

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10431-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN WARNER SMITH

First Respondent

and

ALICK ARLINGTON VOLIERE

Second Respondent

and

FOLARANMI AWOYE DAWODU

Third 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 was present and was represented by David Morgan, Solicitor of RadcliffesLeBrasseur, 5 Great College Street, London, SW1P 3SJ.

Neither the Second nor Third Respondents were present or represented.

JUDGMENT

Allegations

1. The following allegations were made against the First Respondent Mr Smith, the Second Respondent Mr Voliere and the Third Respondent Mr Dawodu:
 - 1.1 The Respondents failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 (“SCC”);
 - 1.2 The Respondents failed to act in the best interests of their clients contrary to Rule 1.04 of the SCC;
 - 1.3 The Respondents behaved in a way likely to diminish the trust the public places in them and the legal profession contrary to Rule 1.06 of the SCC;
 - 1.4 The Respondents, both individually and collectively, failed to make arrangements to ensure an appropriate level of management of the activities of the firm and its members and/or that the firm had in place a system for supervising clients’ matters contrary to Rule 5 of the SCC;
 - 1.5 The Respondents failed to maintain proper books of account in breach of Rule 32 of the Solicitors Accounts Rules 1998 (“SAR”);
 - 1.6 The Respondents operated client accounts without the word “client” included in its title in breach of rule 14 of the SAR;
 - 1.7 The Respondents allowed an unauthorised person to operate a client account of the firm contrary to Rule 23 of the SAR.
2. As against The Second Respondent, Mr Voliere:
 - 2.1 Mr Voliere pursued a course of conduct with the aim of misappropriating client funds;
 - 2.2 Mr Voliere deliberately misled the Solicitors Regulation Authority (“SRA”) and made false statements to an Officer of the SRA in the course of an investigation contrary to Rule 20.05 of the SCC;
 - 2.3 Mr Voliere acted dishonestly.
3. As Against the Third Respondent, Mr Dawodu:
 - 3.1 Mr Dawodu submitted documents to third parties, including the SRA, knowing their content to be untrue;
 - 3.2 Mr Dawodu did not act honestly or transparently with the SRA in the course of its investigation contrary to Rule 20.05 of the SCC;
 - 3.3 In conjunction with Mr Voliere, Mr Dawodu pursued a course of conduct with the aim of misappropriating client monies.
 - 3.4 Mr Dawodu acted dishonestly;

- 3.5 In the alternative, Mr Dawodu acted recklessly.
4. The following allegations were made against the First Respondent Mr Smith, the Second Respondent Mr Voliere and the Third Respondent Mr Dawodu:
- 4.1 The Respondents failed to comply with Rule 10.3 of the Solicitors Indemnity Insurance Rules 2008 (“SIIR”);
- 4.2 The Respondents failed to comply with Rule 10.12 of the SIIR.
5. The following allegations were made against The Third Respondent, Mr Dawodu alone:
- 5.1 Mr Dawodu held himself, or allowed himself to be held out, to a firm of solicitors, namely Richards Solicitors, and to associated third parties, as a partner in the firm of Sovereign Chambers LLP (“Sovereign”), when this was not the case;
- 5.2 Mr Dawodu held himself out, or allowed himself to be held out, to a firm of solicitors, namely Richards Solicitors, and to associated third parties, that he was acting on behalf of a client, namely Mr DW in connection with an application for a bridging loan, when this was not the case.
- 5.3 Mr Dawodu wrongfully received, or allowed the wrongful receipt of the sum of £49,070, namely the sum due to the purported client of Mr Dawodu, Mr DW, following the completion of the bridging loan.

Documents

6. The Tribunal reviewed all of the documents submitted by the Applicant and the First Respondent Mr Smith, which included:

Applicant:

- Rule 5(2) Statement dated 26 January 2010 with exhibits;
- Rule 7 Statement dated 17 December 2010 with exhibits;
- Schedule of Costs.

First Respondent, Mr Smith:

- Mr Smith’s Statement, undated;
- Mr Smith’s Statement in response to Supplementary Statement dated 25 February 2011;
- Extracts from medical records.

No documents were submitted by the Second Respondent Mr Voliere or Third Respondent Mr Dawodu.

Preliminary Matter (1)

7. This case was heard with matters 10049-2008 (SRA v Smith, [SECOND AND THIRD RESPONDENTS REDACTED] and Rahman) and 10273-2009 (SRA v Smith and Voliere).

Preliminary Matter (2)

8. The Applicant sought the Tribunal's permission to amend allegation 5.3 to amend the sum mentioned to £49,070 in place of the sum of £55,000. Having heard and read the evidence, the Tribunal was satisfied that the amendment was appropriate and necessary to reflect the true amount in issue. No prejudice would be suffered by any of the Respondents by permitting the amendment, which was therefore allowed.

Preliminary Matter (3)

9. The Tribunal noted that neither Mr Voliere nor Mr Dawodu were present and therefore considered whether the proceedings had been properly served and whether it would be appropriate to hear the case in the absence of Mr Voliere and Mr Dawodu.
10. The Tribunal noted that on 5 October 2010 the Tribunal had ordered that there should be substituted service of the proceedings on Mr Voliere by means of advertisement in a national paper in the United Kingdom and substituted service on Mr Dawodu by means of advertisement in a national paper in the United Kingdom and in Nigeria.
11. Copies of the advertisements placed by the Applicant, giving notice of the proceedings and of the hearing date, were produced to the Tribunal and placed on the Tribunal's file.
12. The Tribunal was satisfied that the Applicant had complied with its Direction concerning service of proceedings and had done all that it reasonably could to effect service. The Tribunal was satisfied that Mr Voliere and Mr Dawodu would be aware of the proceedings and that they had chosen voluntarily to absent themselves. Neither had played any part in the proceedings, although both had been aware of the SRA investigation which had led to the referral to the Tribunal. In all of the circumstances it was appropriate and proper to hear the proceedings against all of the Respondents on this occasion. The Tribunal was further conscious that Mr Smith was present and represented, and that expeditious disposal of the proceedings was desirable.

Factual Background

13. Mr Smith was born in 1942 and was admitted to the Roll of Solicitors in 1967.
14. Mr Voliere was born in 1961 and was admitted to the Roll of Solicitors in 2006 via the Qualified Lawyers Transfer Test, having been a barrister prior to his admission as a solicitor.
15. Mr Dawodu was born in 1972. In October 2007 he attained the Qualified Lawyers Transfer Test. On 5 December 2007 he became a Registered Foreign Lawyer ("RFL") and his registration was renewed on 19 November 2008.

16. The Respondents were members of, or involved with, a limited liability partnership (“LLP”), operating under the name of Sovereign Chambers LLP (“Sovereign”) at 67 West Ham Lane, Stratford, London E15 4PH. That firm was intervened in following a decision of the SRA on 16 September 2009.
17. On 4 June 2009 an Investigation Officer of the SRA commenced an investigation of the books of account and other documents relating to the Respondents and the practice at Sovereign. A Forensic Investigation Report (“FIR”) dated 4 September 2009 was produced and was relied upon by the Applicant.
18. Sovereign was established in December 2006 with Mr Smith and Mr Voliere being, apparently, partners in the firm. However, in matter 10273-2009 the Tribunal determined that Mr Smith had no involvement with Sovereign until November 2007. Mr Voliere resigned as a member of the LLP in February 2009 but remained with the firm. On Mr Voliere’s resignation as a member, Mr Dawodu was appointed as a member.
19. Mr Dawodu described himself as an equity partner at Sovereign but was also a partner at PG Solicitors, which was his normal place of work.
20. At a meeting on 8 July 2009 Mr Dawodu told the Forensic Investigation Officer that he specialised in employment and immigration law and had no involvement with conveyancing transactions.
21. At an interview with the Forensic Investigation Officer on 4 June 2009 Mr Smith indicated that the practice was being “wound down”, and stated that Sovereign was not taking on any new instructions. At a meeting on 18 August 2009 Mr Smith stated that he and Mr Dawodu had resigned as members of the firm on 29 June 2009. A number of the allegations made related to the period after 4 June 2009 and after Mr Smith’s and Mr Dawodu’s resignation from Sovereign.
22. At the time of the SRA investigation the firm operated client accounts with the Co-operative Bank Plc and HSBC Bank Plc. The signatories on the Co-operative Bank Plc account were Mr Voliere and Miranda Augustus (“MA”), who was understood to be Mr Voliere’s wife, and who was not a person authorised to be a signatory on the client account. The bank mandate in respect of the HSBC account dated 7 February 2009 showed Mr Smith and Mr Dawodu as signatories.
23. The SRA Investigator discovered that the firm held two additional bank accounts with the Access Bank UK Ltd (“Access Bank”) of Northwich, Cheshire, under account numbers 00018901 and 00018900. Neither of the two accounts contained the word “client” in its title. Account No. 00018901 was the main account used to receive client money.
24. During the investigation the Respondents did not produce complete books of account in that no books of account were presented in relation to transactions conducted in the Access Bank accounts.
25. By letter of 14 August 2009 Legal Counsel for RBS, Mr Woolf, wrote to the SRA

outlining circumstances giving rise to potential mortgage fraud in respect of seven purported property transactions affecting National Westminster Bank Plc and RBS. RBS advanced to Sovereign a total sum of £2,442,879. Save for a mortgage advance in respect of a purchase by Mr MMI in the sum of £390,000, such sum having been frozen in the Access Bank account, the balance of £2,052,869 had been paid out to unknown recipients or to recipients who appeared to have no connection with the alleged property transactions. The property transactions to which the mortgage applications were supposed to relate did not proceed to completion and, consequently, the mortgage advances were not secured.

26. The completion dates in respect of the mortgage advances in issue took place between 3 June and 30 July 2009. Six of the seven mortgage advances from RBS, totalling £1,740,719 were credited to Access Bank account No. 00018901.
27. For the indemnity year 2008/9 the Respondents, as members of Sovereign, applied for indemnity insurance cover with the Assigned Risks Pool (“ARP”). The policy proposal form was sent to the firm on 17 October 2008 and the period of cover was recorded as 1 October 2008 to 30 September 2009. The total amount of the premium was £66,271.34 which was to be paid in twelve instalments. The premium was not paid, by instalments or otherwise. After correspondence between the SRA and the Respondents, the conduct of the Respondents was referred to an Adjudicator who considered the matter on 12 April 2010. The Adjudicator set out in her decision that she expected Mr Smith, Mr Voliere and Mr Dawodu, before the expiry of 28 days from the date of the letters notifying them of the decision, to provide documentary evidence to the SRA of the agreement reached with the ARP for payment of the outstanding insurance premium, failing which the Adjudicator directed that the conduct of Mr Voliere and Mr Dawodu be referred to the Tribunal without further notice. The Adjudicator decided to stand over further consideration of any disciplinary action pending evidence that it would be in the public interest to pursue disciplinary proceedings against Mr Smith. By way of a supplementary decision dated 12 April 2010 the Adjudicator directed that the First, Second and Third Respondents pay fixed costs to the SRA of £600 in connection with the investigation and adjudication of the matter. On 19 April 2010 the SRA wrote to Mr Smith, Mr Voliere and Mr Dawodu enclosing copies of the Adjudicator’s Decision and requesting a response within 14 days. On 6 May 2010 the ARP confirmed to the SRA that the total premium of £66,271.34 remained unpaid.
28. From 30 June 2009 correspondence from Mr Dawodu purported to show that he was a partner in Sovereign and was acting for a Mr DW of 93A BA, Wembley, in connection with an application for a bridging loan in the sum of £55,000. On 24 July 2009 Mr Dawodu wrote to Richards solicitors, who acted for the bridging loan provider, enclosing a mortgage deed purportedly signed by Mr DW on 30 June 2009. The signature was purportedly witnessed by Mr Dawodu. By way of a letter dated 31 July 2009 Richards confirmed that the mortgage of £55,000 had been completed, with a sum of £49,706 being paid into the client account of Sovereign on behalf of their (purported) client, Mr DW. No repayments of the loan sums were made and in due course the bridging loan company commenced possession proceedings against Mr DW. It transpired that the real Mr DW, the owner of 93A BA, knew nothing of the bridging loan which had been obtained in his name and paid to Sovereign.

29. By way of a decision dated 26 August 2010 the SRA referred these matters for possible inclusion in the existing disciplinary proceedings against Mr Dawodu.

Witnesses

30. None

Findings of Fact and Law

31. **Allegation 1.1. The Respondents failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 (“SCC”);**

- 31.1 This allegation was denied by Mr Smith. Neither Mr Voliere nor Mr Dawodu had indicated their position with regard to this allegation.

- 31.2 This allegation was put against all three Respondents in relation to the firm’s bank accounts; the mortgage applications in the period June/July 2009; and in the failure to pay the ARP premium. Additionally, this allegation was put against Mr Dawodu in the context of his dealings with 93A BA.

- 31.3 The Tribunal found that Sovereign had a client account with the Co-operative Bank on which Mr Voliere’s wife, MA, was a signatory. She was not permitted to be an authorised signatory on client account. The evidence showed that all three Respondents were aware of the existence of this client account and either knew or should have known that MA was named as a signatory. Whether they knew and did nothing to correct the matter, or failed to make enquiry, all three had failed to act with integrity in this respect.

- 31.4 The Tribunal was satisfied on the evidence presented that the two accounts with Access Bank had been created on the instruction of Mr Voliere, and that he was the sole signatory when the accounts were created in February 2009. Mr Smith’s position, which the Tribunal accepted, was that he did not know of the existence of these accounts. Mr Dawodu was added as a signatory to one of the two Access Bank accounts on 19 June 2009.

- 31.5 Sovereign operated accounts which received and dealt with client money without the word “client” appearing in the title of the account and in circumstances where the existence of the accounts was hidden from Mr Smith and was not recorded fully in the firm’s books of account. Whilst it appeared to the Tribunal that Mr Voliere, and subsequently Mr Dawodu, were active in the use of these accounts, and had therefore shown a lack of integrity, the Mr Smith had also failed in his duties under Rule 1.02 of the SCC. His failure to play a proper role in the management of the firm, or to be aware of the activities of his colleagues, allowed Mr Voliere and Mr Dawodu to carry out a series of very serious breaches of the SAR and/or SCC. He was, accordingly, fixed with this allegation with regard to the Access Bank accounts although his personal culpability was less than that of Mr Voliere and Mr Dawodu.

- 31.6 Mr Voliere showed a further lack of integrity in that he denied to the SRA Investigation Officer that he had any knowledge of the accounts with Access Bank. It was clear to the Tribunal that this was not a true statement as the documents showed

- clearly that Mr Voliere had been active in establishing the accounts.
- 31.7 For reasons which will be set out more fully in dealing with allegations 2.1 and 3.3 below, the Tribunal found that Mr Voliere and Mr Dawodu had dealt with the Access Bank accounts in an improper way, thereby further establishing against them the allegation of a failure to act with integrity.
- 31.8 The Tribunal found that Sovereign had not paid the ARP premium for the 2008/9 indemnity period. The firm was carrying out work for clients, and receiving client monies at a time when it had failed to pay for insurance. It is vital for public protection that solicitors are insured.
- 31.9 Mr Smith and Mr Dawodu had at various times in correspondence and in interview with the Investigation Officer sought to blame one or more of the others. Mr Smith had suggested that he had been assured by the practice manager, Mr A, that the monthly premiums had been paid. In a letter to the SRA of 6 October 2009 Mr Smith had stated that he was not aware that the premiums were unpaid and further stated that Mr Voliere had agreed to discharge the premiums from his share of the fee income. Mr Voliere had not expressly replied to the allegation. Mr Dawodu had asserted in correspondence that he was unaware the premium was in arrears and asserted that Mr Voliere had indicated that Mr Smith would deal with payment of the premium. Mr Voliere's failure to respond to correspondence from the SRA about this matter was further support for the finding that he had failed to act with integrity.
- 31.10 Whatever may or may not have been agreed between the Respondents, the fact remained that the firm had been uninsured through the ARP or otherwise for a period whilst it was conducting client matters. This was a serious matter, and the responsibility for ensuring appropriate insurance was in place rested with all three Respondents. Mr Dawodu was not a member of Sovereign until after the beginning of the indemnity period, and Mr Voliere had ceased to be a member of the firm in February 2009. However, all had a responsibility to ensure that the premium was paid and that the firm was appropriately insured. They had failed to do this, which exposed the public to risk and thereby demonstrated a lack of integrity.
- 31.11 So far as Mr Dawodu was concerned, his dealings with the purported client Mr DW, and the transaction concerning 93A BA (fuller details of which will be set out under allegations 5.1 to 5.3 below), gave yet more support to the finding that this Respondent had acted in breach of Rule 1.02 of the SCC.
- 31.12 The Tribunal found this allegation to have been proved against all three Respondents.
32. **Allegation 1.2. The Respondents failed to act in the best interests of their clients contrary to Rule 1.04 of the SCC;**
- 32.1 This allegation was denied by Mr Smith. Neither Mr Voliere nor Mr Dawodu had indicated their position with regard to this allegation. The allegation was put against all three in relation to dealing with the firm's bank accounts, maintenance of the books of account and the transactions using the Access Bank accounts in the period June/July 2009.
- 32.2 All three Respondents were members at various times of a firm whose client bank

account with the Co-operative Bank Plc had a person, MA, who was not authorised to be a signatory as a designated signatory. The SAR are intended to protect the public and any breach of the SAR may therefore support an allegation of failure to act in the best interests of clients. Of greater significance than the fact that MA was a signatory on a client account was the creation of two accounts with Access Bank which were not recorded within the firm's books of account. This meant that it was not possible to assess the true financial position of the firm when the SRA investigation was conducted which, in turn, meant that client money was at risk.

- 32.3 The series of seven transactions in the period June/July 2009 involving loans from RBS or National Westminster Bank Plc showed a clear failure to act in the best interests of the lender clients. In relation to the seven transactions which the Tribunal considered carefully, Sovereign had received a gross sum of £2,442,869 from lenders. That money was not used to secure charges on various properties and the lenders accordingly received no security for their loans. The net mortgage advances credited to the Access Bank account 00018901 amounted to £1,740,719 and the sum credited to account 00018900 was £699,970. Apart from the sum of £390,000 (which amount was frozen in account 00018901, after these transactions came to light), the remaining funds had been disbursed in a way unrelated to the purported lending on property. The Tribunal had no information that any of the sums had been repaid to the lenders.
- 32.4 The Certificates of Title had been signed by Mr Dawodu in six of the seven transactions.
- 32.5 The Tribunal found so that it was sure that the seven transactions set out had the hallmarks of mortgage fraud. Sovereign had failed to secure the interests of its lender clients, or indeed the interests of those for whom it purported to act in the transactions.
- 32.6 Indeed, there was wholesale failure on the part of the firm to protect the best interests of the firm's clients, in particular RBS, to the extent that advances totalling well over £2 million were made in respect of seven properties and the charge on each was not registered on the title to those properties.
- 32.7 The conduct of the transactions was in the hands of Mr Voliere and/or Mr Dawodu. However, Mr Smith failed to exercise any, or any sufficient, supervision and management of the affairs of Sovereign, such that he had little or no idea of the manner in which the firm was being run, or the manner in which client matters were being conducted. There was thus a serious failure on his part to ensure the interests of clients were protected.
- 32.8 The Tribunal found this allegation to have been proved against all three Respondents.
33. **Allegation 1.3. The Respondents behaved in a way likely to diminish the trust the public places in them and the legal profession contrary to Rule 1.06 of the SCC;**
- 33.1 This allegation was denied by Mr Smith. Mr Voliere and Mr Dawodu had not indicated their position with regard to this allegation.

- 33.2 The allegation was again put on the basis that the Respondents' behaviour in relation to the bank accounts, books of account, mortgage transactions and professional indemnity insurance was such as to diminish the trust the public would place in them and/or the legal profession. In addition, the allegation was put against Mr Dawodu in relation to his dealing with 93A BA. The Tribunal again found that Mr Smith's role had been passive rather than active. He had been unaware of the existence of two bank accounts which received and dealt with client money. Those accounts were used to facilitate improper transactions. Further, Mr Smith had apparently been unaware that the firm had not paid its insurance premium.
- 33.3 In failing to exercise anything close to the required standard of management and supervision, Mr Smith's behaviour was such as would diminish the trust the public placed in him and/or the solicitors profession.
- 33.4 The Tribunal was satisfied, so that it was sure, that in establishing and using the Access Bank accounts and allowing client money to be used improperly, Mr Voliere and Mr Dawodu had clearly behaved in a damaging way. Further, the failure to ensure that the firm paid its insurance premium and Mr Dawodu's improper dealings with 93A BA confirmed that this allegation had been proved. Accordingly, the Tribunal found the allegation proved to the highest standard against all three Respondents.
34. **Allegation 1.4. The Respondents, both individually and collectively, failed to make arrangements to ensure an appropriate level of management of the activities of the firm and its members and/or that the firm had in place a system for supervising clients' matters contrary to Rule 5 of the SCC;**
- 34.1 This allegation was denied by Mr Smith. Neither Mr Voliere nor Mr Dawodu had indicated their position with regard to this allegation.
- 34.2 The clear evidence before the Tribunal was that Mr Voliere had established two accounts which received and dealt with clients' money, without revealing the existence of those accounts to Mr Smith. Mr Dawodu had at some point become a signatory to one of the accounts.
- 34.3 Whilst the Tribunal could accept Mr Smith's position that he had been deceived by Mr Voliere and/or Mr Dawodu and that they had deliberately withheld information from him, there had at the same time been a considerable failure on the part of Mr Smith to make any proper enquiries to determine the position. His failure to engage himself in the management of the firm meant that Mr Voliere and/or Mr Dawodu were in a position to carry out a number of substantial improper transactions and dealings.
- 34.4 Further, the fact that he was unaware that the ARP premium was unpaid and/or was unable to show that it had been paid, showed a further failure to act appropriately as a principal in the firm. Mr Smith was to a significant degree the "Senior Partner" in that Mr Voliere had been admitted as a solicitor only in December 2006 and Mr Dawodu became a Registered Foreign Lawyer only in late 2007. It was clear to the Tribunal that he had left the management of the firm to Mr Voliere and/or Mr Dawodu. The comparatively inexperienced Mr Voliere and Mr Dawodu had not been

supervised adequately or at all by Mr Smith, in that he was clearly unaware of their activities. For example, in early June 2009 he had informed the SRA Investigation Officer that the firm was not taking on new instructions and yet the firm clearly acted in the seven transactions which caused concern throughout June and July 2009.

34.5 Mr Voliere and Mr Dawodu had, on the evidence, misled Mr Smith to a significant degree. In so doing they had prevented the proper supervision of clients' matters and had obstructed any appropriate management of the activities of the firm.

34.6 The allegation was proved against all three Respondents.

35. **Allegation 1.5. The Respondents failed to maintain proper books of account in breach of Rule 32 of the Solicitors Accounts Rules 1998 ("SAR");**

35.1 This allegation was denied by Mr Smith. Neither Mr Voliere nor Mr Dawodu had indicated their position with regard to this allegation.

35.2 It was clear on the evidence presented to the Tribunal that the firm had failed to maintain proper books of account and there had therefore been a breach of Rule 32 of the SAR.

35.3 This allegation related to the fact that the firm's books of accounts did not contain information concerning the accounts with the Access Bank. As a result of that the SRA's Investigation Officer was not able to assess the true Financial position of the firm.

35.4 Mr Smith's position was that he had been unaware of the Access Bank accounts and therefore had no knowledge that the firm's books of account were inaccurate or incomplete.

35.5 The Tribunal determined that on the evidence considered Mr Smith did not have any knowledge of the Access Bank accounts and could not be liable as an individual for breach of Rule 32 of the SAR. The Tribunal was satisfied, however, so that it was sure that Mr Voliere and Mr Dawodu had failed to maintain proper books of account. They were aware of the Access Bank account and knew, therefore, that the firm's accounting records were incomplete and thus not properly maintained.

35.6 This allegation, which had been admitted by Mr Smith, was found not to have been proved on the facts against Mr Smith, but was found proved against Mr Voliere and Mr Dawodu.

36. **Allegation 1.6. The Respondents operated client accounts without the word "client" included in its title in breach of rule 14 of the SAR;**

36.1 This allegation was admitted by Mr Smith. Mr Voliere and Mr Dawodu did not indicate their position with regard to this allegation.

36.2 The two accounts with Access Bank received and dealt with client money. However, the documents showed clearly, and the Tribunal was satisfied, that the account names did not include the word "client". The Rule which requires the word "client" to

feature in the name of any account dealing with client money is intended to protect the public.

36.3 The Tribunal had determined that Mr Smith did not know of the Access Bank accounts. Accordingly, he did not “operate” those client accounts. The Access Bank accounts were not properly designated but were operated by Mr Voliere and/or Mr Dawodu and accordingly the allegation was proved against Mr Voliere and Mr Dawodu, but not against Mr Smith.

37. **Allegation 1.7. The Respondents allowed an unauthorised person to operate a client account of the firm contrary to Rule 23 of the SAR.**

37.1 This allegation was admitted by Mr Smith. Neither Mr Voliere nor Mr Dawodu had indicated their position with regard to this allegation.

37.2 The documentary evidence presented to the Tribunal showed that MA, Mr Voliere’s wife, was a signatory on the Co-operative Bank Plc client account, but was not a person authorised to be such a signatory.

37.3 The Tribunal noted that Mr Smith was not a signatory to that account and Mr Smith’s position was that he was unaware that MA was a signatory. The Tribunal accepted Mr Smith’s position and therefore found that he could not have “allowed” an unauthorised person to operate a client account contrary to Rule 23 of the SAR.

37.4 Mr Voliere, who was the other signatory on that account, knew that his wife was a co-signatory and it was clear therefore that the allegation had been proved against him. So far as Mr Dawodu was concerned, he had not challenged the SRA’s evidence or case against him and as a principal in the firm could and should be fixed with this breach of the SAR.

37.5 Accordingly, this allegation had been proved against Mr Voliere and Mr Dawodu but not against Mr Smith.

38. **Allegation 2.1. Mr Voliere pursued a course of conduct with the aim of misappropriating client funds;**

38.1 Mr Voliere had been involved in establishing two bank accounts with Access Bank. Those accounts received client money. In a series of seven transactions which completed between 3 June and 30 July 2009 a sum of over £2.4 million was paid into the Access Bank accounts. The money was received from lenders who relied on Sovereign to utilise the money provided in connection with purchases/remortgages and to secure charges against the relevant properties. Mr Voliere was at all relevant times a signatory to the Access Bank accounts. Of the sums received, £633,381.60 left the account by way of CHAPS payments to a variety of payees. The payments made did not appear to relate to the property transactions for which the loans had been obtained. Further, it was clear on the documents that on 9 June 2009 there was a CHAPS transfer from account 00018900 in the sum of £28,000 to MA, Mr Voliere’s wife. The recipients of other payments from that account were unknown at the time of the FIR. The Tribunal was satisfied so that it was sure that Mr Voliere had established the Access bank accounts and operated them with the aim of

misappropriating client funds, namely monies received from lenders. There was no other explanation for the way in which the accounts had been operated or for the transactions which had occurred in June/July 2009.

38.2 Accordingly, this allegation was found to be proved against Mr Voliere.

39. **Allegation 2.2. Mr Voliere deliberately misled the Solicitors Regulation Authority and made false statements to an Officer of the SRA in the course of an investigation contrary to Rule 20.05 of the SCC;**

39.1 Mr Voliere had denied in a meeting on 18 August 2009 that he was aware of the six Certificates of Title which related to six of the seven transactions. He further stated that he was not aware of these transactions and that he had not opened any new bank accounts for Sovereign. This was clearly false. Mr Voliere had established the bank accounts and for a period of time was the sole signatory on those accounts. His statements to the Investigation Officer were deliberately misleading. Accordingly, this allegation had been proved.

40. **Allegation 2.3. Mr Voliere acted dishonestly.**

40.1 In considering the allegation of dishonesty against Mr Voliere, the Tribunal took into account the “combined test” set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12.

40.2 Mr Voliere set up two accounts with Access Bank but concealed those accounts from Mr Smith. He later lied to an SRA Investigation Officer in that he stated he had not opened any new bank accounts for the firm. Indeed, Mr Voliere had at the time the accounts were opened been the sole signatory. On 9 June 2009 a payment of £28,000 was made to MA, Mr Voliere’s wife, out of funds held in the Access Bank account. That money did not belong to Mr Voliere.

40.3 In lying to an SRA Investigation Officer and in authorising or permitting a transfer to his wife of £28,000 of client money when there was no justification for such a transfer, the behaviour of Mr Voliere was dishonest by the standards of reasonable and honest people. Mr Voliere knew that he was providing misleading information to an SRA Officer, and that there was no justification for a transfer of a substantial sum of money to his wife from client funds, and Mr Voliere therefore knew that by those same standards his behaviour was dishonest.

40.4 The Tribunal did not have sufficient information concerning the seven mortgage transactions in June/July 2009 to be sure that these had been carried out by Mr Voliere so could not make a finding of dishonesty with regard to those transactions.

40.5 The Tribunal found to the highest standard, so that it was sure, that Mr Voliere’s behaviour had been dishonest.

41. **Allegation 3.1. Mr Dawodu submitted documents to third parties, including the SRA, knowing their content to be untrue;**

41.1 The Tribunal was satisfied, so that it was sure, that Mr Dawodu had completed and

signed Certificates of Title in relation to six of the seven transactions in which client funds had been misappropriated. It was noted that Mr Dawodu had suggested to the SRA Investigation Officer on 19 August 2009 that correspondence had been sent out by the firm in his name, of which he had no knowledge. However, it was clear that the Certificates of Title on which the lender clients relied had been signed by Mr Dawodu, and those documents also named him as the authorised signatory.

- 41.2 The Certificates of Title were inaccurate. In particular, it was clear to the Tribunal that the purported evidence in respect of one purported client was fictitious, and the Certificate of Title in respect of one property had been altered to refer to a different property.
- 41.3 In the documentation which enabled Mr Dawodu to be added as a signatory to one of the Access Bank accounts, the full name of Mr Dawodu was spelt “Folaranmo”, rather than “Folaranmi” which was the name given in Mr Dawodu’s professional history form. Further, Mr Dawodu described himself as a “solicitor”, whereas he was a RFL.
- 41.4 The Tribunal regarded as particularly serious Mr Dawodu’s signature of Certificates of Title which he knew to be false. This was particularly serious as lender clients relied on those documents to provide funds, which were subsequently misappropriated by Mr Voliere and/or Mr Dawodu.
- 41.5 The Tribunal was further satisfied that Mr Dawodu had been party to the creation/signature of a mortgage deed purportedly signed by Mr DW in connection with the property at 93A BA. The person who signed the mortgage deed was not Mr DW, the owner of the property.
- 41.6 The Tribunal was satisfied so that it was sure that Mr Dawodu had submitted documents to third parties knowing their content to be untrue.
42. **Allegation 3.2. Mr Dawodu did not act honestly or transparently with the SRA in the course of its investigation contrary to Rule 20.05 of the SCC;**
- 42.1 Mr Dawodu denied that he had any knowledge of, or involvement in, the seven transactions which had resulted in losses to lenders of over £2 million. The documents clearly showed that Mr Dawodu had been dealing with those matters. In particular, he had signed the Certificate of Title in six of the relevant matters. Mr Dawodu had therefore attempted to mislead the SRA Investigation Officer. In particular, Mr Dawodu attempted to deny that he was a signatory on various material documents when he was the signatory. The Tribunal was conscious that it did not have benefit of expert evidence in the form of a handwriting expert report. Nevertheless, a proper construction of the transactions, and examination of the signatures on various documents was sufficient to satisfy the Tribunal so that it was sure that in the circumstances set out, Mr Dawodu had signed a number of material documents and had then lied to the SRA about that.
- 42.2 The Tribunal was satisfied that this allegation had been proved.

43. **Allegation 3.3. In conjunction with Mr Voliere, Mr Dawodu pursued a course of conduct with the aim of misappropriating client monies.**

43.1 The Tribunal was satisfied so that it was sure that Mr Dawodu, together with Mr Voliere, had pursued a course of conduct with the aim of misappropriating client monies. The course of conduct included becoming a signatory on an account with Access Bank, dealing with a series of transactions in which client funds were actually misappropriated and arranging, or alternatively permitting, the use of the funds which were misappropriated for purposes unconnected with the acquisition of registered charges.

43.2 The Tribunal was satisfied, so that it was sure, that this allegation had been proved.

44. **Allegation 3.4. Mr Dawodu acted dishonestly.**

44.1 The Tribunal considered carefully Mr Dawodu's actions in the light of the Twinsectra test.

44.2 Mr Dawodu was the key player in obtaining from Bridging Loans Ltd a Charge of £55,000 on a property at 93A BA, owned by Mr DW. The real Mr DW knew nothing of the bridging loan. Of the amount of the Charge, an amount of £49,706 was paid to the client account of Sovereign. The Tribunal was satisfied that Mr Dawodu had improperly obtained the sum of £55,000 by holding out that he was acting on behalf of Mr DW when this was not the case.

44.3 Further, Mr Dawodu had signed the Certificates of Title in six of the seven transactions in which over £2 million had been misappropriated.

44.4 The Tribunal was satisfied so that it was sure that in acting as he did, as set out at 44.2 and 44.3 above, Mr Dawodu was dishonest by the standards of reasonable and honest people, and that he knew his conduct was dishonest by those same standards.

45. **Allegation 3.5. In the alternative, Mr Dawodu acted recklessly.**

45.1 Having found that Mr Dawodu had acted dishonestly, the Tribunal did not make any finding with respect to the allegation that he had acted recklessly.

46. **Allegation 4.1. The Respondents failed to comply with Rule 10.3 of the Solicitors Indemnity Insurance Rules 2008 ("SIIR");**

46.1 This allegation was admitted by Mr Smith. Mr Voliere and Mr Dawodu had given no indication of their position with regard to this allegation.

46.2 Rule 10.3 of SIIR makes provisions concerning payment of the ARP premium, and in particular provides that the firm, and any person who is a principal of that firm, agrees to be jointly and severally liable to comply with the Rule.

46.3 The ARP premium was not paid as required. Accordingly, all three of the principals in Sovereign were liable for that default and the allegation was then proved against all three Respondents.

47. **Allegation 4.2. The Respondents failed to comply with Rule 10.12 of the SIIR.**
- 47.1 This allegation was admitted by Mr Smith. Mr Voliere and Mr Dawodu had given no indication of their position with regard to this allegation.
- 47.2 Rule 10.12 of SIIR provides that the ARP premium must be paid within 30 days of the premium being notified to it by the ARP manager. The relevant indemnity period was 2008/9. The premium required had not been paid by 6 May 2010, the premium having been notified to the firm on or about 17 October 2008.
- 47.3 The Tribunal was satisfied that this allegation had been proved against all three Respondents.
48. **Allegation 5.1. Mr Dawodu held himself, or allowed himself to be held out, to a firm of solicitors, namely Richards Solicitors, and to associated third parties, as a partner in the firm of Sovereign Chambers LLP (“Sovereign”), when this was not the case;**
- 48.1 Mr Dawodu (together with Mr Smith), resigned as a member of Sovereign on 29 June 2009. Indeed, Mr Dawodu had also indicated that he had notified the SRA on 29 April 2009 that he had ceased to be a partner in the firm. However, it was clear on the documents that from 30 June 2009 Mr Dawodu had held himself out to a firm of solicitors, namely Richards Solicitors, and to associated third parties, as a partner in Sovereign. The Tribunal was referred to a number of items of correspondence. The Tribunal noted that on 30 June 2009 Sovereign confirmed to Richards Solicitors that Mr DW had attended their offices and been advised in connection with the loan application. On 7 July 2009 a letter from Sovereign confirmed that Mr Buchalter of Richards Solicitors had spoken to Mr Dawodu, who had confirmed that office copies of the Register of Title would be provided. Richards Solicitors wrote to Sovereign on 8 July 2009 requesting clarification of certain matters and on 20 July 2009 Mr Dawodu responded. On 23 July 2009 Richards wrote to Mr Dawodu requesting further clarification and on 24 July 2009 Mr Dawodu wrote to Richards Solicitors enclosing a mortgage deed purportedly signed by Mr DW on 30 June 2009. That signature was purportedly witnessed by “Fola Dawodu”, namely Mr Dawodu. The loan was completed on 31 July 2009 and the net sum of £49,706 was paid into the client account of Sovereign.
- 48.2 The Tribunal noted that all of the correspondence from Sovereign named Mr Dawodu as a partner in the firm.
- 48.3 The Tribunal was satisfied so that it was sure that Mr Dawodu had held himself out as being a partner in Sovereign, when he was not. The Tribunal was satisfied that the correspondence from Sovereign was from Mr Dawodu, and it was satisfied that Mr Dawodu had permitted his name to remain on the notepaper of Sovereign as being a partner.
- 48.4 The Tribunal was satisfied that this allegation had been proved.

49. **Allegation 5.2. Mr Dawodu held himself out, or allowed himself to be held out, to a firm of solicitors, namely Richards Solicitors, and to associated third parties, that he was acting on behalf of a client, namely Mr DW in connection with an application for a bridging loan, when this was not the case.**

49.1 Having reviewed all of the evidence and papers in this matter, the Tribunal was satisfied that Mr Dawodu had not acted for the real Mr DW, the registered owner of 93A BA, but had held himself out, or allowed himself to be held out, to Richards Solicitors and others as acting on behalf of Mr DW. The Mr DW who genuinely owned the property, and knew nothing of the application for the bridging loan, was a gentleman of over 70 years of age. He was considerably older than the “Mr DW” shown in identification documents produced in connection with the loan application. Further, it was noted that Mr Dawodu had not obtained sufficient confirmation of the identity of the purported Mr DW.

49.2 By acting as he did, Mr Dawodu had enabled the misappropriation of over £49,000 obtained from the bridging loans company. That money had been paid into the account of Sovereign and there was no evidence to suggest that it had been recovered.

49.3 The Tribunal was satisfied that this allegation had been proved.

50. **Allegation 5.3. Mr Dawodu wrongfully received, or allowed the wrongful receipt of the sum of £49,070, namely the sum due to the purported client of Mr Dawodu, Mr DW, following the completion of the bridging loan.**

50.1 In all of the circumstances the Tribunal was satisfied that Mr Dawodu had wrongfully received, or allowed the wrongful receipt, of £49,070 being the net sum due to the purported client, Mr DW, in respect of a bridging loan. That sum was received by Sovereign in circumstances where the bridging loan application had been entirely fictitious, or on behalf of a fictitious client.

50.2 The Tribunal was satisfied that this allegation had been proved.

Previous Disciplinary Matters

51. None.

Mitigation

52. No mitigation was offered on behalf of Mr Voliere or Mr Dawodu.

53. On behalf of Mr Smith it was submitted that he had been in practice for almost 44 years and before his involvement with the firm of Cavells (as set out in matter 10049-2008), Mr Smith’s record had been unblemished.

54. Mr Smith had not been involved in the various breaches directly. It was acknowledged that his supervision of Mr Voliere and/or Mr Dawodu had been too lax, and he had failed to be as involved as he should have been in the management of the firm.

55. Mr Smith was not the principal in committing any wrongdoing, and he was guilty by way of omission rather than commission. Mr Voliere and Mr Dawodu had behaved in a fraudulent way and had misled him. They had been determined to hide certain matters from him.
56. Mr Smith was of advanced years, and more particularly had suffered ill health. He had had a brain haemorrhage in approximately 1995, had had a stroke, had significant problems with his eyesight, and suffered from prostate cancer. It appeared from Mr Smith's Supplementary Statement in matter 10049/2008 that he could become confused quite easily, particularly if under pressure.

Sanction

57. The Tribunal took into account in determining sanction all that had been said in mitigation and all of the circumstances and facts which it had found, in this and in the two other proceedings (10049/2008 and 10431/2010).
58. Mr Smith had been a solicitor for almost 44 years, and for the greater part of his time in practice had an unblemished record. He became ill and vulnerable. He joined two firms in close succession. To both he lent his good name, his experience and his untarnished practising certificate. In his involvement with Cavells (matter 10049/2008), large amounts of money were put at risk but, for reasons which were not entirely clear to the Tribunal, there had been no ultimate loss to the public or profession.
59. Mr Smith's involvement with Sovereign, which began at about the time Cavells was closing, was a disaster of substantial proportions. The public and lending institutions were exposed to and suffered great loss, and the profession suffered substantial damage as a result.
60. The Tribunal accepted that Mr Smith was not directly the cause of these losses and damage. However, in becoming a partner in Sovereign, failing to exercise any control, supervision or management, he gave the opportunity to others to commit serious breaches of the SCC and the SAR and, indeed, to misappropriate over £2 million.
61. Solicitors must be aware that if they permit their practising certificates and reputation to be exploited, the penalty they face could appear to be harsh. However, the Tribunal considered carefully the cases of Bolton -v- The Law Society [1994] 1 WLR 512 (particularly at page 518), and Weston v The Law Society, 29 June 1998, CO/225/1998 in relation to financial stewardship. Having considered the reasoning expressed in those cases with great care, the Tribunal came to the conclusion that in these circumstances, and notwithstanding other considerations such as any personal sympathy which might be felt for Mr Smith, it was both appropriate and proportionate that Mr Smith should be struck off.
62. The Tribunal had found both Mr Voliere and Mr Dawodu to have behaved dishonestly. Indeed, their conduct was reprehensible. A number of serious findings had been made against Mr Voliere in this matter and in 10273-2009. Taken together, when all the proven allegations were taken together, Mr Voliere was directly

responsible for a catalogue of serious breaches of the standards which the public rightly ought to expect of solicitors. Even if the Tribunal had not found Mr Voliere to be dishonest, striking him off the Roll would have been justified. The fact that the Tribunal was sure that he had behaved dishonestly strengthened the Tribunal's conviction that this was the only and proportionate penalty which could be imposed.

63. The Tribunal had also found that Mr Dawodu had behaved dishonestly. He had been engaged in a series of transactions which had resulted in substantial losses (over £2 million) to lender clients. Although the sum of money involved was much smaller, the Tribunal had been particularly concerned by Mr Dawodu's behaviour in the matter of Mr DW and 93A BA. The real Mr DW, who was an elderly gentleman in poor health, had been distressed by facing possession proceedings in circumstances where he knew nothing of a loan which had been secured (with the connivance of Mr Dawodu) over his property. Again, in this respect, and in the misappropriation of client funds in seven conveyancing/remortgage transactions, Mr Dawodu's conduct was reprehensible. The lack of integrity involved in these matters was so great that even if the Tribunal had not found Mr Dawodu to be dishonest, it would have been justified in striking him off the Roll. In all of the circumstances the only appropriate and proportionate sanction the Tribunal could impose would be to strike Mr Dawodu off the register of RFLs.

Costs

64. The Applicant submitted a claim for costs in this matter of approximately £31,000. On consideration of the Costs Schedule, the Tribunal assessed that an appropriate and reasonable level of costs was £28,000.
65. No applications were made to reduce the costs payable or to persuade the Tribunal to make its costs order unenforceable without further permission from the Tribunal.
66. The Tribunal considered how best to apportion costs between the Respondents and determined that it would be appropriate to make an apportionment based on a broad assessment of the degree of culpability of the parties.
67. Accordingly, of the £28,000 to be awarded in costs, Mr Smith was ordered to pay £4,000 on a several basis and Mr Voliere and Mr Dawodu were ordered to pay £24,000 on a joint and several basis.

Statement of Full Order

68. 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.
69. 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).

70. The Tribunal Ordered that the Respondent, Folaranmi Awoye Dawodu of 32 St Albans Avenue, London, E6 6HQ, solicitor, be Struck Off the Register of Foreign Lawyers and it further Ordered that he be jointly and severally liable with Alick Arlington Voliere to pay the costs of and incidental to this application and enquiry fixed in the sum of £24,000.00.

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

J C Chesterton
Chairman