On 15 June 2012, *[Respondent 1]* appealed against the Tribunal's decision on sanction. The appeal was dismissed by Mr Justice Haddon-Cave. *[Respondent 1]* v Solicitors Regulation Authority [2012] EWHC 2690 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10454-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[RESPONDENT 1] First Respondent

and

SARAH JOANNE CROMPTON Second Respondent

Before:

Mr K W Duncan (in the chair)
Mr M Fanning
Mr M R Hallam

Date of Hearing: 9th March 2011

Appearances

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

The First Respondent, *[RESPONDENT 1]*, appeared in person.

The Second Respondent, Sarah Joanne Crompton, did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent were that he:

1.1 Failed to adequately supervise his staff, contrary to Rule 5.01 of the Solicitors Code of Conduct 2007 ("SCC");

1.2 Failed to act in the best interests of the firm's client, TMB;

1.3 Provided a misleading statement, contrary to Rules 1.02 and 1.06 of the SCC;

1.4 Failed to provide material information, contrary to Rules 1.02 and 1.06 of the SCC.

The allegations against the Second Respondent (Sarah Joanne Crompton) were that she:

1.5 Failed to comply with the client's instructions and failed to disclose material facts to the client and in doing so failed to act in the best interests of the client (TMB);

1.6 Failed to comply with the Law Society's guidance on Mortgage Fraud;

1.7 Failed to disclose material information to a lender client and in doing so failed to act in the best interests of the client, contrary to Rule 1.04 of the SCC;

1.8 Acted in circumstances of a conflict of interest contrary to Rule 3.01 of the SCC;

1.9 Acted for the buyer and seller in circumstances contrary to Rule 3.09 and 3.10 of the SCC;

The First Respondent, *[RESPONDENT 1]*, admitted all the allegations against him.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and Respondents, which included:-

Applicant:

- Rule 5 Statement dated 19 February 2010 together with enclosures;
- Supplementary Statement dated 26 July 2010;
- Second Supplementary Statement dated 20 October 2010;
- Statement of Costs dated 3 March 2011.

First Respondent *[RESPONDENT 1]*:

- Witness statement of *[RESPONDENT 1]*dated 7 March 2011;

- Medical Report from Dr Sripuram dated 7 March 2011;
- Letter dated 13 August 2007 from David Thomas solicitors to Solicitors Regulation Authority ("SRA");
- Letter dated 10 March 2008 from SRA to Mr H, together with attached enclosures;
- Letter dated 4 December 2008 from SRA to David Thomas Solicitors;
- Determination of the Disciplinary Tribunal of the Council of the Inns of Court regarding Mr H;
- Character reference dated 8 March 2011.

Second Respondent (Ms Crompton)

- None

Preliminary Matters

3. The Applicant confirmed the Second Respondent, Ms Crompton, had been properly served with all documents and that he had not expected her to attend the Tribunal hearing. He requested the Tribunal's leave to proceed in her absence. The Tribunal was satisfied she had been properly served and granted leave to proceed in her absence.

Factual Background

4. The First Respondent was born on 7 October 1965 and was admitted as a solicitor on 1 August 2002. His name remained on the Roll. At the material time he was a sole practitioner *[NAME AND ADDRESS OF FIRM REDACTED]*. The Second Respondent was an unadmitted employee of the First Respondent.

5. On 9 October 2008 the SRA received a letter from the First Respondent which notified the SRA that he had terminated the employment of Mr H on 1 October 2008 following the discovery that Mr H had misappropriated clients' monies. The letter stated that Mr H had:

> "taken more monies from clients and in some instances considerably more, than what he would have handed over to the this (sic) firm."

Mr H was a non-practising barrister who had worked at the Firm since 2 May 2008 dealing with immigration matters.

6. During a meeting on 11 November 2008 with a Senior Investigation Officer ("SIO") of the SRA the First Respondent explained that he first met Mr H late one Sunday evening in April 2008. At that time Mr H's office was virtually opposite the Firm. The First Respondent stated that he had seen Mr H around the building but never spoken to him. Mr H approached the First Respondent to ask for his assistance in a

number of immigration matters as he was returning to Pakistan for a time due to a family bereavement. The First Respondent stated that he was unsure as to why Mr H had chosen him that night although speculated that there weren't any other lawyers working that day. The First Respondent explained to Mr H:

> "I am not an immigration lawyer but I have done immigration in the past and employ a team of immigration solicitors and clients."

The First Respondent said that he accepted the cases from Mr H having felt trapped, and felt he couldn't say no.

7. When Mr H returned from Pakistan he approached the First Respondent and asked whether he would be interested in taking him on to work as he had over 15 years' experience in the area. The First Respondent stated he had been looking for a replacement solicitor for his immigration department and so the proposition appealed to him. Mr H began work at the Firm on 2 May 2008 on a self-employed basis. The issue of remuneration was dealt with by Mr H receiving 40% of his billed work. This was subsequently increased to 50% in June 2008. However, no contract between the parties was signed. The First Respondent stated that he requested copies of Mr H's passport, CV, certificates and references but none of these documents were forthcoming.

8. Some time before 25 June 2008 another employee of the First Respondent carried out an internet search on Mr H and discovered that Mr H had been suspended from practising as a Barrister for three years starting on 5 June 2006 which period was not due to expire until 4 June 2009. When the First Respondent confronted Mr H about the matter he initially denied the allegations but eventually conceded the point when presented with the evidence. The Rehabilitation of Offenders Act 1974 does not apply to barristers or solicitors by virtue of the Rehabilitation of Offenders Act 1974 (Exception Order) 1975. The effect of this is that a conviction against a barrister is never spent.

9. The First Respondent stated Mr H was supposed to work from 9.30-17.30. However, clients would attend the offices when he was not present and would have to be seen by other fee earners. Many of these clients indicated that they had paid Mr H varying amounts of money to proceed with their matter but these sums did not tally with the Firm's records and ledgers. The First Respondent was concerned about Mr H and therefore conducted an audit of Mr H's files.

10. On 1 October 2008 the First Respondent invited one of Mr H's clients, MP, to attend the Firm's offices. An appeal to the Immigration Appeals Tribunal by MP was due to be heard the next day. There was concern over the trial bundle which was not yet completed, and should have been with the Tribunal five days before the hearing. Counsel instructed on behalf of MP was also concerned not to have received a full brief. MP appeared disappointed and commented that he had paid Mr H £5,000 to deal with the matter. However, when the client ledger was inspected, it recorded that the Firm had only received £1,000. The First Respondent confronted Mr H with the discrepancy when he returned to the office at 14.30 that afternoon. Mr H denied the allegations and the First Respondent suspended him from work while the matter was investigated. However, Mr H refused to leave the office and was arrested by the

police. The SRA report stated that Mr H was on bail at the time of the SIO's investigation.

11. The First Respondent stated that the Firm had a policy not to accept cash in excess of £500 except in exceptional circumstances, such as the client had to be known to the fee earner, and even then the cash was taken at their discretion. Monies could only be taken from clients on the office premises and clients had to be given a receipt. The receipt would contain the client name or matter number, the date, the amount of monies paid over, the signature of the fee earner and the Firm's name or stamp. A copy of the receipt was given to the client, a copy was placed on the file and a copy stayed in the receipt book. The First Respondent stated that everyone at the Firm including Mr H was aware of the Firm's policy on accepting monies.

12. In order to assist the police investigation, the Firm, with police approval, contacted all current and previous clients of Mr H inviting them to come forward and provide a witness statement. The First Respondent also provided copies of these statements to the SRA as well as a schedule which detailed the matters where the monies paid by the client was not reflected in the Firm's records.

13. During the meeting with the SIO, when asked if he had supervised Mr H, the First Respondent said:

> "....the supervision was there but limited.... I would also look at recent correspondence on the files but not in any detail.... This is due to me not being an immigration expert...."

Conveyancing

14. As part of the SRA's investigation a number of conveyancing transactions unrelated to Mr H were also examined. In particular eight transactions all exhibited similarities:

- The transactions were conducted by the Second Respondent, under the supervision of the First Respondent;
- The transactions related to properties known as "G Lodge";
- The Firm acted for purchaser and lender, and the seller was represented by A;
- The lender was TMB;
- TMB would pay F Finance and/or IMP between £1,546 and £1,672 if a mortgage was taken;
- No funds were received directly from the purchaser;
- F Finance had previously acquired an option to purchase on each of the properties for £5;
- Upon completion, F Finance received approximately 45% of the proceeds of

sale and transferred the property to the transferee.

15. The First Respondent explained that the Second Respondent had been with the Firm since July 2008. He explained that both the Second Respondent and F Finance had been referred to him by A.

16. One transaction (which was similar to the other transactions) was where the Firm, in particular the Second Respondent, acted for BB in relation to a purchase. A client care letter dated 7 July 2008 confirmed a purchase price of £240,000 and also confirmed that the Second Respondent would be responsible for the conduct of the matter supervised by the First Respondent.

17. On 31 July 2008 the Firm received a mortgage offer from TMB. Based on a purchase price of £230,000 TMB were willing to lend £175,950, a loan to value ratio of 76.5%. Within the mortgage details TMB also instructed the Firm to act on its behalf in the transaction in accordance with the Council of Mortgage Lenders ("CML") Handbook. The Mortgage offer also stated that if the client took out a mortgage with TMB, then F Finance would be entitled to a share of £1,609.00 in cash and benefits.

18. On 4 August 2008 the Firm wrote to TMB confirming that BB had forwarded a deposit in the matter directly to the seller's solicitors, A. TMB promptly responded on 6 August 2008, highlighting the Firm's obligations under paragraph 6.3 of the CML Handbook and confirmed that:

> "All monies, including the deposit should pass through your (the Firm's) bank account for you to then pass to the Vendors solicitor."

19. The Second Respondent wrote to BB on 5 August 2008 explaining to the client that they had also been instructed to act for TMB in the transaction. The letter requested that BB provided the Firm with written confirmation that the balance of the completion monies would come from his own resources and not be the result of any further borrowing. The First Respondent signed the Certificate of Title on 6 August 2008, requesting a mortgage advance of £172,500 and listed the completion date as 8 August 2008. On 8 August 2008 £172,470 was credited to the client ledger. The completion statement on file calculated that the balance due from the client in order to complete was £63,370.37.

20. The file contained a letter from FJF dated 11 August 2008. The letter was addressed to BB from FJF's Funds Manager and informed BB that FJF was forwarding the balance of £63,370.37 to the Firm. The client ledger confirmed that on 13 August 2008 a further £63,370.37 was credited. However, the description on the ledger did not confirm the source of the monies as FJF. Instead the description on the ledger was "Compl (sic) monies from F Finance". Furthermore, a copy of the Firm's client account bank statement recorded a CHAPS payment on 13 August 2008 in the sum of £63,370.37 from F Finance.

21. Despite the letter on file from FJF to BB, the description on the client ledger and the description on the bank account, there was no evidence on file to show that the Firm had made enquiries with either BB, F Finance or FJF as to the source and ownership of the completion funds.

22. On 13 August 2008 contracts were exchanged in the matter and a sum of £231,585.12 was transferred to A in respect of the purchase monies as well as apportionment for service charges. However, the contracts referred to a deposit of £23,000 being paid on exchange. The purchase price on the mortgage offer, Certificate of Title and TR1 Form all failed to take into account any deposit. Although the Contract did refer to a deposit of £23,000 having been paid, this sum was not taken into account when stating the balance due on completion.

23. The matter file also contained an agreement between the current owner, who would eventually sell to BB, and F Finance. The agreement was dated 30 June 2008, eight days before BB instructed the Firm in relation to the purchase. The agreement was an option to purchase the property granted in favour of F Finance. The option, if executed, allowed F Finance to purchase the property for £125,000. The consideration paid by F Finance for the option was £5. F Finance would release the property from the option for £104,500.

24. The TR1 Form set out that on completion the purchaser gave the seller £230,000. Of this, the seller, "at the direction of [F] Finance" received £125,500 and F Finance received £104,500. Following these payments:

> "The transfer is made at the direction of [F] Finance and it transfers and confirms the property to the transferee."

25. On another transaction, the Firm, and in particular the Second Respondent, acted for MT in relation to the purchase of a property. The client care letter dated 7 July 2008 confirmed a purchase price of £240,000 and also confirmed that the Second Respondent would be responsible for conduct of the matter, supervised by the First Respondent. The letter also stated:

> "It is extremely important for you to ensure that monies required from you, including our costs and expenses will be cleared funds for banking purposes by the day before exchange of contracts."

26. In addition to the client care letter the Firm also sent MT a further letter requesting MT to provide written confirmation that the balance of the completion monies was to come from his own resources, and would not be the result of any further borrowing. There was no evidence on file that such confirmation was given. On 22 July 2008 the Firm received a mortgage offer from TMB. Based on a purchase price of £240,000 TMB was willing to lend £180,000, a loan-to-value ratio of 75%. Within the mortgage details TMB also instructed the Firm to act on its behalf in the transaction, in accordance with the CML Handbook. The mortgage offer also stated that if the client took out the mortgage with TMB then F Finance would be entitled to a portion of £1,672 in cash and benefits.

27. The First Respondent signed the Certificate of Title on 23 July 2008, requesting a mortgage advance of £180,000 and listed the completion date as 25 July 2008. On 28 July 2008 £179,970 was credited to the client ledger. The completion statement on file calculated that the balance due from the client in order to complete was £65,991.88.

28. The file contained a letter dated 31 July 2008 from the Firm to A. The letter stated that it was the Firm's understanding that MT was sending £65,991.88 directly to A and requested confirmation as to when that had been received. The confirmation of receipt was made by letter on 1 August 2008 and exchange of contracts took place on the same day. Both the seller's and the purchaser's copy of the contract referred to a deposit of £65,991.88. However, the ledger made no record of either a credit or a debit in this amount. The ledger recorded that on 1 August 2008 £175,708.12, the balance of the completion monies, was sent to A.

29. The CML Handbook at paragraph 6.3.3 states that solicitors acting for the purchaser must report to the lender if they will not have control over the payment of all of the purchase monies. There was no evidence on file to show that TMB had been informed that the Firm did not hold all of the purchase monies, despite the fact that over 25% of the total purchase monies did not pass through the Firm's accounts. Throughout the transaction the client ledger balance never exceeded £179,970 on a transaction where the purchase price was £240,000. Nor was there any evidence to show that TMB had been informed that the purchaser had paid over £65,000 of the purchase price directly to the seller's solicitor.

30. The TR1 Form stated that on completion, the purchaser gave the seller £240,000. Of this, the seller "at the direction of [F] Finance" received £130,000 and F Finance received £110,000. Following these payments:

> "The transfer is made at the direction of [F] Finance and it transfers and confirms the property to the transferee."

<u>BA - Will</u>

31. On 19 March 2009 the SRA received a complaint from HJ Solicitors in relation to the First Respondent. HJ Solicitors were instructed by PJ and BJ in a contentious probate matter following the death of BA. BA was BJ's sister and PJ's Aunt. The contentious probate matter was as a result of two Wills being produced, both purportedly being the final Will and Testament of BA. PJ and BJ relied upon a Will dated 12 July 2001, which had been prepared by MW & Co, and which left everything to PJ ("the 2001 Will").

32. However, JM, brother to BA and BJ, relied upon another Will dated 9 October 2003 ("the 2003 Will"), which made JM the main beneficiary. The 2003 Will had purportedly been witnessed by the First Respondent and a secretary, MR. At the time of witnessing the 2003 Will the First Respondent was employed at the firm of PG & Co, as was MR.

33. Also provided to the SRA was a further copy of the last page of the 2003 Will. This copy contained a certification by the First Respondent. It stated:

> "I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.... 09/10/2003"

This certification was dated the same day that the 2003 Will was executed.

34. HJ Solicitors contacted MR and obtained a witness statement from her, dated 14 February 2009. In this statement MR stated:

> "I was very surprised to see the document (2003 Will) which I do not recall signing."

MR provided copies of her standard signature. MR went on:

> "I can confirm beyond doubt that at no stage did I ever meet anyone called [BA], nor was I ever asked to witness a Will belonging to [BA] and indeed, the signature appearing at document MR1 (the 2003 Will) is most certainly not mine."

35. In attempting to prove that the 2003 Will was genuine JM wrote to the First Respondent on 26 January 2009 requesting any records he may have in respect of preparing the 2003 Will. This letter was delivered by hand. The First Respondent replied on the same day and stated that he did not have any record on BA as a client and no record of her instructions. He stated:

> "I must assume that she (BA) came to our offices only to have her Will executed and a copy certified.... I have no clear recollection of her visit to our offices but you will appreciate that this relates to a matter over 5 years ago.... I am able to confirm that both signatures (witness and certification) and the handwriting on the copies enclosed with your letter are mine."

36. However, having been contacted in relation to the contentious probate case the First Respondent later wrote to HJ Solicitors and stated:

> "....logically the chances are that the signature could be mine, however, given the passage of time and me not recalling the details of the above named (BA) I cannot be 100% sure. What I can confirm without a doubt is that I certainly would not lend my name to any document that is not genuine."

This letter was sent on 6 February 2009, some two weeks after the First Respondent had written to JM.

37. For the purposes of the probate hearing HJ Solicitors instructed a Forensic Examiner of Handwriting and Questioned Documents who concluded that:

> "There was strong evidence to suggest that (BA) did not sign the (2003) Will, although this was based on the inclusion of an atypical reference signature and were that to be excluded, there would be very strong evidence that she did not sign it."

38. As a result of HJ Solicitors' complaint, the SRA wrote to the First Respondent requesting further information in relation to his dealings with JM and comments on the 2003 Will, particularly in light of the witness statement of MR. On 28 August the First Respondent responded to the SRA's request for further information in terms he stated:

- He told HJ Solicitors on 9 February 2009 the signature on the 2003 Will was not his;

- BA was never a client of his;

- He would provide HJ Solicitors with a statement but due to pressures at work, had not found the time to complete this yet;

- He never acted for JM and had never met him before now.

The First Respondent also stated:

- He had met JM twice, once on Edgware Road and once in a coffee shop on Edgware Road;

- If he had met BA he would have asked to see her ID, but he never met her so never did;

- He never witnessed the will and the signature on it was not his;

- He did not know how his name appeared on the Will. However, in 2008 he was approached by a client who informed him that someone he knew (JM) was writing a book and wanted to follow the career of a recently qualified lawyer. He therefore forwarded his CV to JM.

- In 2008, a lady came to see him regarding BA and asked him to certify a copy of the 2003 Will. Since the signature resembled his and he recognised the name PG & Co, he was in a hurry and so certified it. His mistake was incorrectly putting the year as 2003 rather than 2008.

- He did not realise that "something was not quite right" until February 2009, following which he immediately went to HJ Solicitors.

- A solicitor at HJ Solicitors had pressurised him into giving a statement informing him that JM used underhand tactics, preyed on the vulnerable and used threats and blackmail to get what he wanted; as well as making it clear that if he did not do so he would report the matter to the SRA.

39. The First Respondent was asked to provide further information and stated:

- He had never met JM until the meeting on Edgware Road when he was introduced by a mutual third party.

- He believed that he had been targeted by JM who he now understood to be a confidence trickster. He was used, without his knowledge or fraudulent intent on his part.
- Under pressure he had thought that he was certifying a proper transaction. He now realised that the earlier signature on the Will was not his and was clearly fraudulent.

40. On 18 February 2010 the SRA wrote to the First Respondent and requested his comment to the allegation that he purported to witness the signature of BA on the 2003 Will and the authenticity of that signature has been called into question.

41. On 5 March 2010 the First Respondent replied to the SRA's letter and stated:

- In relation to his letter of 26 January 2009 LD (JM's girlfriend) visited his office and instructed him that JM had told her not to leave until he had provided her with a letter. Without thinking of the consequences he prepared the letter;

- He did certify the Will but did not witness it or forge any signatures;

- He was slow in providing a witness statement due to the pressures of work, a number of matters which he and his staff were dealing with and the ill-health of his wife:

  "I just put this matter to one side and prioritised others."

- He was embarrassed over the situation and for:

  "making a very obvious and silly mistake by noting the wrong date, ie 2003 rather than 2008."

- He did not forge anyone's signature, nor did he have any part in preparing the Will.

- He accepted that he had been slow in providing information;

- He accepted that he should not have written the letter of 26 January 2009;

- "I do not accept that I have been dishonest, but I do accept that I have been foolish. Throughout my correspondence with you I have been honest with you and I apologise if my accounts in part have been confusing."

<u>Failure to disclose material information</u>

42. During an inspection in February 2010 the SRA obtained a copy of the Firm's most recent application for Professional Indemnity Insurance for the insurance year 2009-2010 ("the Form"). The Form stated:

> "All material information must be disclosed to insurers to enable terms to be negotiated and cover arranged. This is not limited to answering specific questions that may have been asked in this proposal form. Any changes which may occur or come to light after a quotation has been given must also be notified."

43. The Form contained a declaration that:

> "I/We undertake to inform the insurers of alteration to this proposal occurring

> before the completion of the contract. I/We are satisfied after enquiry of all principals, consultants and employees, the above details are correct to the best of our knowledge and belief and that we have not suppressed or mis-stated any material fact. I/We understand that any fraudulent suppression or fraudulent mis-statement of any material facts will be reported by insurers to the Consumer Complaints Service for solicitors...."

The First Respondent signed and completed the Form, dated 28 August 2009.

44. Question 6(b)(i) on the Form stated:

> "Has the firm ever been removed from a lenders panel?"

Question 6(b)(ii) stated:

> "Over the last three years have you acted for multiple buyers in the same development or in the same building? If yes please provide details on a separate sheet."

To both of these questions the First Respondent answered "No".

45. During discussions with the SRA the First Respondent disclosed that the Firm had been removed from the panel of two institutional lenders; Abbey and Alliance & Leicester. However, the First Respondent stated that at the time of completing the form he honestly believed that the Firm had not been removed from any panels.

46. The Firm had previously acted in eight transactions at a building development. The First Respondent explained that he had simply ticked the wrong box in response to question 6(b)(ii). He explained that it was possible that he had rushed through the Form and there was no intention to deliberately mislead anybody.

47. Question 11 on the Form stated:

> "Has the practice or any prior practice or any present or former principals, partners, consultants or employees thereof: a) Been the subject of an OSS/CCS/LCS investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority of any recognised body?..."

The First Respondent answered in the negative to this question.

48. However, on 9 October 2008 the First Respondent notified the SRA that he had terminated the employment of Mr H after it was discovered that he had been misappropriating client monies. Furthermore, the SRA commenced an investigation into the firm in December 2008.

49. When asked about his response on the Form in light of the SRA's investigation the First Respondent stated that he believed that since the investigation commenced as a result of his notification to the SRA about Mr H:

> "....you found some matters on the conveyancing side but um the initial investigation was all about him."

He conceded that in hindsight he should not have answered the question in the negative but stated that that was how he felt at the date.

50. During the SRA's investigation the Respondent stated in terms that:

- A former employee Mr M had informed him that the Firm had been removed from the panel of the Abbey. He was only made aware that the Firm had been removed from the Alliance & Leicester panel in January 2010;
- The issue of multiple buyers and the same development was with the Firm's insurer;
- In relation to the other anomalies on the application form the First Respondent stated that these were being dealt with.

51. The First Respondent provided the SRA with a letter to AON dated 15 March 2010. The First Respondent disclosed that since the application form was submitted he had had conditions imposed on his practising certificate; and that Mr M informed him that the Firm had been removed from a panel. He also stated that Mr M no longer worked at the Firm. The letter also disclosed that the Firm had acted for multiple buyers in the same development and been subject to an SRA investigation.

52. On 24 February 2010 the SRA contacted XL Insurance Company, who arranged the First Respondent's Professional Indemnity Insurance. The SRA sought clarification as to whether cover would have been offered if the First Respondent had given the correct answers to questions 6(b)(i), 6(b)(ii) and 11(a); and if so, whether the premium would have altered. XL responded and stated, in reference to the responses given to Question 6,

> "....had we been appraised of the true situation, this would not have generated an automatic decline. Rather, the most likely outcome would be that we would have asked further questions of the firm and made our underwriting based on the answers (as to whether the risk should be declined, or whether an increased premium would be required)"

53. In relation to Question 11 XL stated:

> "....if the investigation was complete, we would have asked for a copy of the investigation to satisfy ourselves that nothing untoward was found... if the report was pending, this would have generated an automatic decline."

XL also confirmed that they considered that a forensic investigation by the SRA and its outcome would be a material fact which insurers should be made aware of within a practical time frame.

<u>Further Conveyancing Matters (The Second Respondent, Sarah Joanne Crompton)</u>

54. On 7 May 2009 the SRA commenced an investigation into Martyn Amey & Co of 7 Kidderminster Road, Bromsgrove, Worcestershire B61 7JJ ("MWA").

55. The Second Respondent had been employed by MWA (a sole practitioner) as a paralegal from 1 August 2007 to 16 June 2008 when she was dismissed for misconduct. When she started with MWA she brought with her a list of contacts as well as introductions from brokers. She had acted for UPI in seven back-to-back transactions. In the same transactions the Second Respondent had also acted for the end buyer's institutional lender; and on one occasion the Second Respondent had also acted for the original seller.

56. The seven transactions bore similar characteristics:

- There was a same day back-to-back transfer, with an uplift;
- UPI did not use any of its own resources to fund its purchase;
- Deposits due to UPI were paid directly to UPI, and not through MWA's client account;
- The balance of completion monies was paid directly from the end buyer to the original seller;
- The properties involved were not local to the MWA;
- All clients were referred to MWA by the same broker.

<u>37 F Hollows</u>

<u>Mrs E to UPI</u>

57. One of these transactions (which all had similar characteristics) was the sale of 37 F Hollows from Mrs E to UPI. A client letter, dated 22 February 2008, detailed a sale price of £100,000. The property was in Bridgend.

58. The file contained a second letter to Mrs E also dated 22 February 2008. The letter stated:

> "I note from the estate agent's particulars that a colleague from this office is acting for your prospective buyer"

The letter went on to state that MWA could continue to act for both parties provided that:

> "...both parties are established clients (which is the case here) or that both parties have independently instructed different offices of MWA."

MWA only had one office, and the prospective buyer was UPI. The letter further stated that in the unlikely event that a conflict of interests arose between the parties,

MWA would advise both parties to seek advice elsewhere. An identical letter was also sent to UPI who were purchasing the property from Mrs E.

59. Mrs E was not an established client of MWA but had been introduced to MWA by DM of F Finance. Furthermore, the file contained an email from DM which stated two purchase prices; one of £100,000, "for Brian" and one of £115,000, "for David".

60. Additional Enquiries Before Contract were sent out to Mrs E and were returned completed. The form was signed by Mrs E and contained a handwritten annotation:

> "Please note, I am doing this paperwork on behalf of [Mrs E] as she is unfit to deal with it herself. I have filled in information which is to the best of my knowledge true; as my mother-in-law to be is very vague because her deceased husband (Oct 16th 2007) always dealt with everything to do with the house...."

There was no evidence on file that the Second Respondent undertook any investigation as to Mrs E's ability to give instructions.

61. The contract between Mrs E and UPI was dated 8 May 2008 and was scheduled for simultaneous exchange and completion. The ledger of Mrs E recorded receipt of £100,000 on 8 May 2008. However, the monies did not come from the purchase ledger of UPI, but directly from the purchase ledger of Mr T. The client ledger showed that £100,000 was sent to Mrs E on the same day. However, a bank payment form stated that £99,457 was sent to Mrs E; this sum was confirmed by the completion statement. There were also issues in registering the property as a death certificate for Mr E could not be located. A telephone attendance note on the issue stated that Mr T would deal with it because he knew Mrs E.

<u>UPI to Mr T</u>

62. On 22 February 2008 the Second Respondent also sent client care letters to UPI and Mr T in relation to an assignment of the property at 37 F Hollows from UPI to Mr T for £115,000. Mr T's address was 5 F Hollows. The Second Respondent wrote to Mr T and stated that a different colleague from MWA was acting for UPI, who were assigning their interest in the property to Mr T for £115,000. The letter confirmed that they were not aware of any conflict between the parties and were therefore able to continue to act, providing that the parties were separately represented within MWA. However, there was no evidence on the file to show that anyone, other than the Second Respondent, conducted these transactions.

63. On 7 March 2008 MWA received a mortgage offer from TMB in respect of Mr T's purchase of the property. The offer, based on a purchase price of £115,000, was £97,750. TMB also requested that the Firm act on its behalf in the transaction.

64. On 12 March 2008 MWA wrote to TMB requesting confirmation that they (TMB) were happy for MWA to act for both the seller (UPI) and the purchaser (Mr T) providing they were separately represented. A handwritten note on the letter by the Respondent stated that TMB was content for the Firm to act. However, there was no record on file to show that TMB was advised that MWA, and in particular the Second

Respondent, was also acting for the party selling the property to UPI. The file contained some documentation which created the impression that the sale was actually direct between Mrs E and Mr T.

65. On 2 April 2008 the approved contract in relation to the sale to Mr T was sent to UPI by the Second Respondent. The letter stated:

> "The buyers' solicitors have approved the contract for your sale...."

The buyer's solicitor was also MWA.

66. On the same day the Second Respondent wrote to Mr T explaining the mortgage offer and requesting confirmation as to the source of any additional funds required. Mr T responded on 10 April 2008 and stated that he was providing the balance of the transaction from his own personal funds and that he had paid a deposit directly to UPI. This was confirmed by UPI. The file contained no evidence to show that the Second Respondent had informed TMB that a direct deposit had been paid to UPI, and that as a result MWA would not be in control of the whole of the purchase monies.

67. The Second Respondent wrote to TMB on 7 May 2008 and disclosed that UPI were under contract to purchase the property for £100,000 and had not carried out any work on it. She stated that UPI were not property developers but rather exchanged contracts on a purchase with a long completion date, at the same time they found a purchaser and completed the transaction, making a small profit in the meantime. However, at the time of writing this letter no contracts had been exchanged between UPI and Mrs E in relation to the sale of the property. Furthermore, the Second Respondent failed to disclose that she was acting for all parties and that the ultimate transaction was a same day back-to-back transaction with a £15,000 up-lift.

68. A Certificate of Title, on behalf of Mr T, was signed by MWA and dated 8 May 2008 and on the same day Mr T's ledger recorded a credit of £97,720 from TMB. As a result of the direct deposit the maximum balance held in client account was £100,764.57.

69. Contracts between UPI and Mr T were also exchanged on 8 May 2008. The contract between UPI and Mr T stated that encumbrances on the property were:

> "Set out in the Property and Charges register of the Sellers' title as at the date of the Official Copies...."

However, at the date of exchange the seller, UPI was not the registered proprietor, having purchased the property on the same day it was selling it.

70. Despite the contract of sale being between UPI and Mr T, £100,000 was transferred from Mr T's ledger directly to Mrs E. UPI sales ledger recorded a credit of £14,477 on 9 May 2008. However, a day earlier £14,534.57 had been sent to UPI. This payment created a debit balance of £14,534.57 on the ledger which was reduced to £57.57 the following day. The debit balance was finally rectified on 30 June 2008 by

transfer from office account. It was not known what this payment related to. According to Mr T a deposit of £15,000 had been paid directly to UPI, this left £100,000 to be paid on completion. This sum was forwarded to the ledger of Mrs E to satisfy UPI's liability in respect of their completion. The sum of £14,477 was not recorded on UPI's completion statement.

71. UPI's completion statement stated that MWA required £465.43 in order to satisfy its liability in relation to legal fees and disbursements. However, the ledger did not record receipt of this sum.

72. On 22 July 2008 the Second Respondent wrote to UPI requesting payment of £100 to enable them to register the transaction with the Land Registry. The file contained a telephone attendance note which referred to the letter of 22 July 2008 and recorded that no response had been received. The note also recorded that it appeared that UPI had never paid its bill. In order to conclude post-completion matters MWA transferred £523 from the ledger of Mr M in order to pay the Land Registry fee and claim its costs.

73. The file for Mr M could not be located and the connection between Mr M, UPI and this matter could not be established. MWA stated that by their recollection Mr M had owed UPI some monies. However, consideration of Mr M's completions statement showed that Mr M did not hold any monies on account with MWA which would allow them to transfer £523.

Mrs T to UPI

74. On 25 February 2008 the Second Respondent wrote to LW. The letter confirmed that LW had instructed MWA to act on his behalf in relation to his purchase of a property from Mrs T for £120,000. On the same day the Second Respondent also wrote to TLJ, solicitors acting for Mrs T, informing them that they were instructed by LW in relation to the purchase. By letter dated 7 April 2008 the Second Respondent wrote to TLJ on behalf of UPI (not LW), enclosing an approved, and slightly amended, copy of a draft contract, showing UPI as the purchaser instead of LW.

75. Notwithstanding the change in proposed purchaser, TLJ continued to refer to LW in correspondence. On 12 May 2008 TLJ contacted MWA and stated that LW had still not provided a deposit despite making assurances that he would do so.

76. Simultaneous exchange and completion took place on 16 May 2008 and listed a purchase price of £120,000. The contract had initially been drafted between the sellers, CT and SJ, and LW. However, LW's details had been crossed out on the contract and substituted for those of UPI.

UPI to Mr LW

77. On 25 April 2008 the Second Respondent wrote to UPI and confirmed that they had been instructed by the company to sell the property to LW for £150,000. This was three weeks before UPI owned the property. The same day the Second Respondent

also confirmed to UPI that MWA was acting for LW. The letter stated:

> "...a colleague from this firm is acting for your prospective buyer..."

However, there was no evidence on the file to show that any fee earner, other than the Second Respondent had conduct of this matter.

78. Notwithstanding MWA's correspondence in February 2008 that LW wished to purchase the property for £120,000, on 5 March 2008 MWA received a mortgage offer from TMB offering LW a mortgage of £127,000 based on a purchase price of £150,000. The offer also included instructions from TMB for MWA to act on its behalf. There was no record on file of the mortgage offer being forwarded to LW until 25 April under cover of a letter from the Respondent which began:

> "I have today received a mortgage offer in respect of your purchase..."

79. On 8 April 2008 LW wrote to the Second Respondent and confirmed that the balance of purchase monies would be provided by him, from his own resources, without recourse to further borrowing. On 23 April 2008 LW wrote and confirmed that he had paid £22,500 directly to UPI in respect of a deposit on the property. This would mean that on completion £127,500 would be due. This was the exact amount being offered by TMB under their mortgage offer. The following day UPI confirmed receipt of £22,500 from LW and requested that the sum be deducted from the balance to complete.

80. On 25 April 2008 the Second Respondent wrote to TMB and informed them that a deposit of £22,500 had been paid directly to the seller. The Second Respondent wrote further on 2 May 2008 and disclosed that the seller had not owned the property for more than six months. On the basis of this disclosure TMB wrote to MWA requesting information in relation to the seller, in particular, when the seller had purchased the property, the price paid for it, whether any work had been carried out on it and why the seller was selling the property so quickly.

81. This request was received by MWA on 14 May 2008 and on 15 May 2008 the Second Respondent wrote to TMB again disclosing the fact that the seller had not owned the property for more than six months. However, rather than address the questions raised by TMB in their letter, the Second Respondent's letter stated that they (MWA) had raised what they considered to be the relevant questions. The letter stated that the seller was not a property developer, but that his business was simply to buy and sell properties. He would buy properties at auction, arrange a long completion date and in the meantime he would look for a buyer to sell on to. He did not carry out any work on the properties. The letter also stated that the deposit was now being paid through MWA's client account and not directly to the sellers as had previously been indicated.

82. The Second Respondent failed to address the issues of when UPI had purchased the property or the amount that they had paid for it, despite the fact that by acting for UPI in its purchase of the property these details would have been within her knowledge. She also failed to disclose the fact that they were also acting for UPI in relation to the purchase of the property and same day, back-to-back sale with a £30,000 uplift.

83. The letter of 15 May 2008 also contained the Certificate of Title. LW's purchase ledger recorded receipt of £127,500, mortgage monies on 16 May 2008. As with the contract between UPI and CT and SJ, the contract between UPI and LW was also dated 16 May 2008 and allowed for simultaneous exchange and completion.

84. In addition to the receipt of mortgage monies, the ledger of LW also recorded receipt of £20,000 on 16 May 2008. The completion statement on file recorded that those completion monies were from LW. However, the ledger recorded the payment as a receipt from DM. There was no evidence that TMB were informed the balance of completion monies did not come directly from LW. On 16 May 2008 LW's ledger recorded transfer of the full completion monies of £150,000 to UPI's ledger. On 19 May 2008 UPI's ledger recorded the debit of £120,000. These monies were sent three days after the proposed completion date, notwithstanding that fact that MWA had held sufficient funds on the completion date. As a result of this delay a penalty in the form of interest was due. The penalty was satisfied by LW, notwithstanding the fact that his completion monies were paid on time, and he had no contractual obligation towards CT and SJ, who had contracted with UPI.

85. The Completion Statement for UPI's purchase calculated that £8,304.30 was due as their profit from the proceeds of sale. This was sent to UPI on 19 May 2008. The completion statement also recorded a payment of £21,175 to F Finance "as instructed". The file did contain a payment slip which recorded the payment of £21,175 to DM, not F Finance.

Witnesses

86. No witnesses gave evidence.

Findings of Fact and Law

87. **Allegation 1.1: That the First Respondent failed to adequately supervise his staff, contrary to Rule 5.01 of the Solicitors Code of Conduct 2007 ("SCC");**

Allegation 1.2: That the First Respondent failed to act in the best interests of the firm's client, TMB;

Allegation 1.3: That the First Respondent provided a misleading statement, contrary to Rules 1.02 and 1.06 of the SCC;

Allegation 1.4: That the First Respondent failed to provide material information, contrary to Rules 1.02 and 1.06 of the SCC.

87.1 The Tribunal had considered carefully all the documents provided, and the submissions of the Applicant. The First Respondent, *[RESPONDENT 1]*, had admitted allegations 1.1, 1.2, 1.3 and 1.4 which were against him and accordingly the Tribunal found these allegations proved.

88. The Tribunal had taken into account the Second Respondent's responses to the SRA and considered each of the allegations against her carefully.

89. **Allegation 1.5: That the Second Respondent failed to comply with the client's instructions and failed to disclose material facts to the client and in doing so failed to act in the best interests of the client (TMB).**

Allegation 1.6: That the Second Respondent failed to comply with the Law Society's guidance on Mortgage Fraud.

89.1 The Tribunal found both these allegations proved. The Second Respondent had conduct of a number of conveyancing transactions and acted on behalf of a lender, TMB, in relation to the provision of mortgages. The lender had made it clear the Firm was instructed to act in accordance with the CML Handbook and in one case, paragraph 6.3 of the Handbook had been pointed out to the Firm. In particular, in a letter dated 6 August 2008 to the Firm, TMB required the Firm to "confirm that all monies including the deposit should pass through your bank account for you to then pass to the Vendor's solicitor."

89.2 The Tribunal was satisfied that the Second Respondent had failed to follow the requirements of the CML Handbook by failing to report material facts to the lender, including a failure to report the Firm did not have control of all the purchase monies and a failure to ensure that balances of completion monies were not subject to further borrowing. The client, MT, had sent £65,991.88 directly to seller's solicitors and there was no evidence that the lender TMB had been informed of this. The Tribunal was satisfied the Second Respondent had failed to comply with the lender's instructions, particularly those in their letter to the firm dated 6 August 2008. These were material facts that should have been disclosed to the lender, and the failure to disclose was a failure to act in the best interests of the lender client.

89.3 Although the Second Respondent informed the SRA in her letter of 2 July 2009 that she had never received "Green Card" training, the Tribunal noted from her CV that she had been a conveyancing executive since February 2005. As such, the Tribunal would have expected the Second Respondent to be aware of the Law Society's Green Card, which was first published in July 2002. In any event, the lender, TMB had clearly set out the position in their letter of 6 August 2008 requiring the Firm to notify the lender if all monies did not pass through the Firm's client account. The Second Respondent had failed to notify the lender that this had been the case.

89.4 Furthermore, the Second Respondent had not met any of the clients, who were not geographically local to the Firm, and she had not advised the lenders that F Finance Ltd had options to buy the properties for considerably less than the purchase price stated in the mortgage documentation, or that F Finance Ltd had received approximately 45% of the proceeds of sale. These were all material facts that should have been disclosed to the lender client.

89.5 The CML Handbook required solicitors to follow the guidance in the Law Society's Green Card (Mortgage Fraud). The Law Society's Green Card stated among other things that signs of property fraud to watch out for included:

- A deposit, or the difference between the mortgage advance and the price, paid direct, or said to be paid direct to the seller;

- Changes in the purchase price;
- Unusual transactions.

In the transactions dealt with by the Second Respondent, no funds were received directly from the purchasers, there were changes in the price of the property within a very short period of time, funds had been received from third parties and there was no evidence that the lender had been informed of these factors. The narrative on bank statements showed a different source of funds to the correspondence on client files. It appeared short term loans had been made to clients, the Firm did not have control over all the purchase monies and matters were further complicated by the existence of options to buy the properties for considerably less than the purchase price in favour of F Finance Ltd, who had received approximately 45% of the proceeds of sale. These were very unusual transactions. Indeed, the First Respondent *[RESPONDENT 1]* had accepted, when asked by the SIO if he was comfortable about these transactions "if you put it in the context of the business world, then no".

90. **Allegation 1.7: That the Second Respondent failed to disclose material information to a lender client and in doing so failed to act in the best interests of the client, contrary to Rule 1.04 of the SCC;**

90.1 The Tribunal found this allegation proved. The Second Respondent, whilst employed by MWA Solicitors, had conduct of a number of property transactions. The Tribunal was satisfied the Second Respondent had failed to disclose material information to the firm's lender client in that she failed to disclose she was the only fee earner within the firm conducting the transactions, that she was acting for both the buyer and the seller, transactions were conducted on a back to back basis with a substantial uplift on the same day, deposits had been paid direct from the buyer to the back to back buyer/seller, and the balance of completion monies were being provided by a third party.

90.2 The Tribunal's attention had been drawn to the transfer of 37 F Hollows, initially from Mrs E to UPI on 8 May 2008 with a purchase price of £100,000 and subsequently, on the same day, UPI assigned their interest in the property to Mr T for £115,000. The Second Respondent also acted for the lender, TMB, in relation to a mortgage in respect of the assignment to Mr T. There was no evidence that TMB had been informed of the back to back transaction or the substantial increase in the price. Furthermore, the lender was not informed that Mr T paid a deposit of £15,000 directly to UPI. By failing to notify the lender of these issues, the Second Respondent had failed to act in the best interests of the lender client.

91. **Allegation 1.8: That the Second Respondent acted in circumstances of a conflict of interest contrary to Rule 3.01 SCC.**

Allegation 1.9: That the Second Respondent acted for the buyer and seller in circumstances contrary to Rule 3.09 and 3.10 SCC;

91.1 The Tribunal found both these allegations proved. The Second Respondent had acted for Mrs E and UPI in relation to the sale of 37 F Hollows. She stated in her letters of 22 February 2008 to Mrs E and UPI that both parties were established clients, and that both parties had independently instructed different offices of MWA. In fact MWA only had one office and there was no evidence that Mrs E was an established client. Furthermore, it appeared that the Additional Enquiries before Contract had not been completed by Mrs E but by some third party on her behalf, and the Second Respondent had failed to investigate this any further. The Tribunal had no doubt the Second Respondent had acted in circumstances where there was a conflict of interest between these clients. This was particularly pertinent as the Second Respondent also acted in the assignment of UPI's interest in the same property to Mr T for an increased price of £115,000 on the same day as completion of the sale from Mrs E to UPI. The Second Respondent had not acted in the best interests of Mrs E and there was clearly a conflict in that Mrs E's property was sold for £15,000 less than the amount received by UPI from Mr T on the same day.

91.2 Furthermore, in the transaction from Mrs T to UPI and subsequently from UPI to LW the Second Respondent had acted on behalf of all the parties, including the lender client in circumstances where the price had increased from £120,000 between Mrs T and UPI to £150,000 from UPI to LW all on the same day - 16 May 2008. The lender was not informed of the uplift and nor was the lender informed that UPI had agreed to sell the property to LW three weeks before they actually owned the property. The contract between Mrs T and UPI had originally stated the purchaser was LW, but LW's details had subsequently been crossed out and substituted with UPI's details. There was no doubt in the Tribunal's mind that the Second Respondent should not have acted for all the parties in this transaction and that there was a clear conflict of interest between all of those clients, particularly in view of the increase in price on the same day. Mrs T had sold to UPI for £30,000 less than UPI had sold to LW therefore the Second Respondent had not acted in her best interests.

91.3 Rules 3.09 and 3.10 of the SCC stated a solicitor may only act for seller and buyer if certain conditions were satisfied, which included:

- Both parties were established clients;
- That the consideration was £10,000 or less;
- The seller and buyer were represented by two separate offices in different localities and by different individuals who normally work at each office;
- No conflict of interests must exist or arise.

91.4 The Tribunal was satisfied that none of these exceptions applied in any of the transactions where the Second Respondent had acted for the buyer and seller, and therefore the Second Respondent had acted in breach of Rules 3.09 and 3.10 of the SCC.

Previous Disciplinary Matters

92. None.

Mitigation

First Respondent (*[RESPONDENT 1]*)

93. The First Respondent referred the Tribunal to his witness statement dated 7 March 2011 and the other documents he had provided. He apologised to the Tribunal for his conduct and said that he had done the best that he could. He did have measures in place to ensure the proper supervision of the Second Respondent but accepted these were not good enough. He also accepted that he should have made enquiries regarding each and every member of staff, and all new employees, and confirmed he had now made changes. All new staff were placed on a six months probationary period when their work would be checked and, indeed, the First Respondent was no longer carrying out any fee earner work himself but was managing his firm. The Firm had a case management system, each Head of Department was responsible for their own department, an Office Manual was regularly updated and a Human Resources Manual was also available.

94. The Respondent had learnt his lesson the hard way and was ashamed to be before the Tribunal. He reminded the Tribunal that he had self-reported the matter of Mr H to the SRA and to the police, and had worked with both of them to try and help victims. Monies had been paid back to clients.

95. The First Respondent referred the Tribunal to the medical report from Dr Sripuram dated 7 March 2011, which indicated the First Respondent had suffered stress, and gave details of the medication he had received. The First Respondent's witness statement gave details of his financial position and his personal circumstances. The Tribunal was also referred to a character reference from a work colleague with whom the First Respondent had previously been in partnership.

96. The First Respondent confirmed his firm had been subject to a monitoring visit by the SRA last year which had been satisfactory. The First Respondent was also currently a partner with another firm of solicitors, where he had assisted a colleague who had a condition imposed on her practising certificate requiring her to take on a partner. The First Respondent confirmed he could resign from that practice at any time as his colleague was now capable of running the practice on her own. The First Respondent assured the Tribunal he would never appear before the Tribunal again and that he had learnt his lesson.

Sanction

97. The Tribunal had considered carefully the First Respondent's submissions, all the documents he had provided including the medical report and the character reference. In relation to the Second Respondent, whilst she had not provided the Tribunal with any documents or submissions, the Tribunal had taken into account her correspondence with the SRA and in particular her letter of 2 July 2009 to the SRA.

The First Respondent, *[RESPONDENT 1]*

98. The First Respondent had admitted all the allegations against him, which included a

failure to supervise his staff adequately, a failure to act in the best interests of a lender client, providing a misleading statement and a failure to provide material information. These were all very serious breaches of the rules and regulations which were in place to protect clients, their funds and minimise the risk to the public.

99. In his witness statement the First Respondent had stated he had employed two non-practising barristers to conduct immigration work and that they had been charged with the task of reviewing Mr H's files and supervising him. The First Respondent confirmed that whilst he had some knowledge of immigration law, he was not an immigration practitioner and the main person who was responsible for the supervision of Mr H was one of the non-practising barristers, UU. The First Respondent could not abrogate his responsibility to supervise Mr H to non-practising barristers who were not qualified to properly supervise in any event. The Tribunal was extremely concerned that the First Respondent had appointed Mr H without making any enquiry into Mr H's background, which would have been a relatively simple task that he should have undertaken prior to employing Mr H. If he had made relevant and appropriate enquiries with the Bar Council, the First Respondent would have found out that Mr H had been suspended from practice as a barrister for three years from 5 June 2006. Furthermore, it was clear that by June 2008 the First Respondent had discovered Mr H had been suspended from practising as a barrister and therefore he had a further opportunity at that time to terminate Mr H's employment. He failed to do this and as a result, Mr H continued dealing with clients from July 2008 to October 2008 in circumstances where this could have been prevented.

100. The First Respondent had failed to make any enquiries into the Second Respondent's background and employment history prior to offering her a position with his Firm. He stated in his witness statement that he had been given a verbal reference by a solicitor from A Solicitors who had introduced him to the Second Respondent. This was in the summer of 2008. However, if the First Respondent had made proper enquiries with Martin Amey & Co Solicitors, who had employed the Second Respondent from 1 August 2007 to 16 June 2008, he would have been informed that the Second Respondent was dismissed for misconduct by that firm, and this would have alerted the First Respondent.

101. As a result of the First Respondent's inadequate supervision of his employees, he had allowed members of his staff to take advantage of vulnerable clients and had put those clients at substantial risk. His failure to supervise the Second Respondent had also placed lender clients at risk. The First Respondent had signed Certificates of Title without checking the files, and lenders had not been informed of material facts. A Certificate of Title was an extremely important document upon which lenders were entitled to rely, and a solicitor who signed a Certificate of Title had a responsibility to ensure the contents of that Certificate were correct.

102. Furthermore, the First Respondent had provided a misleading statement in a probate dispute which could potentially have dire consequences for the parties involved in that dispute. The Tribunal noted the forensic handwriting expert who had been commissioned in that case had stated in his report:

> "Examination and subsequent comparison between the two sets of witness

> details found significant similarities between the non signature writings. The degree of similarity was greater than would have occurred by chance..."
>
> and
>
> "There was very strong evidence that the same person completed the two sets of non signature witness details on the Will."

This should have been apparent to the First Respondent and would have alerted him to the position.

103. The First Respondent had also failed to disclose material information in his application for professional indemnity insurance and the Tribunal was mindful that the insurers had confirmed to the SRA that if a report as a result of an investigation by the SRA was pending, this would have generated an automatic decline to insure the firm. As a result of the First Respondent's failure those insurers had been placed at risk as they had not been informed of material facts which may have affected their decision to insure the First Respondent's firm.

104. The Tribunal concluded the First Respondent had acted in a cavalier manner and had shown a lamentable dereliction of duty in the way that he ran his practice, and in particular in the way in which he hired and supervised staff. Whilst the Tribunal recognised the First Respondent had made an effort to put things right, the Tribunal was still of the view that the First Respondent did not appreciate the responsibilities of being a partner, and the Tribunal was extremely concerned to hear that the Respondent was also currently a partner in another practice where he had no control over the supervision or management of that practice.

105. The Tribunal did take into account the First Respondent had self-reported the matter relating to Mr H and that he had co-operated with the SRA and the police in their subsequent investigations. However, the Tribunal was also mindful of the comments of Sir Thomas Bingham MR in the case of Bolton -v- The Law Society [1994] CA where he stated:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. ... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal."

The Tribunal was of the view that the First Respondent had not discharged his professional duties with sufficient probity. Taking into account the totality of the breaches, the damage that had been done to the reputation of the profession and the losses suffered by clients as a result of the First Respondent's failures, the Tribunal was of the view that the appropriate penalty was to suspend the First Respondent for a period of 12 months. Furthermore, the Tribunal made a recommendation that the First Respondent should not be allowed to practise in the future as a sole principal or as a partner of a practice without the prior approval of the SRA.

The Second Respondent, Sarah Joanne Crompton

106. The Tribunal, having considered all the documents provided, was satisfied that the Second Respondent's conduct and failures had caused serious damage to the reputation of the profession and had caused clients to suffer. In her letter to the SRA dated 2 July 2009, the Second Respondent had accepted there had been "a general oversight by me". The Tribunal had no hesitation in concluding that she should not be involved with any legal practice without the permission of The Law Society/SRA. Accordingly, the Tribunal granted the Order sought pursuant to s.43 of the Solicitors Act 1974 (as amended).

Costs

107. The First Respondent and the Applicant confirmed the First Respondent had agreed to pay the Applicant's costs relating to the allegations concerning McLee & Co Solicitors in the total sum of £20,000. This figure had been agreed on the basis that it represented two-thirds of the Applicant's costs which related to that firm.

108. In relation to the Second Respondent, the Applicant confirmed that the costs relating to the investigation into Martin Amey & Co Solicitors came to a total of £8,413.50. It was also submitted that the Second Respondent should be responsible for one-third of the Applicant's costs relating to the allegations involving her employment with McLee & Co Solicitors. The Applicant had calculated the total liability for costs in relation to the Second Respondent came to £19,406. However, he indicated the Authority were willing to accept £16,000 for their costs relating to those matters which concerned the Second Respondent. The Applicant had treated the Second Respondent in the same way as the First Respondent on the question of costs.

109. The Tribunal ordered the First Respondent pay the Applicant's costs in the sum of £20,000 as agreed between the parties. The First Respondent had provided details of his financial circumstances and had confirmed his earnings did not cover most of his outgoings. Furthermore, the First Respondent had now been suspended from practice as a solicitor for a period of 12 months and the Tribunal was therefore mindful of the case of Merrick -v- The Law Society [2007] EWHC 2997 (Admin), in which Mr Justice Gross had stated:-

> ".... when an order is made, effectively depriving a solicitor of his livelihood, the question necessarily arises as to how any order for costs would be paid."

Having made enquiry into the First Respondent's means, the Tribunal was satisfied that the First Respondent was not currently in a position to satisfy the Order for costs and therefore ordered that Order for costs was not to be enforced without the permission of the Tribunal.

110. The Second Respondent had not provided the Tribunal with any information regarding her financial position and therefore the Tribunal ordered the Second Respondent pay the Applicant's costs in the total sum of £16,000.

Statement of Full Order

111. The Tribunal Ordered that the Respondent, *[RESPONDENT 1]* of London, W1H, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on the 9th day of March 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00, not to be enforced without the permission of the Tribunal.

112. The Tribunal Ordered that as from 9th March 2011 except in accordance with Law Society permission:-
(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Sarah Joanne Crompton of Gallop View, Risbury, Leominster, Herefordshire, HR6 0NQ;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sarah Joanne Crompton;
(iii) no recognised body shall employ or remunerate the said Sarah Joanne Crompton
(iv) no manager or employee of a recognised body shall employ or remunerate the said Sarah Joanne Crompton in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Sarah Joanne Crompton to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Sarah Joanne Crompton to have an interest in the body.

And the Tribunal further Ordered that the said Sarah Joanne Crompton do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.00.

Dated this 3rd day of May 2011
On behalf of the Tribunal

K W Duncan
Chairman