No. 10413-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF KARON BROWN (The Respondent)

Upon the application of David Barton
on behalf of the Solicitors Regulation Authority

Mrs J. Martineau (in the chair)
Mr R. Hegarty
Mr R. Slack

Date of Hearing: 25 October 2010

FINDINGS & DECISION

Appearances

David Barton, Solicitor Advocate, of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented.

Application Date

The date of the Rule 5 Statement was 17 December 2009.

Allegations

1. The allegations against the Respondent were as follows:

   1.1 Contrary to Rules 1(a), (c), (d) and (e) of the Solicitors' Practice Rules 1990 the Respondent had compromised or impaired each and all of the following:

   Her independence or integrity;

   Her duty to act in the best interests of the client;

Her good repute or that of the solicitors' profession;

Her proper standard of work.

The Respondent was also dishonest, although it was not necessary for this to be established for any elements of the allegation to be made out. Alternatively she was grossly reckless.

1.2 Contrary to Rule 1(b) of the said Rules she compromised or impaired, or permitted another to do so on her behalf, a person's freedom to instruct a solicitor of his or her choice. In so doing she was also dishonest, but in the alternative was grossly reckless although it was not necessary for dishonesty or recklessness to be established for this allegation to be made out.

1.3 In breach of Rule 6(3) of the said Rules she acted for lender and borrower on the grant of a mortgage of land when a conflict of interest existed or arose.

1.4 Contrary to Rule 13 of the said Rules being a principal she failed to ensure that her practice was supervised and managed so as to provide for:

1.4.1 Compliance with principal solicitors' duties at law and in conduct to exercise proper supervision over admitted and unadmitted staff;

1.4.2 Adequate supervision and direction of clients' matters.

The Respondent was also grossly reckless.

1.5 She breached the Solicitors' Introduction and Referral Code 1990 (as amended) in each and all of the following respects:

1.5.1 Contrary to Section 1 she failed to retain her professional independence and her ability to advise her clients fearlessly and objectively;

1.5.2 Contrary to Section 1 she permitted the requirements of an introducer to undermine her independence;

1.5.3 Contrary to Section 1 she accepted introductions or referrals in circumstances which were likely to impair the principles set out in Rule 1 of the Solicitors' Practice Rules 1990.

1.5.4 Contrary to Section 2 she allowed herself to become so reliant on a source of referral that the interests of the referrer affected the advice given to clients.

1.6 Contrary to Rule 15 of the Solicitors' Practice Rules 1990 she provided misleading costs information.

Factual Background

Respondent's History

2. The Respondent was born on 8 January 1953. She was admitted as a solicitor on 15 December 1980. Her name remained on the Roll of Solicitors. On 1 October 2010

her solicitors notified the Tribunal by letter that she had retired from practice with immediate effect and would not be attending the hearing.

3. At all material times the Respondent practised in partnership as Watson and Brown ("the firm") from Crest House, 99a Fowler Street, South Shields, Tyne and Wear NE33 1NU. She had two salaried partners and was the senior partner and sole equity partner, with overall responsibility for the firm's conveyancing. She was also the firm's Money Laundering Reporting Officer.

Documents Before The Tribunal

4. The Tribunal had before it the Rule 5 Statement and Exhibit DEB 1 dated 17 December 2009, which contained a letter from the Respondent dated 4 February 2008.

Facts

5. On 20 February 2007 an inspection of the firm's books of account and other records and documents was commenced by the Applicant's Forensic Investigation Officer ("FIO"). A meeting between the Respondent, her partners, Senior Investigation Officer Mr S. Wallbank and Investigation Officer Miss S. Taylor took place on 9 August 2007. The Investigation resulted in a Forensic Investigation Report ("FIR") dated 28 September 2007. The FIR identified the matters which gave rise to the allegations.

6. The Applicant sent the FIR to the Respondent on 13 November 2007, requesting an explanation for the matters raised. The Respondent provided a substantive response, stated to be in respect of all partners, by letter dated 4 February 2008. Further correspondence passed between the Applicant and the Respondent and the Applicant was provided with copies of relevant files.

7. The FIO found the firm's books of account to be in order.

8. The investigation concentrated on an analysis of a substantial number of conveyancing transactions in which the firm acted for purchasers of investment properties referred by the seller Morris Properties (UK) Limited and its various subsidiaries ("Morris"), controlled by Simon Morris.

9. The firm also acted contemporaneously for lender clients providing funds in respect of the purchases. The firm owed professional duties to both the purchaser and the lender clients.

10. At the heart of the allegations was the professional relationship between the Respondent and Morris. Morris had gone into administration in 2008 with reported debts of £50 million. Members of the public were widely reported to have lost money as a result of Morris's activities.

11. The detailed particulars of Allegation 1 set out in the Rule 5 Statement were that the Respondent acted in or otherwise facilitated conveyancing transactions knowing that they bore the hallmarks of mortgage fraud or were otherwise suspicious so as to require investigation and reporting to lender clients. Alternatively, the Respondent deliberately closed her eyes to the suspicious characteristics of those transactions. In either case she was dishonest. Further or in the alternative, the Respondent failed to

be alert to those suspicious characteristics and was as a consequence grossly reckless. The characteristics and facts in summary were:

- The Respondent failed to inform her lender clients in writing or at all of differences between the purchase price as stated on mortgage offers and instructions, and that actually paid to the vendor;

- The Respondent failed to inform her lender clients of the existence of incentives and/or discounts and other cash payments paid by the vendor to the purchasers;

- The Respondent failed to inform her lender clients that the buyers did not provide the balance of the purchase price;

- The Respondent failed to inform her purchaser clients that they were purchasing as sub-buyers in back-to-back transactions;

- The Respondent preferred the interests of the vendor/introducer over those of her buyer or lender clients. This was deliberate and, accordingly, dishonest;

- The Respondent submitted misleading Certificates of Title.

12. Morris first referred purchaser clients to the firm shortly after September 2005. During the following eighteen months the firm opened 442 matter files for purchasers of properties from Morris. According to the Respondent, there was no Morris panel of solicitors as such and, although purchasers were referred to the firm, there were no payments to Morris and no referral agreement was ever signed.

13. Michelle Clark was employed at the firm as an Assistant Solicitor from November 2004 until 13 April 2006. She worked at the firm for the first six months or so of the period during which the firm was conducting Morris-related transactions. Ms Clark expressed concern to the Respondent, who was her supervisor, about the manner in which the transactions were being conducted. Work was also done by Ms C., an unadmitted clerk, again subject to the Respondent's supervision, and Mr A. described as a FILEX. The firm continued to act until January or February 2007. The decision to cease to act followed complaints from purchaser clients and correspondence and a visit from Messrs Cameron McKenna Solicitors acting for GMAC-RFC, one of the main lenders for which the firm acted during the course of the transactions.

14. Cameron McKenna wrote to the Respondent by letter dated 19 January 2007. They had identified 195 properties where the firm had acted on behalf of lender GMAC-RFC. The letter continued:

> "During our investigations into the properties it has come to light that the borrowers received a significant amount of financial assistance from the vendor or lessor (or, in the case of a sub-sale or sub-lease from a connected party) to fund the balance of the purchase price. Our client was not informed of this at any time before it advanced funds to the borrowers. The borrowers did not complete their mortgage application forms accurately, and you did not inform our client that the borrowers were not providing the balance of the purchase monies themselves."

15. Messrs Cameron McKenna suggested that the Respondent had not complied with a number of the terms and conditions of GMAC's retainer with the firm. In particular it recited relevant provisions of the Council of Mortgage Lenders' Handbook for England and Wales ("CMLH"), namely:

    - That borrowers had received significant financial assistance from Morris or from a connected third party where there existed a sub-sale or sub-lease, and that GMAC had not been informed of this;

    - That GMAC had not been informed of the sub-sale or sub-lease;

    - That GMAC had not been notified if sellers had owned the property for less than 6 months;

    - That GMAC had not been informed of price mark ups in sub-sales or back-to - back transactions.

16. The firm wrote to its clients with ongoing purchases advising it that it could no longer continue to act because of "conflict of interest". The Respondent later stated to the FIO that the firm had been unable to give a full explanation for the conflict to clients because it was unaware of the specific allegations against Morris.

17. The Respondent's firm received approximately 25-34 new instructions from Morris a month. The FIR provided a snapshot of the transactions conducted by the Respondent's firm at the material time, prepared from data provided by the Respondent on 26 March 2007. The analysis demonstrated that:

    - The firm completed 351 purchase and mortgage transactions;

    - 23 matters were ongoing or of unknown status;

    - 68 matters were proceeding but the firm was no longer acting;

    - The total stated purchase price of the properties in accordance with the contracts of sale was £79,925,847.96.

    - The total mortgage money advanced by the firm's lender clients was £72,503,824.74;

    - The sum of £74,080,350.29 was paid to the vendors' solicitors;

    - Out of the total mortgage money advanced, £5,845,497.96 was not paid over to the vendor's (Morris) solicitors;

    - The sum of £7,416,722.63 was shown on client ledger accounts as having been received from Morris or an associated third-party to assist purchasers with their purchases;

    - In 145 of the 351 completed matters, the balance of the purchase funds was received from Morris or an associated company;

- In the remaining 206 transactions, the amounts paid to Morris's solicitors were substantially less than the sale price contained in the contract and mortgage offer, and often less than the mortgage advance received from the firm's lender client.

18. The features of the substantial number of transactions were said to be consistent with mortgage fraud, with the purchasers and Morris as beneficiaries. Some purchasers unwittingly purchased as sub-buyers and did not know that the price that they were paying had been uplifted.

19. The CMLH required the Respondent to work to the standard of care of the reasonably competent solicitor. It contained a mandatory requirement that the Respondent should follow the guidance in the Law Society's Green Card Warning on mortgage fraud. It was intended to convey and reinforce the obligation that solicitors were required to act with reasonable competence and that they had a safeguarding role to protect lenders from fraud.

20. The CMLH required all communications with lenders to be in writing. Solicitors had to report a matter as soon as they became aware of it to avoid any delay. After reporting a matter solicitors should not complete the mortgage until they had received further instructions from the lender. The CMLH recommended that matters be reported before exchange of contracts because mortgage offers might have to be withdrawn or changed.

21. The "Guide to the Professional Conduct of Solicitors" (8th edition) also contained guidance in respect of potential mortgage fraud. This guidance could be summarised as follows:

    - A duty to act in the best interests of the lender when acting for buyer and lender by passing on information to the lender, with the consent of the buyer, where there was any change in the purchase price, or if the solicitor became aware of any other information which they would reasonably expect the lender to consider important whether, or on what terms, it would make the mortgage advance available.

    - Such other information might include other allowances, described as sums for repairs, costs, chattels, incentives such as holidays and subsidised mortgage payments. In short, any allowance which amounted to a price reduction and which would affect the lender's decision whether to make the advance. The lender should be notified of that allowance.

    - Clients should be advised that it would be regarded as fraud to misrepresent the purchase price and that the solicitor was under a duty to inform the lender of the true price being paid for the property. If the buyer would not agree to the information being given to the lender, there would be a conflict between clients.

22. The Law Society's Green Card Warning set out further guidance to solicitors, requiring them to be vigilant to protect both their clients and themselves and so as to minimise the risk of being involved or implicated in fraud.

23. The features reportable to lender clients by the Respondent identified during the investigation were summarised in the FIR as follows:

- Discounts on the purchase price;
- Incentives;
- Mortgage subsidies;
- Payment of legal costs and stamp duty;
- That buyers did not provide the balance of purchase funds themselves;
- That such funds came from Morris or connected third parties;
- That the purchase money actually paid to Morris was less than the stated purchase price, with the consequence that lenders advanced sums greater than the purchase price;
- That deposits were paid direct and not verified;
- That purchaser clients were involved in back-to-back transactions, sometimes without their knowledge.

24. Each transaction required a Certificate of Title to be signed on behalf of the firm and submitted to the lender client in order to trigger release of the mortgage advance. The Certificates contained undertakings on behalf of the firm in the form annexed to Rule 6(3) of the Solicitors' Practice Rules 1990 as if the same were set out in full, subject to limitations contained in it. By giving the undertaking the solicitors expressly undertook to the lender client to notify it in writing if matters came to their attention before completion which would render the certificate untrue or inaccurate. The solicitor also provided an undertaking that the lender's instructions had been complied with. A number of Certificates of Title containing the relevant undertakings on Morris transactions had been produced during the investigation. They had been signed by one or other of the Respondent, Michelle Clark or Mr A.

25. The Applicant submitted that the solicitor had a fiduciary duty of good faith to its lender client, and it was not for the solicitor to decide unilaterally to circumvent that duty.

26. The FIO analysed 24 transactions in detail by inspecting files. They also spoke to and obtained statements from several of the firm's clients who had purchased Morris properties, namely Mr Y., Mr R., Mr and Mrs K., Mr L., and Ms R. These clients reported having been offered discounts and incentives by Morris. For example, clients were offered payment by Morris of an 11% deposit and 3% stamp duty; 11% of the value of refurbished properties plus stamp duty or an enhanced discount of 15% where clients paid their own stamp duty; discount of 15% as a "gifted deposit" and contributions to mortgage re-payments pending refurbishment. Mr Y., Mr R., and Mr and Mrs K. stated during interview that they had not received any advice from the firm regarding the terms of their mortgages, and this included not being told to tell their lender of any discounts.

27. The Respondent's firm provided clients with a "Purchase Questionnaire" for completion at the commencement of a transaction. It included Question 15: "Is there any discount provided by the Seller – if so, how much?". Of the 24 client matters inspected, the FIO were unable to locate the questionnaire or the page containing Question 15 on 8 files. The question was left unanswered in 6 cases. In 3 cases the question had been answered "no". The remaining 7 questionnaires confirmed that a discount had been provided. In one case the discount was 15% (£18,749.25). Three purchasers invited the firm to contact Morris for details of discounts and incentives. One confirmed a rental guarantee for 12 months. Two others confirmed the level of discount received.

28. The CMLH required the firm to ask each borrower how the balance of the purchase price was to be provided. If it was known that the borrower was not providing the balance from his own funds that fact should have been reported to the lender. In 145 of the 351 completed transactions the client ledger demonstrated that the balance of purchase funds came not from the buyer but from the seller (Morris or an associated company). The files contained no evidence that the lender clients had been informed of this, confirmed by the correspondence from Cameron McKenna on behalf of GMAC. There was nothing on file to explain why the seller was providing the balance of the purchase money.

29. In one example involving Mr R. and Mr Y. an investment property was to be purchased from Morris for £299,995 with completion on 31 May 2006. GMAC was to advance £266,990 and instructed the firm to act on its behalf in accordance with the CMLH on 16 May 2006. The property was valued by an agent for the purposes of the mortgage at £299,995. On 31 May 2006 the firm received £42,157.88 into client account with the narrative "Morris Properties". A copy of the accounts voucher dated 31 May 2006 in respect of the receipt was on file marked "Morris Props – Bal to complete". On the same day £297,995 was sent by CHAPS transfer to the vendors' solicitors representing the stated purchase price of £299,995 less £2,000 paid by the clients as a "reservation fee". There was no explanation on file for why money had come from Morris, the seller, rather than the purchasers. There was no evidence to demonstrate that GMAC had been informed of the source of funds.

30. When interviewed on 9 August 2007 the Respondent suggested that clients had wanted to pay the balance of purchase funds by credit card, but the firm did not have credit card facilities. Morris did have such facilities, so the Respondent believed and assumed that Morris collected funds and forwarded money to the firm in time for completion. The Respondent had no written confirmation from Morris that this was what was happening. She said that the firm had not written to clients individually to tell them this. She accepted the potential dangers in accepting funds in this way. The Respondent also accepted that the firm had not followed up answers provided on the Purchase Questionnaires. She accepted that where the answer referred the firm to Morris that should have given rise to concern. She said: "well, from the files you have looked at, we've obviously failed and we haven't followed it up and asked the pertinent questions. We've just moved on as though people haven't said that".

31. In 206 completed matters the amounts paid to vendors' solicitors were substantially less than the stated purchase price, and often less than the amount of the mortgage advance. There was no evidence that the lender clients had been informed of this material fact in accordance with Section 6.3 of the CMLH. This section imposed an obligation to inform the lender if the purchase price was not the same as set out in the

mortgage instructions, together with the reason for the difference. In addition there was an obligation on the solicitor to inform the lender if the firm was not to have control over payment of all the purchase money, for example if it was proposed that the borrower pay money direct to the seller other than a deposit held by an estate agent or a reservation fee of not more than £1000.

32. The FIO analysed a sample transaction where there was evidence of failure to exercise control over the purchase price which was not notified to the lender. The firm acted for Mr R. and Mrs K. in a purchase of a property for £238,000. The purchase was completed on 12 May 2006. The mortgage advance received from GMAC on 11 May 2006 was £211,750 net. The contract named the vendor as National Developments Ltd, a Morris-associated company. The firm also received into client account on the same day one sum of £3,048.06 annotated "Morris Properties" and £660 on 12 May 2006 also from Morris. The sum of £211,036.05 was sent by CHAPS to the vendor's solicitors on 12 May 2006. There therefore appeared to be a shortfall of £26,963.95 on the stated purchase price. The undated completion statement on file appeared to come from Morris. The statement referred to the purchase price as being £239,216.05 (£238,000 plus incidentals) less a "payment to developer" of £26,180, along with the reservation fee, leaving a balance due to complete of £211,036.05. The sum entitled "payment to developer" did not pass through the firm's client account and there was no evidence that the money had actually been paid. The lender had not been informed of the apparent deposit paid direct from the borrower to the vendor. Similar completion statements were found on 4 other matters. The Respondent accepted in interview on 9 August 2007 that the lender had not been informed of these material facts. If no payment had been made by the purchaser direct to the vendor the purchaser would have obtained a mortgage of £211,750 to fund a purchase of £211,036 i.e. a 100% mortgage.

33. The Applicant submitted that there was no evidence that the firm had informed its lender clients of material facts relating to a number of the transactions, such as discounts and incentives and balance of purchase funds coming from a third party. The evidence in fact suggested an absence of any positive enquiries of the buyer or Morris as to the source of the money to complete purchases. Further, if payments were being made by buyers on credit card, itself another form of loan, lenders should have been informed. Documentary evidence should have been readily available in the form of credit card transaction slips.

34. On the same matter the sales notification referred to the vendor as Morris. The Office Copy entry on file dated 28 February 2006 showed the proprietor to be Mr H. He had bought the property for £187,000 in 2003. A Deed of Assignment on the matter file referred to a sub-sale. The property had apparently been sold by Mr H. on 27 March 2006 to HM Developments Ltd, which was then to assign the agreement to Mr R. and Mr Y. for an "Assignment Consideration". The transfer form TR1 dated 2 June 2006 stated that the purchase price was £319,995 (rather than £299,995). It named the transferor as Mr H. rather than HM Developments Ltd. In "Additional Provisions" it was stated that the transfer was by way of sub-sale and that Mr H. received £220,000 and HM Developments Ltd received £79,995 on completion from Mr R. and Mr Y. The sale price received by Mr H. was therefore £46,990 less than the amount advanced by GMAC, namely £266,990. None of this information was passed on by the firm to GMAC. The CMLH required solicitors to report to their lender clients if the seller had not owned a property for 6 months. The buyers said during interview that they were unaware of the sub-sale.

35. Correspondence on the file indicated that the same clients believed the property was to be refurbished by Morris to meet the standards required of Houses of Multiple Occupation ("HMO"). An email dated 31 May 2006 on file from Ms M. of Morris to Ms C. of the firm confirmed that the property did conform to HMO standards. GMAC the lender did not lend money secured on HMO properties. There was no evidence on file that GMAC had been informed of the status of the property or that the clients were given any advice regarding their position. In the event, the clients discovered, when they inspected the property for the first time following completion, that it did not meet the required HMO standards.

36. In the interview on 9 August 2007 the Respondent agreed that these matters should have been brought to the attention of the lender.

37. Clients were referred to the firm by Morris in significant numbers. The referrals generated a substantial income for the Respondent's firm. The Respondent put the percentage of the firm's income from these transactions at 10.5% (2004-2005), 7.3% (2005-2006) and 17% (2006-2007). The Applicant submitted that the facts suggested that the Respondent had preferred the interests of Morris and its associated companies over those of her buyer and lender clients, and that this was deliberate and accordingly dishonest.

38. The Respondent was asked to comment on the Certificates of Title signed by her and others on behalf of the firm. The Respondent said: "If I'm asked to sign a report on title, bearing in mind that I would not be able to go through everything, I have standardly (sic) asked is there anything unusual, anything I need to know before I sign this and that is a fairly standard question that I do use.... And I would expect the girls at that stage to say "well you should be aware of..."" The Respondent also said that she did not make it her business to find out more about what was happening with the files because she "didn't think I needed to with the staff we had". The Applicant submitted that this was a serious departure from the Respondent's duty to her lender clients. The Certificates were misleading because they stated that the firm had complied with the lenders' instructions as set out in the CMLH when they did not. Michelle Clark had queried the transactions doing precisely what the Respondent had relied on staff to do. The transactions had proceeded nevertheless.

39. It was alleged that the Respondent had compromised or impaired, or permitted another to do so on her behalf, a person's freedom to instruct a solicitor of his or her choice. In so doing she was also dishonest, but in the alternative was grossly reckless although it was not necessary for dishonesty or recklessness to be established for this allegation to be made out. The Applicant submitted that the firm had an obligation to check the propriety of the 442 Morris referrals given their quantity and frequency by asking questions and making proper enquiries, to ensure that clients had freely chosen the firm to act. Some clients stated that they had been given little choice by Morris in the selection of their solicitor. The Respondent said that she was not aware that Morris had apparently stipulated that the firm should be used by buyers. If any client had raised the issue he would have been informed that this was not the case and that he was free to instruct a solicitor of their choice.

40. In respect of the first two allegations, the Applicant submitted that the Respondent had demonstrated a wholescale failure towards her lender clients and had not behaved with propriety, honesty and complete trustworthiness. The Applicant submitted that the Respondent's conduct pointed to dishonesty. It was rare for a solicitor to admit

that she had been dishonest. On the facts of this case there was an irresistible inference that there could be no other conclusion to be drawn but that the Respondent had been dishonest. The Respondent's personal participation in the transactions made any other explanation untenable.

41. Mr Barton for the Applicant submitted that the Respondent had a duty to ask further questions concerning the transactions. He referred to the test for dishonesty laid down in Twinsectra Ltd-v-Yardley and Others [2002] UKHL 12. He submitted that the Respondent's explanation in writing for the way in which transactions were conducted was that she did not know what was going on at the time. The transcripts of the interviews with her demonstrated an acceptance that elements of the transactions were improper. The Respondent was an equity partner, and that brought an inference of direct knowledge of transactions with it. He submitted that the Respondent's dereliction of duty was significant and at the very least she had been grossly reckless in relation to the carrying out of her obligations to her lender clients. The Applicant submitted that the Respondent was more than grossly reckless; she was actively dishonest.

42. It was alleged that the Respondent acted for buyer and lender on the grant of a mortgage of land when a conflict of interest existed or arose. In the transactions analysed a conflict arose between the duties owed by the Respondent to the buyers and the lender clients. Buyers were in receipt of discounts, incentives and other preferential financial arrangements as evidenced on the papers. The firm had a duty to the lender clients to pass that information on to them before mortgage monies were released. The lender was under no obligation to proceed with an advance, leaving the buyer potentially unable to proceed. The Applicant submitted that the Respondent completed transactions, effectively on behalf of Morris, as quickly as she could, without keeping lender clients informed of material developments. The Respondent stated at interview on 9 August 2007 and in her written explanation dated 4 February 2010 that she believed the firm had always done its best for the clients. She did not accept that a conflict had arisen as alleged or at all.

43. The primary case against the Respondent was that she was personally responsible for the regulatory failures in relation to the Morris transactions. However it was alleged that, should the Tribunal make findings that such failings were attributable to persons other than the Respondent, it remained open to the Tribunal to find that she had failed to supervise her office and staff so as to ensure that she complied with the minimum requirements of Rule 13 of the Solicitors' Practice Rules 1990. She relied on staff to bring unusual matters to her attention and said that she did not make enquiries because "I did not think I needed to with the staff we had". The Certificates of Title contained undertakings and the Applicant submitted that this explanation was unsustainable in relation to transactions conducted by unqualified staff such as Ms C. The Respondent expressly undertook to the lender clients to inform them of material facts.

44. It was alleged that the Respondent breached the Solicitors' Introduction and Referral Code 1990 (as amended) in that she: failed to retain her professional independence and her ability to advise her clients fearlessly and objectively; permitted the requirements of an introducer to undermine her independence; accepted introductions or referrals in circumstances which were likely to impair the principles set out in Rule 1 of the Solicitors' Practice Rules 1990; allowed herself to become so reliant on a source of referral that the interests of the referrer affected the advice given to clients.

The Applicant relied upon the significant number of referrals by Morris to the firm, together with the matters revealed during the investigation in support of this allegation. The Respondent denied the allegation.

45. It was alleged that the Respondent had provided misleading costs information. In conveyancing matters, bills of costs and initial costs information provided to clients included amounts in respect of bank charges (telegraphic transfers) and "postage, telephones and incidentals" all under the heading of "disbursements". For example on the purchase of a property in Leeds, the initial costs information sheet and subsequent bill of costs showed amounts of £50 plus VAT of £8.75 payable in respect of "bank charges for money transfer" and "postage, telephones and incidentals" within the category "disbursements liable to VAT". The firm's cashier informed the FIO that the firm was charged the sum of £14.00 per telegraphic transfer by its bankers until May 2006 when the charge was amended to £12.00 per telegraphic transfer. The FIO calculated that the firm made a profit of £46.75 per telegraphic transfer charged to a client. Prior to May 2006 the profit was £44.75 per telegraphic transfer. That profit element was not disclosed to the firm's clients and could therefore represent a secret profit. The cashier produced an analysis of the firm's treatment of such charges in the year ending 31 March 2007 showing that the firm received amounts totalling £49,015 for which it was charged £14,418.88 by its bankers, a "secret profit" of £34,596.12. In respect of postage, telephones and incidentals, the sum received to 31 March 2007 was £9,900 plus VAT. The Respondent did not accept that a secret profit had been made, but did accept the misdescription of these items in the firm's bills and costs information.

46. The Respondent had provided explanations for her conduct during her interviews with the FIO. A substantive response to the matters raised in the FIR was contained within her letter to the FIO dated 4 February 2008. The Respondent accepted that she had overall responsibility for the conveyancing practice within the firm and that her salaried partners did not deal with conveyancing. She asserted that there were certain matters that were not dealt with by former employees of the firm to her satisfaction. The Respondent disputed that Rule 1 of the Solicitors Practice Rules 1990 was engaged in relation to the partners as set out within Allegation 1. She distinguished between matters of negligence and misconduct, with the implication that the matters raised were the former. She accepted, but only with the benefit of hindsight, that there were matters that should have been reported to lender clients. She had always understood that the provision of part of the purchase monies by Morris was that these were client monies which had been collected by Morris direct from the clients because the firm did not have credit card facilities. The Respondent believed that she was acting in the purchaser clients' best interests by proceeding in this way.

47. The Respondent accepted that on certain transactions payments for property purchases were made to Morris's solicitors for less than the stated purchase price and not all of the completion monies passed through the firm's client account. However she explained that the partners in the firm were not aware of that practice at the time. The Respondent also accepted that there were instances on files where it appeared that discounts and/or incentives had been offered to clients that had not been reported by the file handlers either to the firm's partners or to the firm's lender clients. The Respondent relied upon the firm's Purchase Questionnaire which raised the issue of whether any discount was provided by the seller. The Respondent accepted that in certain instances the file handlers did not react to statements that there was such a discount. She described this as being regrettable. The Respondent also accepted that

there were instances where lenders had not been told that properties were to be used as HMOs, which she again described as regrettable. However the Respondent maintained the view that the lenders knew what was intended as the information was apparent from the face of the property valuations.

48. The Respondent referred to instances where the Purchase Questionnaires had not been completed fully and to two specific cases where clients were advised that discounts must be notified to the lender. One such case relied upon occurred on 23 January 2007, after the firm had ceased to work for Morris. The Respondent doubted whether the firm had any obligation to make further enquiries in relation to discounts if the Purchase Questionnaire was silent on the point. The obvious inference was that there was no discount. The Respondent accepted that it might be said that a more prudent course would have been to check on each individual matter whether monies had actually been paid to Morris. That had not been done.

49. The Respondent did not accept that she had failed to act in her lender clients' best interests. She said that in February 2007 the firm became concerned at complaints being raised by clients in respect of properties purchased from Morris. Correspondence had also been received from CMS Cameron McKenna for GMAC. The Respondent took the view that the prudent course was to protect the existing clients' interests by informing them that a conflict of interest had arisen so that the firm could no longer act. Advice had then been sought from the Law Society and Counsel, who advised that further letters should be sent to clients explaining the position. A general letter providing more detail had been sent to clients in March and April 2007.

50. The Respondent described in detail procedures for supervising the office. She confirmed that she was the senior partner of the firm with ultimate responsibility for the supervision and management of the conveyancing department.

51. By her solicitors' letter to the Tribunal dated 1 October 2010 the Respondent confirmed that she did not accept the allegations made against her.

Witnesses

52. Forensic Investigation Manager, Eric Fletcher, gave oral evidence. He confirmed that the contents of the FIR dated 28 September 2007 were true to the best of his knowledge and belief.

53. Michelle Clark also gave oral evidence for the Applicant. She confirmed that the contents of her signed statement dated 15 December 2009 were correct. She reinforced that the Respondent ran the firm and was responsible for overall supervision of all conveyancing matters. She confirmed that, whilst most of the conveyancing staff employed did Morris work, the Respondent was the only person to deal direct with Simon Morris. Miss Clark confirmed that she had raised queries concerning the conduct of transactions on several occasions. She had been told by the Respondent that she, Miss Clark, was not sufficiently experienced to understand how the transactions worked. The Respondent had dealt with the first tranche of Morris work personally, from a central table in an open plan office from which she allocated tasks to staff. The Respondent looked at all documents relating to the transactions. It was a pressured environment. Morris staff called the office regularly. Miss Clark had

found the quantity of questions being asked by Morris employees about the progress of transactions to be inappropriate and intrusive.

Findings As To Fact And Law

54. The Respondent had not attended before the Tribunal. The Tribunal had satisfied itself that the Respondent had been served with the Rule 5 Statement and all supporting documents and that she was aware of the hearing date. The Respondent did not accept the allegations against her. The Tribunal had therefore proceeded on the basis that they were denied and had required the Applicant to prove the same to the high standard required.

Allegation 1

55. Allegation 1 related to breaches of Rules 1 (a), (c), (d) and (e) of the Solicitors' Practice Rules 1990 and arose from conveyancing transactions carried out for Morris. In particular it was alleged that the Respondent had compromised or impaired each and all of: her independence or integrity; her duty to act in the best interests of the client; her good repute or that of the solicitors' profession; and her proper standard of work. It was alleged that the Respondent was also dishonest, although it was not necessary for this to be established for any elements of the allegation to be made out. Alternatively it was alleged that she was grossly reckless.

56. It was said that the Respondent had acted in or otherwise facilitated conveyancing transactions knowing that they bore the hallmarks of mortgage fraud or were otherwise suspicious so as to require investigation and reporting to lender clients. Alternatively the Respondent deliberately closed her eyes to the suspicious characteristics of those transactions. In either said case she was dishonest. Further or in the alternative, she failed to be alert to those suspicious characteristics and was as a consequence grossly reckless.

57. The particulars of the allegation have been set out in some detail above. The Tribunal found all of the facts in support of the allegation set out in the FIR and the supporting documents to have been established.

58. For the avoidance of doubt the Tribunal found as a matter of law that Rule 1(c) of the Solicitors' Practice Rules 1990, namely the duty to act in the best interests of the client, applied to the Respondent.

59. The Tribunal found the allegation of breach of Rules 1 (a), (c), (d) and (e) proved in all particulars on the facts.

60. This was not a disorganised firm. It was a firm which conducted high volume conveyancing transactions in a methodical manner. The firm's books of account were in order, indicative of the way in which the firm was being run.

61. The Tribunal found that the sample transactions in the FIR provided clear evidence that the Respondent had as alleged:

- Failed to inform her lender clients in writing or at all of differences between the purchase price as stated on mortgage offers and instructions, and that actually paid to the vendor;

- Failed to inform her lender clients of the existence of incentives and/or discounts and other cash payments paid by the vendor to the purchasers;
- Failed to inform her lender clients that the buyers did not provide the balance of the purchase price;
- Failed to inform her purchaser clients that they were purchasing as sub-buyers in back to back transactions;
- Deliberately preferred the interests of the vendor/introducer over those of her buyer or lender clients;
- Submitted misleading Certificates of Title.

62. A solicitor had a duty to regard her client's interests as paramount and not to prefer her own or her firm's interests to those of the client. That duty included treating the client's interests as paramount as between the client and any third party. Morris was a third party. It was not the Respondent's client. The Respondent had deliberately taken no account of the interests of her purchaser and lender clients in her desire to process the Morris work strictly in accordance with instructions from Simon Morris. Indeed the lender clients were a long way down the Respondent's list of priorities, with their interests almost entirely overlooked on the transactions drawn to the Tribunal's attention.

63. The Respondent's working relationship with Simon Morris and Morris went beyond what one would have expected to see in a truly "arm's length" relationship. The relationship was more indicative of the firm being a subsidiary of Morris rather than that of an independent law firm. The nature of the relationship seriously compromised the Respondent's independence and her integrity. It led her into preferring the interests of Morris, the introducer of valuable work to her firm and the vendor in the transactions drawn to the Tribunal's attention, over those of her purchaser and, significantly, her lender clients. It also led to direct conflict between the interests of her purchaser and her lender clients.

64. The Tribunal did not feel that the evidence of Ms Clark significantly contributed to what it had seen in the papers placed before it. The contents of those papers spoke for themselves.

65. The Tribunal was satisfied on the evidence before it that the Respondent was personally responsible for the regulatory failures in relation to the conveyancing transactions specified in the FIR. The Respondent was the firm's only equity partner, its Senior Partner and Money Laundering Reporting Officer. She had overall responsibility for the conveyancing practice within the firm, and was solely responsible for managing and supervising the Morris transactions.

65. The Tribunal therefore found that the Respondent had compromised or impaired each and all of the following:

her independence or integrity;

her duty to act in the best interests of the client, both lender and purchaser;

her good repute or that of the solicitors' profession;

her proper standard of work.

Allegation 2

66. It was alleged that contrary to Rule 1(b) of the said Rules the Respondent compromised or impaired, or permitted another to do so on her behalf, a person's freedom to instruct a solicitor of his or her choice. In so doing she was also dishonest, but in the alternative was grossly reckless although it was not necessary for dishonesty or recklessness to be established for this allegation to be made out.

67. The Tribunal found this allegation not proved. There was no evidence in the purchaser client statements before the Tribunal that the Respondent had compromised or impaired, or permitted another to do so on her behalf, a person's freedom to instruct a solicitor of his or her choice.

Allegation 3

68. It was alleged that the Respondent in breach of Rule 6(3) of the said Rules acted for buyer and lender on the grant of a mortgage of land when a conflict of interest existed or arose.

69. The Tribunal found this allegation against the Respondent to have been proved on the facts evidenced by the documents before it. The Respondent had failed to inform lender clients of discounts, incentives and other financial assistance given by Morris to purchasers, who were of course also borrowers from the Respondent's lender clients. Those borrowers in the main received significant financial help from Morris in order to enable them to purchase their properties, also from Morris. That financial help was offered by Morris in order to sell properties and to sell them quickly. Borrowers, if asked, could have objected to information being provided to their lenders. The Respondent would then have faced a clear conflict which she would have had to address honestly and genuinely. She did not have to address that issue because she did not ask her purchaser clients for permission to disclose information. Her lender clients were not kept informed of material facts by the Respondent in accordance with her professional obligation to act in the best interests of her individual clients. Lender clients were therefore unable to make truly informed decisions as to whether or not to proceed with mortgages. The Rules set out in the Council of Mortgage Lenders' Handbook were there to ensure that lenders had all information available before making decisions whether to advance money. If the Respondent had provided lender clients with the information that she had undertaken to provide concerning financial assistance given to borrowers, there was a significant risk that lenders would decide not to advance money to borrowers. It was also possible that purchases would not be able to proceed, or would have proceeded at a slower pace than the purchasers and/or Morris would have wished. These factors gave rise to an obvious conflict of interest which the Respondent singularly failed to address.

Allegation 4

70. It was alleged that contrary to Rule 13 of the said Rules, the Respondent being a

principal, she failed to ensure that her practice was supervised and managed in certain particulars.

71. The Applicant having made out its primary case against the Respondent, namely that she was personally responsible for the regulatory failures in relation to the conveyancing transactions specified in the FIR, the Tribunal found this allegation not proved.

Allegation 5

72. It was alleged that the Respondent breached the Solicitors' Introduction and Referral Code 1990 (as amended) in a number of respects as set out in the Rule 5 Statement. The Tribunal found this allegation to have been proved on the facts in each respect. The Tribunal found that the Respondent had an arrangement, formal or otherwise, with Simon Morris and his companies. This relationship put her in direct conflict with her lender and borrower clients. The significant numbers of transactions carried out by the Respondent in a relatively short period of time, namely 442 matters being opened over an 18 month period equating to over 24 new cases a month, resulted in the Respondent becoming dependent on that source of work and the income that it generated. The Tribunal was in no doubt that the Respondent failed to retain her professional independence and her ability to advise her clients fearlessly and objectively. She permitted the requirements of Simon Morris of Morris, to undermine her independence. She accepted introductions or referrals in circumstances which were likely to impair the principles set out in Rule 1 of the Solicitors Practice Rules 1990. The Respondent permitted herself to become reliant on Morris to the extent that Morris's interests coloured the advice given to borrower and lender clients. The Tribunal was left with the clear impression that the Respondent viewed Morris first and foremost as her client to the disadvantage of her actual clients.

Allegation 6

73. It was alleged that, contrary to Rule 15 of the Solicitors' Practice Rules 1990, the Respondent provided misleading costs information. The Tribunal found that the Respondent did provide misleading costs information as alleged. Indeed this was admitted by the Respondent in relation to the bank charges and money transfer element in her letter dated 4 February 2010. The Respondent disputed that any profit had been made out of postage, telephones and incidentals. The Tribunal found that the admitted manner in which the Respondent dealt with bank charges and money transfer expenses on bills delivered to clients was sufficient to make out this allegation.

Dishonesty In Relation To Allegation 1

74. The only proven allegation to which an allegation of dishonesty was attached was in respect of the breach of Rules 1(a), (c) (d) and (e) of the Solicitors' Practice Rules 1990. Mr Barton for the Applicant addressed the Tribunal on the test to be applied to allegations of dishonesty as set out in the decision of the House of Lords in Twinsectra Ltd-v- Yardley and Others [2002] UKHL 12. The Tribunal applied that test whilst bearing in mind the high standard of proof to be met for allegations of dishonesty to be made out. The Tribunal considered all the evidence, including the Respondent's written response dated 4 February 2008 to the FIO and Mr Barton's submission. In particular the Tribunal carefully considered the spreadsheet prepared

by the FIO from data provided by the Respondent, setting out the volume and nature of the conveyancing transactions and the amount of money discounted from the purchase prices notified to the lender clients so as to trigger the release of mortgage advances.

75. The Tribunal found that there were many unsatisfactory and suspicious elements to the Morris conveyancing transactions. Both purchaser and lender clients suffered financially as a result. The Respondent actively managed or carried out all the work on the transactions. She knew what was going on, and deliberately chose not to keep lender clients informed of material facts which might have affected their decision to lend money to purchasers. The Tribunal was satisfied to the requisite high standard that the Respondent's conduct in respect of the Morris conveyancing transactions to which it had been referred, and her preference of the interests of Morris over those of her buyer and lender clients, was dishonest by the standards of reasonable and honest people. The Tribunal was also satisfied so that it was sure that the Respondent did not have an honest belief that she was authorised by her buyer and lender clients to proceed with the transactions without keeping them informed of material facts, or to provide misleading Certificates of Title containing undertakings which were submitted to lender clients to authorise release of the mortgage advances. It was also satisfied so that it was sure that the Respondent did not have an honest belief that she was permitted deliberately to prefer the interests of Morris over those of her buyer and lender clients. In both cases the Respondent knew that what she was doing was dishonest by those same standards.

76. If the Tribunal had not found the Respondent to have been dishonest in respect of Allegation 1 it would have found her conduct to be grossly reckless.

Mitigation

77. No mitigation was provided by the Respondent.

Costs

78. The Applicant applied for costs in the fixed sum of £35,978.20.

Previous Disciplinary Proceedings Before the Tribunal

79. None.

Sanction and Reasons

80. The Tribunal having found four serious allegations against the Respondent proved, and having found dishonesty in respect of allegation 1, decided that the only appropriate sanction was to strike the Respondent off the Roll of Solicitors.

81. In reaching that decision the Tribunal was mindful of its responsibility towards the general public and the solicitors' profession. In order to practise as a solicitor it was fundamental to be a person who acted at all times with the utmost integrity, independence, probity and trustworthiness. The general public was entitled to expect a solicitor to be a person whose trustworthiness was not seriously in question. The profession's most valuable asset was its collective reputation and the confidence which that inspired in the public. The Respondent's conduct was such as to place that

reputation, the profession and the public at significant risk of injury if she was allowed to continue to practise.

Decision As To Costs

82. The Respondent had not made any representation as to her ability to pay costs. The Tribunal therefore ordered the Respondent to pay costs, but in the slightly reduced amount of £35,500.

Order

83. The Tribunal Ordered that the Respondent, KARON BROWN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,500.00.

Dated this 10th day of December 2010
On behalf of the Tribunal

J Martineau
Chairman