

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10450-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOANNE GRACE

Respondent

Before:

Mrs K. Todner (in the chair)

Mr A. Ghosh

Mr R. Slack

Date of Hearing: 25 May 2011

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were as follows:
 - 1.1 She had withdrawn money from client account in circumstances other than permitted by Rule 22 of the Solicitors' Accounts Rules 1998 and utilised it for her own benefit;
 - 1.2 She acted in circumstances where there existed a conflict between her interests and those of her clients;
 - 1.3 She had breached Rule 1 of the Solicitors' Practice Rules 1990 in each and all of the following respects:
 - 1.3.1 she had compromised or impaired her independence or integrity;
 - 1.3.2 she had compromised her duty to act in the best interests of the client;
 - 1.3.3 she had compromised or impaired her good repute or that of the solicitors' profession.
 - 1.4 She had breached Rule 1 of the Solicitors' Code of Conduct 2007 in each and all of the following respects:
 - 1.4.1 she had failed to act with integrity;
 - 1.4.2 she had allowed her independence to be compromised;
 - 1.4.3 she had failed to act in the best interests of each client;
 - 1.4.4 she had behaved in a way that was likely to diminish the trust the public placed in her or the profession;
 - 1.5 In breach of Rule 20.05 of the Solicitors' Code of Conduct 2007 she failed to deal with the Authority in an open prompt and cooperative way;
 - 1.6 She had failed to deliver her accountants' report for the period ended 31 March 2008;
 - 1.7 She had failed to comply with a decision of the Adjudicator dated 28 January 2009 requiring her to pay compensation and refund fees to Mr and Mrs S.

In addition it was alleged that the Respondent had been dishonest in relation to allegations 1.1, 1.3, 1.4 and 1.5.

2. The further allegations against the Respondent were as follows:-
 - 2.1 She had failed to act in the best interests of her client the Bank of Ireland (including its subsidiary Bristol and West Mortgages) in breach of Rule 1 of the Solicitors' Code of Conduct 2007;
 - 2.2 She had failed to act with integrity, in breach of Rule 1 of the said Code;

2.3 She had acted in a way that had diminished the trust the public placed in her or the solicitors' profession, in breach of Rule 1 of the said Code;

2.4 She had failed to fulfil undertakings in breach of Rule 10.05 of the said Code.

Documents

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

Applicant:

- Application dated 11 February 2010 together with the Rule 5 Statement and bundle of documents ("DEB 1");
- Supplementary Statement dated 11 April 2011 together with a bundle of documents ("DEB 2");
- Witness statement of Rebecca Mary Lloyd dated 6 May 2011;
- Witness statement of Katherine Claire Hicks dated 9 May 2011;

Respondent:

- Witness statement of the Respondent dated 24 May 2011 together with accompanying documentation.

Preliminary Matter

4. After careful consideration the Tribunal determined that the hearing should proceed in the Respondent's absence.

In arriving at this decision, the Tribunal had regard to the following factors:-

- (i) the Respondent had not provided any valid reason for her absence;
- (ii) the Respondent had been aware for a considerable period of the date of the hearing. In this regard, the Tribunal noted that the direction made by the Tribunal on 21 April 2011 contained a reminder of the hearing date of 25 May 2011;
- (iii) five witnesses for the Applicant were present for the hearing. Of these, four witnesses had travelled considerable distances to be present. Mr and Mrs Drennan had travelled from Ireland; Ms Hickes from Leeds and Mrs Lloyd from Warrington.

A 28 page witness statement with 107 pages annexed to it, dated 24 May 2011, was received by the Tribunal on the morning of the hearing. The Respondent did not provide any explanation for the late delivery of her statement. Notwithstanding this,

the Tribunal postponed the commencement of the hearing whilst it considered the statement and its annexures.

Factual Background

5. The Respondent, who was born in 1966, was admitted as a solicitor on 1 March 1991. At the time of the hearing her name remained on the Roll of Solicitors.
6. At all material times up to 19 September 2008 (when the firm closed) the Respondent was carrying on practice as Grace and Co from Aztec House, 20 Froghall Lane, Warrington, Cheshire WA2 7JR.
7. On 17 December 2008, Nicola Prue, a Senior Investigation Officer employed by the Solicitors Regulation Authority (“SRA”) commenced an investigation of the books of account and other documents of Grace and Co. Ms Prue prepared a report dated 8 April 2009. In the report, Ms Prue refers to two partners of the firm, namely the Respondent and Rebecca Moore, now known as Rebecca Lloyd. Mrs Lloyd was the Respondent’s trainee from 27 March 2006 until 5 August 2006. She was then employed as an assistant solicitor until 22 July 2007 when she became a salaried partner. She left the firm on 29 February 2008.
8. Mrs Lloyd acted for clients, Mr and Mrs D, in connection with their purchase of two leasehold properties at Plots “A” and “B” Moorland View (addresses anonymised) from Barratt Homes Ltd. At the time Mrs Lloyd was an assistant solicitor.
9. The ledgers in relation to these two properties were clearly marked as purchase transactions. They were not remortgages; the documents appended to the report were consistent with two purchases of new properties with the assistance of mortgages. Grace and Co acted for the mortgagee, Mortgage Express, as well as the purchasers.
10. On 15 May 2007, according to the ledgers, the sum of £1,500 for each property was received into client account. On the same day two payments of £1,000 were made to Grace Property Developments (“GPD”) as a reservation fee. GPD was a partnership set up by the Respondent and a partner to purchase and rent properties.
11. Mortgage offers were found on both matter files. The instructions to Grace and Co incorporated the Council of Mortgage Lenders Handbook (“CMLH”). In each case, Mortgage Express stated it was advancing 85% of the “valuation of the property”. In relation to both properties the valuation was stated as being £167,350 and the loan was accordingly calculated at £142,247.
12. The ledger showed that both transactions proceeded virtually simultaneously. They showed the receipt of the mortgage advances from Mortgage Express of £142,247 for each property on respectively 28 and 29 June 2007. They showed the remittance of the purchase monies to the vendor’s solicitor on 29 June. However, each ledger also showed a receipt into client account on 28 June of what is described in the narrative as bridging finance from Express Loan Corporation. These funds arrived simultaneously with the mortgage advances from Mortgage Express. The matter files do not explain why there was a need for bridging finance, and there was no explanation from the

Respondent for the receipt of these sums of money which appeared to have been unnecessary given the straightforward nature of the two purchase transactions.

13. Both ledgers showed the immediate payment of such bridging finance the day after receipt and so the money was accordingly paid into and out of client account within a period of less than 24 hours.
14. The Certificates on Title were both dated 25 June 2007 and indicated as the price "remortgage value £167,350". The CMLH required solicitors to report differences in the purchase price as stated in the mortgage offer and as stated in the transfer. This helped to highlight possible mortgage fraud and if there were differences, the lender had an opportunity to re-evaluate its offer. It was for this reason that the Certificates contained undertakings upon which lenders relied.
15. Mrs Lloyd signed and sent the Certificate for Plot B Moorland View (also known as Emerald Way) but could not confirm who signed or sent the other Certificate. Both contained undertakings confirming that the lender's instructions had been complied with in all respects. The lenders were not in fact informed of discounts on each of these two properties and accordingly the Certificates were false and misleading when confirming that instructions had been complied with. The Respondent stated that she organised the structure of the purchase transactions (as a partner in GPD) and in an email sent to Mrs Lloyd asked her to send completion statements for checking before they were sent to Mr and Mrs D. As a principal in the firm and participant in the transactions, and financial beneficiary, she was responsible for the submission by her firm of the said Certificates.
16. By fax dated 28 June 2007, Mortgage Express asked Grace and Co to confirm that all monies including the deposit would pass through the firm's client account in accordance with Condition 3 of the mortgage offer. This was in the following terms:-

"Our solicitor is to confirm the purchase price and that all monies, including your deposit are to be paid through the solicitor's client account. If all monies should not pass through the solicitor's client account, we may not be able to proceed or we may have to reduce the loan amount".
17. The response dated 29 June for each property stated the following:-

"We thank you for your fax. We note that this matter is a remortgage and not a purchase. We therefore would suggest that condition 3 does not apply. However we can confirm the remortgage value of £167,350 and all funds will pass through our client account as required".

The two responses were sent by Mrs Lloyd.

18. In each transaction the sale price was in fact discounted by the seller and the purchase prices paid to the vendor's solicitors were respectively £146,437.88 and £144,985.88. These figures were contained in the client ledgers. Taking the discounts into account, Mortgage Express funded almost 100% of the purchase prices and not 85%.

19. The seller's solicitor's completion statement showed allowances of £20,082 on Plot A. The firm's bank statements showed the figures paid for the two purchases. The price paid as stated on the Land Registry entries and copy leases was consistent with this position.
20. According to the ledgers by 29 June 2007, the purchase prices had been paid in full. There remained surpluses on each ledger of respectively £24,100.94 and £25,568.44. The surpluses were there because of the discounts. The Respondent took £40,164 of this for her own benefit. Had the discounts been reported, Mortgage Express may have availed itself of the opportunity to reconsider its offer and there would have been no surpluses. In this way, the Respondent was the beneficiary of the scheme which she structured.
21. On each transaction there was a post completion payment into client account on 5 July 2007 of respectively £28,291.82 and £28,307.18, in each case according to the narratives used to pay off the "2nd Bridging Finance". The second bridging finance payments were not required for completion to take place and Mr and Mrs D's payments were made after completion. The money to make the payments was raised by Mr and Mrs D on other property in Ireland, and after payment out from client account there remained credit balances of £22,609.97 and £26,049.33. It was not apparent from the files why these sums were paid after completion; their effect was largely neutral.
22. As the ledger for Plot A showed, there were sundry payments for costs and other outgoings but in addition there was a payment to GPD of £20,082.00 on 11 July 2007. The bank statement showed the payment clearing on 11 July 2007. It was a payment of client money and represented the discount.
23. The ledger itself was printed on 18 September 2007 and the Respondent had failed to provide anything up to date at that stage. As at that date the ledger for Plot B was in credit by £23,709.51 and after the deductions noted in manuscript on the second page, the balance was £20,082.00. The payment of exactly this sum was made and traced to the account of GPD. There was a debit to client account of £20,082 on 18 September 2007 in respect of Plot B Moorland View. The narrative was "GPD INTRODUCTORY COMM ... MOORLAND VIEW D302.2".
24. The client ledger itself, printed off on the same date, did not show the payment.
25. In Ms Prue's emails to the Respondent of 23 December 2008 and 5 January 2009 and in her letter to the Respondent of 3 March 2009 the Respondent was asked for "current or closing ledger cards for Mr and Mrs D's purchases". None was provided to her.
26. GPD was the Respondent's company. In the matter files Ms Prue found undated documents titled "Declaration for Signature" purporting to be signed by Mr and Mrs D and confirming that they had been notified that GPD was to be paid a commission and that the Respondent as a partner in Grace and Co would receive the commission. The documents did not state the amount, nor was it possible to discern from them what the commission was for. However, the document evidenced the Respondent's personal benefit from what was client money. She was paid a total of £40,164.00. In

evidence, Mr and Mrs D confirmed that they had signed the Declaration. It was amongst a number of documents that they were asked to sign and they did not realise its significance at the time of signature.

27. On the matter file was an undated attendance note recording a conversation with Mrs D. It stated as follows:-

“She queried amount stated in office copies as incorrect. O/C’s state £147,000 and she said she paid £167,000. She said it wasn’t a bridging one, but also stated she paid a £500 one off fee for bridging the two amounts. She sent over £56,000 deposit in total for the two properties and said she queried Comp Stat with Becky some time ago but she told her not to worry about it”.

28. Rebecca Lloyd told Ms Prue that the documentation she sent to the Ds on 13 June 2008 referred to a purchase price of £167,350 for each property (the contract, mortgage deed and completion statement). This corroborated the Ds’ stated understanding.

29. In a letter dated 14 April 2008 to Mr and Mrs D, referring to a telephone conversation “today”, they were informed that the purchase price of £147,268 stated on the office copies was correct because of the discounts. Nothing more was said.

30. By letter dated 22 May 2008 Mr and Mrs D lodged a complaint with the Legal Complaints Service.

31. Page two of the letter dated 22 May stated that:-

“GPD” is a property company Miss Grace runs namely Grace Property Developments. At no time during the purchase of these properties were my clients ever made aware of any services GPD undertook on their behalf especially not to justify “GPD Invoices” on both purchases in the sum of £20,082 on each transaction. The total for “GPD invoices” that my client has paid £40,164”.

32. In Mr and Mrs D’s letter of 18 April 2008 they stated that they were not told of the discount, nor were they told what “GPD Invoices” was. The letter was not replied to and a further letter was sent on 28 April. The failure to reply to that letter resulted in the complaint. Mr and Mrs D confirmed in evidence that they were not told of the discounts nor of what the GPD invoices related to.

33. Mr and Mrs D said that they did borrow on mortgage from Mortgage Express the sum of £284,496 and paid deposits totalling £56,599. These items totalled £341,095. The purchase prices actually paid were £291,084 and the Respondent was able to receive the sum of £40,164 from client account. The documents did not tell them of the discount. The sole beneficiary of this was the Respondent.

34. By email dated 23 December 2008, the Respondent wrote to Julie Woodfield employed by the SRA in its legal department and responsible for obtaining the files. The following material facts were drawn from the letter:

- (a) That Rebecca Lloyd had the day to day conduct of the D transactions (note: Rebecca Lloyd was an assistant solicitor when she conducted these transactions and not a partner as the email incorrectly stated);
 - (b) GPD brokered the two purchases, and that the Respondent was a partner in both that company and Grace and Co solicitors;
 - (c) The properties were purchased using what the Respondent described as a remortgage facility;
 - (d) That GPD was paid for an investment package.
35. Ms Prue attended the Respondent's home address to commence the investigation on 17 December 2008. The Respondent had by then closed her office.
36. The Respondent was not present at 11am and a man on the intercom said that she was out shopping and was expected back in about an hour. When Ms Prue returned after an hour, a person describing herself as an employee of the Respondent's property development business (GPD) stated that she was travelling and would not be back until after 17.30.
37. Ms Prue then identified herself to the employee and requested that she contact the Respondent to ask her to return at 16.00. The employee would not provide the Respondent's mobile telephone number to Ms Prue. The employee then returned and told Ms Prue that the Respondent would not return that day and could she make an appointment to see her. Ms Prue stated she would return on 22 December in order to continue her investigation. Ms Prue requested that contact be made to either confirm or otherwise the appointment.
38. The Respondent made no contact with Ms Prue or the Authority to either confirm the appointment or reschedule.
39. On 22 December Ms Prue returned to the Respondent's home address and on this occasion met with MF who stated she was the Respondent's practice manager (of Grace and Co), that the Respondent was in Belgium, that Ms Prue could not speak with her and that the Respondent would be unlikely to return to England until the end of January 2009.
40. Ms Prue hand delivered the SRA's letter notifying the Respondent what was required from her. Rule 34 of the Solicitors' Accounts Rules 1998 provided that any solicitor must at the time and place fixed by the SRA produce to any person appointed by the SRA any records, papers, client and trust matter files, financial accounts and other documents, and any other information necessary to enable preparation of a report on compliance with the Accounts Rules, the Solicitors' Practice Rules and the Solicitors' Code of Conduct. The SRA's requirement for production was in writing, and was left at the Respondent's most recent address held by the SRA. Ms Prue was able to email the letter to the Respondent on 23 December.
41. Rule 20.05 of the Solicitors' Code of Conduct 2007 ("the Code"), which was by then in force, imposed obligations on the Respondent to deal with the SRA in an open,

prompt and cooperative way, facilitating the investigation of compliance with Accounts Rules, Solicitors' Practice Rules and the Code, and conduct issues arising out of the complaint by clients Mr and Mrs D described in detail above. The obligation was a continuing one.

42. Ms Prue was not at any stage able to meet or speak with the Respondent who gave only an email address as a method of communication.
43. On 22 December, the date of the return visit, MF told Ms Prue that the Respondent's practice had been closed and that she believed the books of account were with her reporting accountants. Ms Prue was told that the Respondent would be contacted that evening to ascertain their location and Miss Prue would be contacted by either the Respondent or MF. Ms Prue was told that closed files were stored at Nook Bungalow (The Respondent's last known address), and live files and money had on 19 September 2008 been transferred to other solicitors in Liverpool. Ms Prue was unable to inspect any live or closed files, apart from those relating to Mr and Mrs D.
44. Ms Prue was told that the Respondent's office and client accounts remained open and that, according to an online printout relating to client account, there was a credit balance as at 18 December 2008 of £6,528.26.
45. Ms Prue was also handed two matter files relating to Mr and Mrs D that had been the subject of directions to the Respondent to produce them under Section 44B Solicitors Act 1974.
46. On 16 January 2009 a Mr B of a firm of solicitors contacted Ms Prue's office. On 19 January 2009 Ms Prue visited the reporting accountants' offices to review books of account and other records.
47. On 29 January 2009 Ms Prue wrote to Mr B with details of what she needed from the Respondent. There was no reply from either Mr B or the Respondent.
48. On 25 February Ms Prue left a telephone message for Mr B. Her call was not returned.
49. On 3 March Ms Prue wrote to Mr B again. The letter made clear the documents and information the SRA required from the Respondent. A copy of the letter was also sent to the Respondent by email.
50. On 24 March Ms Prue telephoned Mr B in the absence of a response to her letter. She spoke with Mr B's partner, who stated that no instructions had been received from the Respondent. Further, the Respondent did not herself reply to Ms Prue's letter and the report was prepared without any cooperation or assistance from the Respondent.
51. By letter dated 29 April 2009 the SRA wrote to the Respondent by post and email with a copy of the report and its Appendices to ask the questions set out therein.
52. The Respondent had been variously abroad on personal or business matters and had not been open or prompt with the SRA in its investigation of the complaints of Mr and

Mrs D. She had in particular failed to account properly for the money she took from them in July and September 2007.

53. By letter dated 12 May 2009 the Respondent wrote to answer the questions addressed to her on 29 April. She enclosed a number of copy emails said to have been obtained from Rebecca Lloyd's computer. She stated that the emails involving Mr and Mrs D showed that they knew exactly what the position was in relation to the two purchases and had agreed to pay GPD. It was in fact not possible to tell from the emails what they were being advised or what they agreed to. The two purchases were completed on 29 June 2007, and the emails enclosed with the Respondent's letter were dated only the day before completion. The Respondent's letter was completely silent as to the provision of advice to them as to whether or not they should take independent legal advice given the clear conflict between their interests and those of the Respondent.
54. In June 2009 the SRA was informed that the Respondent was in the USA because of her grandfather's illness.
55. By letter dated 16 July 2009 the SRA wrote to the Respondent by email at both addresses available for her to inform her that the SRA had referred her failure to deliver her accountant's report for the year ended 31 March 2008 to the Tribunal.
56. The letter also repeated certain questions which remained unanswered from the SRA's letter of 29 April 2009. In relation to Mr and Mrs D's transactions she was specifically asked why she did not give them answers to their complaints that they did not know of the discounts, nor to the same questions from the Legal Complaints Service. By email dated 16 July 2009 the Respondent stated that she had returned from the USA and asked for further time to answer the questions. Given the passage of time, that request was declined. Nothing further was received from the Respondent and the caseworker prepared her report for adjudication on the information available.
57. By letter dated 23 August 2009 the Respondent wrote to the SRA. The Respondent sought to draw a distinction between her position as a partner in GPD and Grace and Co. She was the principal in the solicitors' practice which had complete control over Mr and Mrs D's money and which, at her direction, paid it to GPD. She drew up the bills from her property company.
58. On 13 May 2008 Grace and Co solicitors sent a Certificate on Title to the Mortgage Works UK Plc (which is a subsidiary of Nationwide Building Society). It was submitted in connection with a mortgage advance made to the Respondent in connection with The Huntley. The mortgage advance of £205,911 was sent to Grace and Co for completion on 14 May 2008.
59. The Certificate contained an undertaking as set out in the Appendix to Rule 6(3) of the Solicitors' Practice Rules 1990. The relevant parts of the undertaking were that the mortgage would be completed, that any documents necessary to register the mortgage would be delivered to the Land Registry and any other registrations necessary to protect the mortgagee's interests would be effected.

60. On 25 November 2008 the mortgagee complained because its mortgage had not been registered.
61. The Respondent was written to by both the Legal Complaints Service and the SRA. The only response was an email dated 21 January 2009 stating that the matter file had been sent to other solicitors on 14 January. They in turn stated that the original mortgage had never been signed. The Respondent had never explained the delay in complying with her obligations.
62. On 28 May 2009, the Adjudicator made a decision in relation to the outstanding accountant's report for Grace and Co for the year ended 31 March 2008. That report had been due for delivery by 30 September 2008. The decision contained an expectation that the Respondent would deliver the report within 28 days of the date of notification of the decision. This was done by post and email on 11 June 2009. The report was never delivered and remained outstanding.
63. On 28 January 2009 the Adjudicator decided that the Respondent's services to Mr and Mrs S were inadequate and directed her to pay compensation of £800 and to refund fees of £804.70 within seven days. The Respondent failed to comply with the decision, or indeed to respond to any correspondence.
64. In relation to the Supplementary Statement, the allegations all arose out of the remortgage of properties by the Respondent and her business partner MF. In three of the transactions the Respondent's firm Grace and Co acted for her and MF as borrowers, and also for the mortgagee as lender. In each case that was the Bank of Ireland and/or its stated subsidiary (Bristol & West). The properties in question were at 2 Buccaneer Way, 4 Buccaneer Way and 4 Bates Court.
65. The three properties were purchased from a developer known as Westbury Homes. At the time of purchase the Respondent was able to obtain from Westbury Homes a loan to fund the deposit, and a mortgage from Mortgage Agency Services Number One Limited (MAS) to fund the balance of the purchase price. This enabled the properties to be purchased without the need to raise any cash towards the purchase price. To secure the loans Westbury took a second charge ranking below the main lender (MAS) which took a first charge in the usual way.
66. Bristol and West were subsequently approached for remortgages, and in each case the remortgage was agreed subject to obtaining a first legal charge with both Westbury Homes and MAS charges being redeemed. In relation to each transaction Bristol and West released to Grace and Co the advance monies to be used as instructed in obtaining a first legal charge. This required not only the redemption of the MAS charge but also the consent of Westbury to Bristol and West taking a first charge and ranking in priority.
67. In none of the three transactions did the Respondent obtain the consent of Westbury Homes. The direct consequence of this was that Bristol and West's charges were never registered at the Land Registry. Each property remained subject to a Westbury Homes charge. The mortgage advances from Bristol and West were nonetheless utilised in the case of two of the properties to discharge the MAS charges (2 and 4

Buccaneer Way) and in the case of the other (4 Bates Court) for purposes unknown to Bristol and West and unexplained by the Respondent.

68. In each case Bank of Ireland released the mortgage monies against the undertakings expressly contained in the Certificates on Title. In each such Certificate, undertakings incorporated by Rule 6(3) of the Solicitors' Practice Rules 1990 were expressly given. Notwithstanding the Certificates were dated after the Solicitors' Code of Conduct came into force in July 2007 which contained undertakings as set out in the Annex to Rule 3 of the Code, they refer to Rule 6(3) of the by then replaced Solicitors' Practice Rules.
69. The property at 2 Buccaneer Way was first purchased and registered in the joint names of the Respondent and MF in January 2006. The Proprietorship Register contained an entry dated 23 February 2006 restricting dispositions without the consent of Westbury Homes (Holdings) Limited. By letter dated 4 January 2008 Bristol and West instructed Grace and Co to act in connection with the remortgage of this property. The instructions were expressly subject to the CMLH. The mortgage Applicant was the Respondent's business partner MF, whose residential address (Nook Bungalow) was also the Respondent's. The mortgage advance was stated as being £138,431. Additionally, on 22 January 2008, Grace and Co sent by fax the items set out in their letter to Bristol and West of that date. These completed the lender's pre completion requirements.
70. The transaction was completed on 23 January 2008 and simultaneous with the remortgage was a transfer of the property from joint names to the sole name of the MF. The mortgage advance was used to discharge the charge in favour of MAS and on 5 February an application was submitted to the Land Registry to register these transactions.
71. On 11 February 2008 the Land Registry sent a requisition indicating that the registration could not be completed without the consent of Westbury. Such consent was never provided and as a consequence Bristol and West's charge was never registered.
72. The property also remained registered in joint names with a mortgage deed signed by MF only. This had an adverse effect on the extent to which the lender could enforce its security against the entire property.
73. In relation to 4 Buccaneer Way, Grace and Co was instructed to act for the lender, on this occasion Bank of Ireland. The Respondent was the borrower. The provisions of the CMLH applied to the transaction. The instructions were dated 23 February 2007 when the property was registered in the names of the Respondent and MF.
74. The Certificate on Title was dated 24 September 2007 for completion on 25 September 2007. The mortgage in favour of MAS was discharged but no consent was obtained from Westbury. As a consequence the Bank of Ireland charge was never registered.
75. This property also remained registered in joint names with the mortgage deed signed by the Respondent only.

76. On 20 December 2007 Bristol and West instructed Grace and Co in connection with a mortgage of 4 Bates Court. The mortgage advance was £314,470 and the mortgage applicant was the Respondent. The property was registered in her name together with MF and was to be transferred to the Respondent's sole name with the remortgage.
77. The remortgage was duly completed. The Certificate of Title was submitted by fax on 20 December 2007. Such papers as the lender had been able to obtain included a handwritten attendance note dated 4 January 2008 recording a telephone conversation with "Lindsay" at Bristol and West stating "Funds will be with us today". That was preceded by the faxed letter dated 3 January which submitted the documents signed by the Respondent.
78. The mortgage monies were duly advanced. The mortgage in favour of MAS was not discharged, nor was Westbury's consent to register obtained. The Respondent failed to account to Bristol and West who were still attempting to discover from her what she did with the money.

Witnesses

79. The following witnesses gave live evidence before the Tribunal.
- Nicola Prue
 - Mrs D
 - Mr D
 - Rebecca Lloyd
 - Katherine Hicks

Findings of Fact and Law

80. In relation to the allegations in the original Rule 5 Statement, the Tribunal found as follows:-
81. **Allegation 1.1. She had withdrawn money from client account in circumstances other than permitted by Rule 22 of the Solicitors' Accounts Rules 1998 and utilised it for her own benefit;**
- 81.1 The Tribunal found this matter proved on the basis of the Respondent's dealings with 4 Bates Court. The evidence clearly showed that she had misappropriated mortgage funds from the Bank of Ireland. The Tribunal applied the combined test as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 and was satisfied to the required standard that the Respondent's actions had been dishonest.
82. **Allegation 1.2. She acted in circumstances where there existed a conflict between her interests and those of her clients;**
- 82.1 The Tribunal found this allegation proved. Whilst there was some evidence to suggest that the Respondent had declared information that might have indicated the existence of a conflict, in relation to her dealings with Mr and Mrs D, the Tribunal found that her efforts to do so had been inadequate and insufficient. In any event, it

must have been clear to the Respondent that there was a conflict and yet she continued to act.

83. Allegation 1.3. She had breached Rule 1 of the Solicitors Practice Rules 1990 in each and all of the following respects:

1.3.1 she had compromised or impaired her independence or integrity;

1.3.2 she had compromised her duty to act in the best interests of the client;

1.3.3 she had compromised or impaired her good repute or that of the solicitors' profession.

Allegation 1.4. She had breached Rule 1 of the Solicitors' Code of Conduct 2007 in each and all of the following respects:

1.4.1 she had failed to act with integrity;

1.4.2 she had allowed her independence to be compromised;

1.4.3 she had failed to act in the best interests of each client;

1.4.4 she had behaved in a way that is likely to diminish the trust the public places in her or the profession.

83.1 The Tribunal found these allegations proved. The Respondent was clearly shown, by the evidence, to have manipulated transactions for her own benefit. She acted, in her capacity as a partner in Grace and Co solicitors, as a solicitor in transactions where she had, by reason of her business interests in GPD, a direct financial interest. She benefitted substantially from that financial interest. Applying the dishonesty test in Twinsectra, the Tribunal was satisfied so that it was sure that, in so acting, the Respondent had been dishonest.

84. Allegation 1.5. In breach of Rule 20.05 of the Solicitors' Code of Conduct 2007 she failed to deal with the Authority in an open prompt and cooperative way.

84.1 The evidence showed that the Respondent had failed to cooperate with the SRA as required by a solicitor. She failed to engage properly with the process and did not provide information as required. The Tribunal went on to consider whether, in relation to her dealings with the SRA, the Respondent had been dishonest. Although there was some evidence of her deliberately avoiding the Investigator, the Tribunal was not satisfied to the required standard that her conduct in this regard could properly be said to be dishonest. Therefore, the Tribunal found that particular part of the allegation not proved.

85. Allegation 1.6. She had failed to deliver her accountants' report for the period ended 31 March 2008.

- 85.1 This allegation was clearly substantiated on the evidence. The accountants' report was not provided despite the Respondent being given additional time to comply with her professional obligations. The Tribunal found this allegation proved.
86. **Allegation 1.7. She had failed to comply with a decision of the Adjudicator dated 28 January 2009 requiring her to pay compensation and refund fees to Mr and Mrs S.**
- 86.1 It was not necessary for the Tribunal to enquire in detail about the matters involving Mr and Mrs S. The Tribunal noted the Adjudicator's decision and that the Respondent had failed to comply with the directions contained therein. The Tribunal found this allegation proved.
87. **Allegation 2.1. She had failed to act in the best interests of her client the Bank of Ireland (including its subsidiary Bristol and West Mortgages) in breach of Rule 1 of the Solicitors' Code of Conduct 2007.**
- Allegation 2.2. She had failed to act with integrity, in breach of Rule 1 of the said Code.**
- Allegation 2.3. She had acted in a way that had diminished the trust the public placed in her or the solicitors' profession, in breach of Rule 1 of the said Code;**
- Allegation 2.4. She had failed to fulfil undertakings in breach of Rule 10.05 of the said Code.**
- 87.1 The Tribunal found these allegations proved. The evidence clearly showed that the conduct of the Respondent breached the provisions of the Solicitors' Code of Conduct 2007. Not only did the Respondent act in breach of the Code, but she subsequently failed to assist in the investigation of what had happened to the funds.

Previous Disciplinary Matters

88. None recorded against the Respondent.

Mitigation

89. The Respondent did not appear at the hearing. The Tribunal noted the contents of her witness statement of 24 May 2011. There was no specific mitigation submitted by or on behalf of the Respondent.

Sanction

90. The Tribunal viewed the Respondent's conduct as being particularly serious. There were numerous examples of her failing to meet her professional obligations. The Tribunal found that she had acted dishonestly and had manipulated transactions for her own financial benefit. The Tribunal concluded that the Respondent posed a significant risk to the public if she were to be allowed to continue in practice. Therefore, the Tribunal concluded that the only appropriate sanction was to order that the Respondent be struck off the Roll of Solicitors.

Costs

91. Mr Barton submitted a Schedule of Costs in the sum of £33,034.41. The Tribunal considered that that was an appropriate amount in all the circumstances and ordered that the Respondent should pay the full costs as claimed.

Statement of Full Order

92. The Tribunal Ordered that the Respondent, JOANNE GRACE of Nook Bungalow, Nook Lane, Antrobus, Northwich, Cheshire, CW9 6LA, 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 £33,034.41.

Dated this 2nd day of September 2011
On behalf of the Tribunal

K Todner
Chairman