cash shortage was created and was, in effect, at the time a sole practitioner. Accordingly, this allegation had been proved against the Second Respondent.

43. **Allegation 1.7. The First and/or Second Respondents had acted dishonestly.**

43.1 This allegation was denied by the First Respondent. The Second Respondent had given no indication of his position. This allegation was made in relation to the formation and operation of the sham partnership.

43.2 The Tribunal was aware that in order to make a finding of dishonesty against either or both Respondents it would have to be satisfied that the "combined test" set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 had been met to the very highest standard.

43.3 With regard to the First Respondent, he did not see the arrangement with the Second Respondent as a "sham partnership". He had had no intention to mislead clients or the public. He had been unaware that he was being held out as a partner before he actually joined the practice. The Tribunal was conscious that the Respondent's illness and infirmity made him vulnerable. The First Respondent's ill health may well have affected his thinking and ability to deal with certain matters. Overall, therefore, there was nowhere near enough evidence against the First Respondent that he had behaved in a way that was dishonest by the standards of reasonable and honest people and that he had known his behaviour was dishonest by those same standards. Whilst the First Respondent had behaved in a foolish and naive way, he had not been dishonest.

43.4 However, the Tribunal was satisfied so that it was sure that the Second Respondent's conduct had been dishonest. In setting up a practice in which the First Respondent was named as a partner, when the First Respondent had not agreed to be a partner and did not know he was being held out as such, the Second Respondent had behaved in a way which was dishonest by the standards of reasonable and honest people. The Second Respondent knew that the First Respondent was not a true partner in the firm and in holding him out as such, the Second Respondent knew he was dishonest by the standards of reasonable and honest people.

43.5 The allegation was therefore not proved against the First Respondent but was proved against the Second Respondent.

44. **Allegation 2.1. Between December 2006 and 20 November 2007 the First Respondent failed to supervise the Second Respondent adequately or at all.**

44.1 The First Respondent denied this allegation.

44.2 The First Respondent did not consent to joining Sovereign, or to be held out as a partner, until November 2007. It was correct that there had been no supervision of the Second Respondent in that period, but as the First Respondent was not involved in the practice he had no duty to supervise. Accordingly, this allegation had not been proved.

45. **Allegation 2.2. He permitted himself to be held out as principal of the firm, Sovereign Chambers LLP, when, between December 2006 and 20 November 2007 he had little or no involvement with the firm's business nor carried out any of the responsibilities of a principal and partner in the firm.**

45.1 The First Respondent denied this allegation. Between December 2006 and 20 November 2007 the First Respondent was held out as a principal of Sovereign. However, the First Respondent was unaware that he was being held out in this way and accordingly had not given permission.

45.2 The allegation against the First Respondent was also framed to refer to Sovereign's conduct of immigration work from at least 20 December 2006. The Tribunal accepted that the First Respondent had had no involvement with the firm until November 2007. Although letters from Sovereign named him as a principal, he had not given any permission for such holding out.

45.3 It was further alleged on the papers that this allegation related to the Second Respondent's breach of undertaking in the matter of 63HR. By the time that transaction took place, it was acknowledged by the First Respondent that he was a partner. The allegation is stated to relate up to 20 November 2007 but the undertaking was given after that date. The Tribunal could not find that this matter was relevant to the allegation.

45.4 The Tribunal did not find this allegation proved as the First Respondent did not know he was being held out as a partner in the relevant period.

46. **Allegation 3.1. The Second Respondent effectively ran and thereby purported to supervise, a practice at a time when he was neither qualified nor permitted to do so.**

46.1 This and all subsequent allegations were against the Second Respondent only. The Second Respondent had given no indication of his position in relation to the allegations.

46.2 The Tribunal found on the evidence submitted that the Second Respondent had effectively run the practice of Sovereign. He had purported to supervise a practice at a time when he was neither qualified nor permitted to do so. The Tribunal noted and found that the Second Respondent had undertaken immigration work as evidenced by correspondence with Work Permits (UK) and others from December 2006. Further, there was correspondence in relation to conveyancing matters before November 2007 which showed the firm was carrying out legal work. The allegation was proved.

47. **Allegation 3.2. He failed to make full disclosure of his immigration status to the SRA.**

47.1 The Tribunal found that in the period to 28 February 2008 the Second Respondent was permitted to remain in the UK as a student. The Tribunal was satisfied on the evidence presented that whilst the Second Respondent was allowed to remain as a student he should not have been conducting business or working on a self employed basis. The Second Respondent had failed to disclose to the SRA that he was in the

UK as a student and was not permitted to undertake work. This allegation had been proved.

48. **Allegation 3.3. Between December 2006 and 28 February 2008, the Second Respondent involved himself in a business undertaking, namely as a purported partner in a legal practice, when not entitled to do so.**

48.1 The Tribunal found it proved that the Second Respondent had involved himself in a business undertaking, namely as a purported partner in a legal practice, when he was not entitled to undertake such work. This was clearly the case between December 2006 when Sovereign was established and 28 February 2008, at which point it appears the Second Respondent was granted leave to remain in the UK under the "Lawyers Concession".

48.2 The Tribunal noted that a CV prepared by the Second Respondent and given to the SRA in the course of its investigation set out a range of legal work and experience undertaken throughout the period when the Second Respondent had student status. According to the CV the Second Respondent had worked as a legal assistant/paralegal between April 2000 and October 2002 in London, as a barrister/legal assistant for another London firm between November 2002 and August 2003, as an in-house barrister at a solicitors' firm in London between September 2003 and December 2004 and, amongst other matters, had been a freelance barrister/court advocate from October 2005 to June 2006.

48.3 The allegation related to the specific period after the formation of Sovereign, so although it noted the wider concern that the Second Respondent may have undertaken other work when not permitted to do so, the Tribunal could make no specific findings in that regard.

49. **Allegation 3.4. The Second Respondent denied conducting applications on behalf of clients for work permits whereas he did undertake such work.**

49.1 The Tribunal found that the Second Respondent had denied in the course of the SRA investigation that he had conducted any applications on behalf of clients for work permits. The documentary evidence presented clearly showed that the Second Respondent had carried out such work. Accordingly, the allegation that he had denied conducting any matters with regard to work permits whereas he had in fact done such work had been proved.

50. **Allegation 3.5. The Second Respondent breached an undertaking given in the course of a conveyancing transaction.**

50.1 The Tribunal was satisfied so that it was sure that the Second Respondent had given an undertaking in the course of a conveyancing transaction, being the sale of 63HR. The undertaking given related to redeeming or discharging the mortgages and charges registered on the property and sending to the purchaser's solicitors form DS1 as soon as it had been received.

50.2 Completion took place on 26 February 2008 but as at 21 July 2008 the Second Respondent had not honoured the undertakings. As a result of the Second

Respondent's failure to honour the undertakings a complaint was raised and correspondence about this matter took place in the period up to and including October 2008. There was no evidence before the Tribunal to show whether and when the matter had been resolved. Nevertheless, it was clear that for a period of at least ten months after the undertaking was given the Respondent failed to comply with it. Accordingly, this allegation had been proved.

51. **Allegation 4.1. He failed to disclose to a client of the firm, namely the lender, all relevant information relating to a conveyancing transaction which was material to the lender's business.**

51.1 This, and subsequent allegations contained in the Rule 7 Statement, related to the Second Respondent's conduct whilst acting for Mr KO in the purchase of 63 HR London E13 together with the lenders KMC and subsequently, ME. The Tribunal had read and considered the documents and found so that it was sure that the Second Respondent failed to notify KMC/ME that the purchase price was in fact £215,995 rather than the £239,995 as stated in the transfer. It was a material consideration that the amount being loaned by KMC was £215,995.

51.2 Further, the Second Respondent failed to inform KMC/ME of the fact that this was a "back to back" transaction. There was no evidence that KMC was made aware by the Second Respondent of the existence of the intermediate purchaser, Mr OO.

51.3 A solicitor is under a duty to disclose to a lender client any material information. If the purchaser client refuses to allow the disclosure the solicitor must return the lender's instructions and explain that a conflict of interest has arisen. Here, it was clearly material that the transaction was in the nature of a "back to back" transaction and that the actual purchase price was significantly less than the amount stated in the transfer document. It was particularly material that the lender client provided the entirety of the purchase price after the price reduction. The lender should have been informed so that it could reassess its decision to lend.

51.4 This allegation was proved on the facts and on the documents.

52. **Allegation 4.2. He completed, and signed, documentation in the course of a conveyancing transaction which he knew, or should have known, was incorrect.**

52.1 The Tribunal found that the Second Respondent signed a Certificate of Title in the 63 HR matter confirming to the lender client that he had investigated the title and was not aware of any other financial charges secured on the property which would affect it after completion; and that both KMC and Mr KO would have good and marketable title to the property free from prior mortgages or charges and from onerous encumbrances. However, the Second Respondent had not taken into account the entry of a Notice on the title by D&ST, which Notice was lodged on 7 November 2007 (approximately 3 months before the Certificate of Title was signed). The Second Respondent had confirmed that he had carried out all necessary searches when investigating the title to the property. If he had it would have revealed the Notice. Accordingly, in completing and signing a Certificate of Title the Second Respondent knew or should have known that this document was incorrect. He was not in a position to sign the Certificate of Title as he had either not undertaken the necessary

searches or had failed to take into account their content. Accordingly, this allegation was proved.

53. **Allegation 4.3. He failed to act in the best interests of the firm's lender client by failing to register at HM Land Registry within a reasonable time or at all, the mortgage on the Title to a property contrary to Rule 1.04 of SCC.**

53.1 The lender's funds were sent by the Second Respondent to the vendor's solicitors on 7 February 2008 in order to complete the purchase. However, because the Second Respondent had failed to take into account the Notice entered by D&ST, it was not possible to register either Mr KO's title or the lender's charge. The application for registration was cancelled on 24 September 2008.

53.2 The Second Respondent failed to act in the best interests of his firm's lender client by failing to register within a reasonable time or at all the mortgage on the title contrary to Rule 1.04 of SCC.

54. **Allegation 4.4. He failed to honour an undertaking in the course of a conveyancing transaction in breach of Rule 10.05 of SCC.**

54.1 In signing the Certificate of Title the Second Respondent was giving an undertaking with regard to discharge of existing charges on 63 HR, and that that purchaser would acquire a good title. In fact, Mr KO and his mortgagees could not acquire such title because of the prior Notice registered by D&ST. The undertaking to the effect that KMC/ME would acquire a first charge on the property was breached. Accordingly, this allegation had been proved.

Previous Disciplinary Matters

55. None.

Mitigation

56. There was no mitigation put forward on behalf of the Second Respondent.

57. On behalf of the First Respondent it was submitted that he had admitted some of the allegations. The First Respondent had not been found to be dishonest.

58. Until his involvement with Cavells (dealt with under matter 10049/2008) the First Respondent had had an unblemished and long career, with almost 44 years in practice. He now suffered from ill health, which may well have clouded his judgment. Insofar as the First Respondent was guilty, it was by omission rather than commission. The Second Respondent had been determined to hide things from the First Respondent and it was notable that the First Respondent had practised from a separate office to the Second Respondent after joining Sovereign. The First Respondent had, because of his ill health, been easy prey for the Second Respondent. He had been foolish and careless and did not take the care that he should have done in becoming involved with the Second Respondent.

Sanction

59. The Tribunal considered the sanction against the First Respondent in the light of the findings it made in this matter and in matters 10049/2008 and 10431/2010. The Tribunal considered it appropriate to consider all of the findings made rather than attempt to impose separate sanctions for each breach as there was to a large degree a cumulative effect. The Tribunal therefore took into account mitigation advanced in the other two matters in which the First Respondent had been prosecuted.

60. The First Respondent had been a solicitor for almost 44 years and for the greater part of his time in practice had had an unblemished record. The First Respondent became ill, in particular from about 1995 and also became vulnerable. The Tribunal noted that the First Respondent had suffered from a stroke, had severe eye problems and suffered from prostate cancer. He had had a brain haemorrhage approximately 15 years ago, as a result of which he was advised to avoid stress. It appeared from the First Respondent's supplementary statement in matter 10049/2008 that he could become confused quite easily, particularly if under pressure.

61. After becoming ill he joined or became involved in two firms in close succession and lent his good name to both of those, together with his experience and the benefit of his practising certificate.

62. In the course of his involvement with Cavells (matter 10049/2008), large amounts of money were put at risk. For reasons which were not entirely clear to the Tribunal there was no actual loss to the profession or public. Nevertheless there had been a substantial risk caused by breaches of the Solicitors Accounts Rules.

63. The second firm, Sovereign, was a disaster for the First Respondent, and the public, of substantial proportions. The public were exposed to great loss and the profession to great damage.

64. The First Respondent had not been a cause directly of that loss and damage. Nevertheless, by lending his previously good name to a practice which he was not engaged actively in managing, the First Respondent allowed the opportunity to others to commit acts of serious dishonesty.

65. The Tribunal wanted it to be noted by the profession that solicitors should be aware that they must take great care in allowing their many years of practice to be exploited. If this occurred, they could face the most substantial penalty.

66. The Tribunal took into account the principles expressed in the case of Bolton v The Law Society [1994] 1 WLR 512. The sanctions imposed by the Tribunal were often directed to preventing an opportunity to repeat an offence and maintain the reputation of the solicitors' profession which clients and the public must be able to trust "to the ends of the earth". In this instance, the Tribunal had not found the First Respondent to be dishonest. However, it had found that he had fallen below the standards of integrity expected of the profession. The First Respondent had put himself in a position where he was taken advantage of by others. He was too vulnerable for the Tribunal to allow him to continue to practice. He was a danger to the public and to the reputation of the solicitors' profession. Thus, whilst the Tribunal had sympathy

with the personal circumstances of the First Respondent and took into account his ill health, he had permitted others to exploit his professional standing. Solicitors at all stages of their careers, including in the twilight of those careers, must guard against the possibility of such exploitation.

67. In all of the circumstances, and having taken into account the principles expressed in the Bolton case, the Tribunal considered it necessary and proportionate to strike the First Respondent off the Roll of Solicitors.

68. So far as the Second Respondent was concerned, the Tribunal had made a finding that he had been dishonest. That finding was made on the basis of the legal tests set out in the Twinsectra case and had been found to the highest standard, so that the Tribunal was sure.

69. Again, the Tribunal took into account the findings it made in the other matter involving the Second Respondent, matter 10431/2010. Not only in this case but in the other case the Second Respondent was found to have behaved in a manner which lacked integrity and had put at risk clients and members of the public. The catalogue of default was such that, in the light of the finding of dishonesty, there could be no alternative but to order the Second Respondent to be struck off. Indeed, the catalogue of default was such that even without any finding of dishonesty the Second Respondent should be struck off.

70. The Tribunal noted in particular that the Second Respondent had exploited the First Respondent. That did not wholly excuse the First Respondent's conduct but added to the clear picture the Tribunal had that the Second Respondent should not be permitted to practice. He was dishonest and lacked integrity, and must be struck off the Roll.

Costs

71. The Applicant submitted a claim for costs in the total sum of £14,098.68, which included SRA investigation costs of £3,626.35.

72. The Tribunal considered that an appropriate and reasonable sum for the costs of the proceedings was £14,000.

73. No application was made on behalf of either Respondent under the principles set out in either Merrick v The Law Society [2007] EWHC 2997 (Admin) or D'Souza v The Law Society [2009] EWHC 2193 (Admin). The Tribunal decided to apportion the costs on a several basis between the First and Second Respondents. More allegations had been brought and proved against the Second Respondent.

74. In the circumstances, and having read and heard all of the evidence, the Tribunal considered it appropriate to order the First Respondent to pay £5,000 in costs for these proceedings and the Second Respondent to pay £9,000.

Statement of Full Order

75. The Tribunal Ordered that the Respondent, John Warner Smith of Letchworth, 5 Waterloo Place, Weymouth, Dorset, DT4 7NY, solicitor, be Struck Off the Roll of

Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sums of £9,000 in respect of case no. 10049-2008, £5,000 in respect of case no. 10273-2009 and £4,000 in respect of case no. 10431-2010.

76. The Tribunal Ordered that the Respondent, Alick Arlington Voliere of 34 Love Lane, Woodford Green, Essex, IG8 8BB, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sums of £9,000 in respect of case no. 10273-2009 and £24,000 in respect of case no. 10431-2010 (in respect of such costs Alick Arlington Voliere is jointly and severally liable with Folaranmi Awoye Dawodu).

Dated this 28th day of June 2011
On behalf of the Tribunal

J C Chesterton
Chairman