No. 10472-2010

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF MATTHEW APAU OBENG Solicitor (First Respondent)
and ADEYOYE ADEYEMI Registered Foreign Lawyer (Second Respondent)

Upon the application of Ian Ryan
on behalf of the Solicitors Regulation Authority

Mr E. Richards (in the chair)
Mr E. Nally
Mrs S. Gordon

Date of Hearing: 15th November 2010

FINDINGS & DECISION

Appearances

Ian Ryan, Partner and member of Finers Stephens Innocent LLP of 179 Great Portland Street, London, W1W 5LS appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

There were no appearances by or on behalf of either Respondent.

The date of the Rule 5 Statement was 10 March 2010.

Preliminary Matters

(1) There had been difficulties in effecting service of proceedings. At an interlocutory hearing on 14 July 2010 a differently constituted Tribunal directed substituted service on the Respondents by means of advertisement in The Times, the Law Society Gazette and, if possible, a newspaper or legal publication in Nigeria, where both Respondents were believed to be residing. This was confirmed by Order dated 2 August 2010.

(2) Advertisements were placed in the Times and the Law Society Gazette. It had not been practical for the Applicant to place an advertisement in the Nigerian press due to pre-conditions imposed by the publications in question.

(3) The Tribunal determined that, advertisements having been placed by the Applicant in accordance with the Tribunal's Order, those advertisements constituted service of the proceedings in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007.

Allegations

The allegations against the Respondents were as follows:

(i) They failed to keep books of account properly written up for the purposes of Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR");

(ii) They allowed client account to become overdrawn in breach of SAR Rule 22(8);

(iii) They acted in conveyancing transactions that had suspicious characteristics in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 ("SCC");

(iv) They failed to act in the best interest of their lender clients in a number of conveyancing transactions in breach of Rule 1.04 of the SCC 2007;

(v) They failed to act in the best interest of their lender client when dealing with an unfamiliar firm of solicitors in breach of Rule 1.04 of the SCC 2007;

(vi) They failed to comply promptly or at all with the terms of an undertaking given to Humphrey Williams Solicitors in breach of Rule 10.05(1)(b) of SCC 2007;

(vii) They failed to make adequate arrangements for the supervision of the Firm's conveyancing work in breach of Rules 5.01 and 5.03 of SCC 2007.

Factual Background

Respondents' Histories

1. The First Respondent was born on 31 March 1953 and was admitted as a solicitor on 17 September 2001. His name remained on the Roll of Solicitors.

2. The Second Respondent was born on 26 May 1964, and was registered as a Registered Foreign Lawyer ("RFL") on 31 May 2007. He continued to be registered as an RFL subject to conditions.

3. At all material times the Respondents practised in partnership as Matthew Wokeson & Co ("the Firm"), 660 Old Kent Road, London SE15 1JF. The Second Respondent became a partner in November 2007. The Firm closed on 9 February 2009.

4. Upon due notice to the Respondents, Mr Roberto Ferrari, the Applicant's Forensic Investigation Officer ("FIO"), began an inspection of the Firm's books of account on 30 October 2008 and produced a report dated 13 March 2009 with Appendices.

Documents Before The Tribunal

5. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant

- Rule 5 Statement and exhibit IPR/1 dated 10 March 2010.

Respondents

- Letters to and from the Respondents at exhibit IPR/1, including a letter written on behalf of the Respondents by Geoffrey Williams QC to the Applicant dated 20 May 2009.

Facts

Allegations (i) and (ii)

6. The FIO noted that the Firm's books of account had not been properly maintained. The office side of the client ledger accounts was inaccurate. The narrative on the client ledger accounts was insufficient to identify mortgage advances received. There was a cash shortage on current account of £10,556.35 as at 30 September 2008, attributable to debit balances on two client ledgers. The largest of these debit balances arose on 4 September 2008 when £10,349.58 was withdrawn from the general client account to pay a disbursement to Her Majesty's Revenue & Customs ("HMRC") on behalf of client, Ms S., when the relevant client ledger showed a nil balance. That payment was in fact made in error, the liability to HMRC having been paid by cheque dated 18 February 2008. The duplicated payment cleared the client bank account on 9 September 2008, creating a cash shortage. The Firm requested a refund from HMRC by letter dated 23 October 2008. The overpayment was returned and credited to Ms S.'s client ledger account on 5 November 2008, clearing the debit balance which had existed for approximately two months.

Allegations (iii) and (iv)

7. The Respondents acted for both lender and borrower in conveyancing transactions involving properties at Bowden Road, Arthur Road, Deepdale, Woodside, Greenview, Barking Road and Newick Road. It was alleged by the Applicant that the Respondents failed to be alert to suspicious features of those conveyancing transactions, and that they failed to act in their lender clients' best interests by failing to disclose information to them.

Bowden Road

8. It was alleged that there was an uplift on sub-sale of £94,995 and that the Respondents were not in control of all purchase monies. On 30 November 2007 Ms S. instructed the Firm, and in particular the Second Respondent, to act for her in the purchase of property at Bowden Road from FF Ltd at a stated purchase price of £344,995. On 22 November 2007 the Firm received instructions to act for TMB, which was to advance mortgage funds of £293,215 to Ms S. in order to facilitate the purchase, with Ms S.

providing the balance of £51,780. The First Respondent signed the Certificate of Title on 5 December 2007. The purchase proceeded by way of simultaneous exchange of contracts and completion on 10 December 2007. The purchase was by way of sub-sale, notified by the Firm to TMB by letter dated 6 November 2007. Contracts for sale on file confirmed that FF Ltd bought the property for £250,000, and sold to Ms S. for £344,995, with a resulting uplift of £94,995. There was no evidence on file that TMB had been advised of the uplift.

9. On 10 December 2007 the balance of funds required for completion, £63,638.60, were deposited into the Firm's client bank account described as "deposit on account". The client account bank statements stated that the source of the funds was FF Ltd. There was no evidence on file that the Respondents had informed TMB that Ms S. was not to provide the balance to complete.

Arthur Road

10. It was alleged that the Respondents were not in control of all purchase monies; that a deposit had been directly paid by the purchaser; that there was an uplift on sub-sale of £1,750,000; that the purchaser settled the Stamp Duty Land Tax Liability ("SDLT") of £150,000 directly; and that the balance of the mortgage advance was disbursed to FMH, a company owned and controlled by the First Respondent.

11. On 19 December 2007 the Firm, and in particular Mr O., an unadmitted fee earner, was instructed to act for Mr E. in his purchase of a property at Arthur Road from ECH Ltd at a stated purchase price of £3,750,000. On 20 December 2007 the Firm was instructed to act for C. Bank Plc, which was to provide Mr E. with mortgage funds of £2,812,500 in order to facilitate the purchase. The difference between the purchase price and the mortgage funds was £937,500.

12. The purchase was by way of a sub-sale. ECH Ltd bought the property for £2,000,000. The uplift in price was therefore in the order of 87.5%.

13. The Certificate of Title was signed by the First Respondent on 20 December 2007, and the matter proceeded by way of simultaneous exchange of contracts and completion on 24 December 2007.

14. According to the client ledger account no funds were received from Mr E. in respect of his purchase. The sale contract indicated that a deposit of £1,091,609.70 had been paid direct between Mr E. and ECH Ltd. This was the sole reference to the deposit on the Firm's file. An attendance note of a telephone conversation on 20 December 2007 between Mr M. of C. Bank Plc and the Second Respondent, confirmed that the lender client was aware of the sub-sale. The note also stated that C. Bank Plc "required confirmation of the availability of balance of purchase price from client and source of funds". A letter from the Second Respondent to C. Bank Plc dated 15 December 2007, five days prior to the telephone conversation, stated on behalf of the Firm "that our client has the sum of £937,500 being the balance required for the purchase of the above property. The money is from the proceeds of the sale of another property". The figure quoted was £154,109.70 less than the deposit recorded on the sale contract as deposit paid direct.

15. There was no written evidence on file that the Respondents informed C. Bank Plc of the price difference and the fact that the deposit had been paid by Mr E. direct.

16. C. Bank Plc's instructions to legal representatives included the following clause, "immediately legal completion has taken place the Bank requires you to submit the appropriate SDLT return and pay the SDLT due." On or about 24 December 2007, the Firm submitted a Land Transaction Return form to HMRC with a client account cheque for £150,000 for SDLT. The cheque cleared on 4 January 2008 but was cancelled the same day as it came from a cancelled cheque book. The Land Transaction Certificate was issued on 31 December 2007 and the purchase was registered at HM Land Registry. The cancelled cheque was not posted to the client ledger account. On file there was a letter dated 19 December 2007 from Mr E. to the Firm in which he stated that he would personally pay the SDLT.

17. After completion and registration there remained a client ledger account balance of £149,546. In a series of letters commencing on 19 December 2007 Mr E. instructed the Firm to pay the balance to FMH Ltd in three tranches of £100,000, £31,339.08 and £10,000. A Companies House search against FMH Ltd revealed that the Respondents were FHM Ltd's officers and that the First Respondent held the issued share capital. The FIO was unable to speak to Mr E. about the transaction as he was overseas at the time of the investigation and his telephone number was "unobtainable".

18. The Applicant was subsequently informed by C. Bank Plc that Mr E. defaulted on the Arthur Road advance. A Receiver was appointed on 10 September 2008. The property was sold for £2,200,000 on 30 September 2008, namely £1,550,000 less than the price recorded as having been paid on 24 December 2007.

<u>Deepdale</u>

19. It was alleged that the Respondents were not in control of all purchase monies; that a deposit had been paid directly by the purchaser; that there was an uplift on sub-sale of £1,250,000; and that there were unexplained payments to the vendor's solicitors.

20. On 7 December 2007 the Firm, and in particular Mr O, was instructed to act for Mr B. in his purchase of a property at Deepdale from ECH Ltd at a stated purchase price of £3,200,000. On 20 December 2007 the Firm was also instructed to act for C. Bank Plc, which was to provide Mr B. with mortgage funds of £2,400,000 in order to facilitate the purchase. The difference between the purchase price and the mortgage funds was £800,000. The Certificate of Title dated 20 December 2007 was signed by the First Respondent. The matter proceeded by way of simultaneous exchange of contracts and completion on 21 December 2007.

21. A telephone attendance note dated 20 December 2007 recorded that Mr O. contacted Mr M. of C. Bank Plc to inform him that there was a sub-sale. This was not subsequently confirmed to the Bank in writing.

22. An undated sale agreement and copy transfer form TR1 dated 21 December 2007 confirmed that ECH Ltd had purchased the property for a stated price of £1,950,000. There was no evidence on file that C. Bank Plc had been informed that there was a same day uplift in price of £1,250,000.

23. Clause 25 of C. Bank Plc's instructions to legal representatives stated that legal representatives "must not utilise the Home Loan Advance unless all the purchase monies including the deposit have passed through your Firm's Clients' Account". According to the client ledger account no funds were received by the Firm from Mr B. in respect of his purchase. By letter dated 20 December 2007 solicitors acting for the ECH Ltd notified the Firm that "the vendor has the deposit in the sum of £933,109.70". There was no evidence on file that the Respondents obtained confirmation of the payment from Mr B., or that they notified C. Bank Plc that the balance of funds required to complete was not under the Firm's control.

24. Post-completion the Firm sent a client account cheque for £128,000 to HMRC in respect of SDLT. The cheque was posted to the client ledger account on 21 December 2007 and cancelled on 4 January 2008, having been drawn from the cancelled cheque book. The Land Transaction Return was issued and registration at the Land Registry completed. The funds in respect of SDLT remained on client account until 18 August 2008, when a replacement cheque was issued and forwarded to HMRC.

25. On 18 February 2008, the sum of £48,960 remaining on Mr B.'s client ledger account was forwarded to ECH Ltd's solicitors. There was no client authority on file for the payment, nor any indication as to the transaction to which it related.

Woodside

26. It was alleged that the Respondents were not in control of all purchase monies; that a deposit had been paid directly by the purchaser; and that there was an uplift on sub-sale of £2,235,000.

27. On 31 January 2008, the Firm, and in particular the Second Respondent, was instructed to act for Mr B. E. in his purchase of a property at Woodside from ECH Ltd at a stated purchase price of £3,800,000. Customer Due Diligence information on file consisted of a copy of the photograph page of a United Kingdom passport, together with a Barclaycard credit card statement in Mr B. E.'s name dated December 2007. This statement indicated that Mr B. E.'s account had been suspended for non-payment and that his credit limit was £260.

28. On 31 January 2008 the Firm was also instructed to act for C. Bank Plc, which was to provide Mr B. E. with mortgage funds of £2,660,000 in order to facilitate the purchase. The difference between the purchase price and the mortgage funds was £1,140,000.

29. The Certificate of Title dated 1 February 2008 was signed by the First Respondent. The matter proceeded by way of simultaneous exchange of contracts and completion on 4 February 2008. A telephone attendance note dated 1 February 2008 confirmed that the Second Respondent contacted Mr M. of C. Bank Plc to inform him that there was a sub-sale. This was not subsequently confirmed to the Bank in writing.

30. Documents on file recorded that the registered proprietors had purchased the property for £1,040,000 on 6 July 2007. The uplift in price on sub-sale was therefore £2,235,000. C. Bank Plc subsequently notified the Applicant that they were not advised by the Firm of the uplift.

31. The only money received by the Firm to complete the transaction was the mortgage advance of £2,660,000. The sale contract recorded that a deposit of £1,296,461.75 had been paid direct between Mr B. E. and ECH Ltd. There was no evidence on file that the Respondents notified C. Bank Plc that a deposit had been paid direct and that the balance of funds required to complete was not under the Firm's control.

32. The Applicant was subsequently informed by C. Bank Plc that Mr B. E. had defaulted on his mortgage and that a Receiver had been appointed on 10 September 2008. The property was sold for £1,300,000 on 30 September 2008, namely £2,500,000 less than the price paid on 4 February 2008.

Greenview

33. It was alleged that the Respondents were not in control of all purchase monies; that a deposit had been paid directly by the purchaser; that the seller had owned the property for less than six months; that the purchaser received an incentive of 5% of the purchase price; and that the vendor's solicitor received 10% of the purchase price as an introduction fee.

34. On 24 June 2007, the Firm, and in particular Mr C., a trainee solicitor, received instructions to act for Mr EN, a practising solicitor, in his purchase of a property at Greenview from EIPS Ltd for a stated purchase price of £204,950. On 26 June 2007 the Firm was also instructed to act for PF Ltd, which was to provide Mr EN with mortgage funds of £184,455 in order to facilitate the purchase. The balance required to complete the purchase was £20,495.

35. PF Ltd's mortgage instructions required that solicitors must report if the contract between the seller and the buyer was part of a sub-sale and if the contract provided for a cashback incentive to the buyer or if part of the price was being satisfied by the seller. The solicitors were required to ensure that funds forming the balance of the purchase price had been deposited in their client account for transfer to the vendors' solicitors on completion. The Certificate of Title included provision that the seller had owned or been the registered owner of the property for not less than 6 months.

36. The Certificate of Title was signed by the First Respondent and forwarded to PF Ltd on 29 June 2007. A letter from the Firm dated 2 July 2007 notified PF Ltd that the transaction was proceeding by way of an "assignable contract".

37. Simultaneous exchange of contracts and completion took place on 6 July 2007. The contract documentation on file was for a sale from EIPS Ltd to Mr EN. However, the lease indicated that the transaction was a direct grant from the registered proprietor to Mr EN. EIPS Ltd had not owned the property for a period of six months. There was no evidence on file that the Respondents had informed C. Bank Plc of that fact.

38. A letter dated 26 June 2007 from EIPS Ltd's solicitors, I & Co, stated "additionally, we have received instructions from our client stating that 10% of the purchase price will be paid to I & Co Solicitors as introducers' fee, whilst 5% will be paid to your client marked as a gift". There was no evidence on file that Mr EN had been contacted by the Respondents to confirm this, or that PF Ltd had been notified of the incentives.

39. On 5 July 2007 I & Co wrote to the firm stating that EIPS Ltd had received £23,506.75 from Mr EN as a deposit paid direct. There was no evidence on file that the Respondents contacted Mr EN to confirm the direct payment or that PF Ltd had been informed that no purchase monies had been received direct from the client.

Barking Road

40. It was alleged that the Respondents were not in control of all purchase monies; that a deposit had been paid directly by the purchaser; that the seller had owned the property for less than six months; and that the vendor, by sub-dividing the property and issuing two leases to the purchaser, achieved a same day profit of at least £35,465.

41. On or about 6 May 2008 the Firm, and in particular Mr O., was instructed to act for Mr J. in his purchase of a property at Barking Road from FF Ltd for a stated purchase price of £195,000. On 24 April 2008 the Firm was also instructed to act for BM, which was to provide Mr J. with mortgage finance of £140,250 in order to facilitate the purchase. The balance required to complete the purchase was £54,750. The Certificate of Title dated 6 May 2008 was signed by the First Respondent.

42. FF Ltd purchased the freehold on 9 May 2008 for a recorded price of £245,000. On the same day FF Ltd granted two 125-year leases for £195,000 each, both of which were to be purchased by Mr J.

43. The only funds received by the Firm in respect of the transaction was the mortgage advance. The sale contract for Flat A recorded that a deposit of £58,467.75 had been paid direct by Mr J. to FF Ltd. This was confirmed by a letter from the vendor's solicitors dated 8 May 2008. There was no evidence on file that BM had been informed by the Respondents that the seller had not been the registered proprietor for six months or that the deposit had been paid direct. A Companies House search revealed that Mr J. was a director of FF Ltd and held one of the four shares then in issue. There was no evidence that the Respondents informed BM of the connection between FF Ltd and Mr J.

Newick Road

44. It was alleged that the Respondents were not in control of all purchase monies and that a deposit was paid directly by the purchaser.

45. The Firm, and in particular Mr O., was instructed to act for Ms W. in respect of the purchase of a property at Newick Road for the stated price of £400,000. On 24 May 2008 the Firm was also instructed to act for BM, in respect of its advance of £240,000 to Ms W. to enable her to complete the purchase. The balance required to complete was £160,000. The Certificate of Title dated 29 May 2008 was signed by the First Respondent. The vendor's solicitors stated by letter dated 23 May 2008 that Ms W. had paid the vendors £174,035 by way of direct deposit. The client ledger account confirmed that no funds had been received by the Firm from the purchaser to complete the purchase. This information was not reported by the Respondents to BM.

Allegation (v)

46. The allegation related to the purchase on behalf of Ms W. of the property at Newick Road. The Firm received correspondence from persons purporting to be Freeth Cartwright LLP of 26 Cleveland Road, South Woodford, London, acting for the vendor. Following receipt of the mortgage advance of £225,162.25, the vendor's purported solicitors failed to discharge the existing mortgage over the property and ceased communication with the Respondents.

47. Freeth Cartwright LLP existed as a firm of solicitors, but did not have a London office. There was no evidence on file that the Respondents had taken the steps recommended in the Council of Mortgage Lenders' Handbook, the Law Society Warning Card and the Law Society Mortgage Fraud Practice Note when they found themselves dealing with an unfamiliar firm of solicitors.

Allegation (vi)

48. The Respondents acted for the purchaser of Westwell Road. HW Solicitors acted for the vendor. Exchange of contracts took place on 23 June 2008 under Law Society Formula B and Mr O., an unadmitted clerk, undertook on behalf of the Firm, to forward to HW Solicitors that same day the purchaser's signed contract and to hold the deposit of £12,000 to HW Solicitors' order. HW Solicitors did not receive the signed contract. They wrote to the Firm on 18 September 2008 demanding the return of the £12,000 deposit in accordance with the Firm's undertaking.

49. By 10 April 2009, when a complaint was made to the Applicant, the undertaking had not been satisfied.

Allegation (vii)

50. Rule 12 of the Solicitors Code of Conduct sets out the scope of practice of a Registered Foreign Lawyer in England and Wales. Rule 12.03(5)(a) states: "Whether practising in your capacity as an RFL or not, you must not undertake work which you are not qualified or entitled to undertake by the law of England and Wales." Guidance Note 4(b) states: "If you are an RFL you are not a "qualified person" under the Solicitors Act 1974. Becoming an RFL does not confer any ... right to do or supervise reserved conveyancing ... An RFL who is a partner in an MNP cannot even do certain work which an employee of the MNP could do - ... or doing reserved conveyancing ... under the supervision of a solicitor".

51. The Second Respondent was described on the Firm's client care letters as the head of the conveyancing department. He acted on exchange of contracts and was the named reference on mortgagees' instructions received by the Firm. The Second Respondent completed a Professional History Form for the Applicant on 29 October 2008. In that form he stated that his area of work was conveyancing and that he supervised conveyancing staff.

Witnesses

52. No oral evidence was called.

Findings as to Fact and Law

53. The Tribunal was satisfied that the Respondents had been properly served with the proceedings by means of advertisement in The Times and the Law Society Gazette in accordance with the Order of the Tribunal dated 2 August 2010.

54. The Tribunal proceeded on the basis that all allegations against both Respondents were denied.

Allegation (i) - that the Respondents failed to keep books of account properly written up for the purposes of Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR")

55. The office side of the client ledger accounts had not been maintained accurately, and in several instances the narrative on the client ledger accounts was not sufficient to identify mortgage advances received. The Applicant submitted that this allegation was substantiated on the documents before the Tribunal to which reference was made in the Rule 5 Statement. There was no explanation from the Respondents as to why the books of account were written up as they were.

56. The Tribunal found this allegation as against both Respondents to have been substantiated on the facts.

Allegation (ii) - that the Respondents allowed client account to become overdrawn in breach of SAR Rule 22(8)

57. As at 30 September 2008 there was a cash shortage on current account of £10,556.35 attributable to debit balances on two client ledgers, and in particular that of Ms S. The Applicant submitted that this allegation was substantiated on the documents before the Tribunal. In a letter dated 20 May 2009 written to the Applicant's FIO by Geoffrey Williams QC on behalf of the Respondents, they agreed that there was a cash shortage of £10,556.35 as at 30 September 2008. The Respondents explained that the shortage was created in error, and replaced in part on the first day of the FIO's inspection and completely six days later. The error was said to have arisen due to duplication of a payment of Stamp Duty. There was no continuing shortage on client account. The Respondents also made it clear that the Second Respondent had conduct of the matter on which the error arose and that it was the First Respondent alone who had a mandate to operate the client account.

58. The Tribunal found this allegation as against both Respondents to have been substantiated on the facts.

Allegation (iii) - that the Respondents acted in conveyancing transactions that had suspicious characteristics in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 ("SCC")

59. This allegation related to the conveyancing transactions described in detail in the factual background. The Applicant relied on the Arthur Road transaction as the most serious example, and submitted that the transaction raised concerns about the Respondents' conduct. The Respondents' lender client, C. Bank Plc, lost £612,500, being the difference between the amount advanced to Mr E. and the ultimate sale price. Further, Mr Ryan for the Applicant informed the Tribunal that there were

outstanding claims against the compensation fund totalling in the region of £15,000,000-£16,000,000 in respect of conveyancing transactions carried out by the Firm.

60. By letter dated 15 December 2007, the Second Respondent informed the lender client on behalf of the Firm that Mr E. "had the sum of £937,500 being the balance required for the purchase of the property ... from the proceeds of sale of another property." When interviewed by the FIO, the Second Respondent agreed that he did not have evidence that his client held such funds but had relied upon what his client had told him. He also confirmed that the firm had not acted in the sale of the other property referred to in that letter. The Second Respondent denied that he had misled his lender client by confirming that Mr E. had £937,500 and that the source of the funds was a property sale. The deposit recorded on the sale contract as having been paid direct by Mr E. to ECH Ltd was £1,091,609.70. There was no evidence on file that the lender client had been informed that there had been an uplift in the sale price and that the deposit had been paid direct. The Second Respondent told the FIO that he had passed this information to the lender client by telephone, but this was not confirmed by documents on the matter file.

62. It was suggested by the Second Respondent during interview by the FIO that SDLT had been paid by Mr E. direct to HMRC. The balance of £141,339.08 on the client ledger account was, on Mr E.'s instructions it was said, paid out to a company called FMH Ltd, of which the Respondents were the company's officers and the First Respondent held the issued share capital. During interview the Second Respondent confirmed that the lender client was unaware that the Firm had not paid SDLT directly in accordance with its instructions or that the Firm had continued to hold part of the mortgage advance post-completion, no monies having been received by the Firm direct from Mr E.

63. The Second Respondent told the FIO that the payments to FMF Ltd were in respect of other property purchases by Mr E., but was unable to provide any specific details. When requested to do so by the FIO, the Respondents did not produce bank statements for FMH Ltd showing transfers from the Firm and payments to solicitors said to be acting for Mr E. in respect of the other property purchases where the vendor was FMH Ltd. The Respondents were unable to remember the address of the relevant property, but believed it might be in Dagenham. They were unable to recall the precise sale price but believed that the transaction took place in April 2008.

64. The Respondents had not attended before the Tribunal to provide an explanation in respect of the suspicious circumstances particularised in the Rule 5 Statement for each of the properties concerned, which could be summarised as failure to control all purchase monies; failure to report uplifts on sub-sales to lender clients; failure to report direct payment of deposits by purchasers to lender clients; failure to report to lender clients the fact that purchasers had settled SDLT liabilities direct; release of mortgage advance monies to FMH Ltd, a company owned and controlled by the First Respondent; unexplained payments to vendors' solicitors; transactions where vendors had owned properties for less than six months; a transaction where the purchaser and the vendors' solicitors received incentives; and finally a transaction where a vendor sub-divided a property and issued two leases to the same purchaser to achieve a same day profit of at least £35,465.

65. Explanations for the Respondents' conduct were provided in the 20 May 2009 letter from Geoffrey Williams QC to the FIO as follows:

- Bowden Road: The reference in the client ledger account to FF Ltd was a reference to the transaction in question and not a reference to the payer of the deposit. In any event the client was a director of FF Ltd, and therefore funds from that company were in effect the equivalent of funds from the purchaser. TMB, the lender client, was aware of the sub-sale, having been informed of the same by letter. The Respondents were unaware of the uplift until after completion. They were not put on notice of the connection between FF Ltd and Ms S.

- Arthur Road: This was a commercial loan transaction and therefore the terms of the Council of Mortgage Lenders' Handbook in respect of uplifts and directly paid deposits in particular did not apply. The Respondents had been informed by the client that the property was sold at a low price as a result of its distressed condition. The deposit was paid direct, and the Respondents received confirmation from the vendor's solicitors to that effect. They therefore believed that they had control of the deposit. The lender client was aware that this was a sub-sale, having been notified that it was such by the Second Respondent in accordance with his instructions. The fact of the directly paid deposit was plainly stated on the face of the contract, and the amount actually paid was greater than the amount required to complete. The Second Respondent had no reason not to trust his client or not to accept his instructions. Mr E. had informed the Firm that he would be personally paying the Stamp Duty. This was accomplished by the Respondents sending off the appropriate form with Mr E.'s personal cheque in accordance with his instructions. The amount retained after completion equated to the sum paid for Stamp Duty by the client and the Respondents had no alternative but to comply with the instructions of Mr E. with respect to payment out of those funds. The Respondents had little involvement in the subsequent transaction with FMH Ltd, which was largely dealt with by the Office Manager. The Respondents were entitled to rely on the confirmation received from other solicitors in relation to the deposit and to state to the lender client that the funds in question were from the client and not from any other source. The lender client's instructions did not specifically say that the Stamp Duty had to be paid by a cheque drawn on the Firm's account.

- Deepdale: The lender client was informed that the transaction was a sub-sale and of the uplift. The Respondents suggested that the lender client might not have made a note of the relevant telephone conversation. The solicitors for the vendor informed the Respondents that a direct deposit had been paid and the Respondents had no reason not to accept what they were told. Mr B. therefore did make a contribution towards the purchase price. The balance on client account was paid out in accordance with the verbal authority of Mr B., and the Respondents had no alternative but to comply with his instructions.

- Woodside: The Respondents believed that the lender client would satisfy itself with respect to the credit rating of the client, and that a mortgage offer would not have been made if the lender client was not so satisfied. The

Respondents informed the lender client by telephone that this was a sub-sale and the uplift was disclosed in a similar way. The Respondents suggested that the lender client had made no note of the telephone conversation. The Respondents repeated the explanation above in relation to the directly paid deposit. They submitted that Mr B. E. did contribute towards the purchase price. They also submitted that the fact that a Receiver had been appointed rather than a possession order being obtained pointed to the advance being commercial lending rather than residential lending, with different criteria applying.

- Greenview: The Respondents submitted that the trainee solicitor dealing with the transaction believed that it related to an assignment. It was not felt necessary to inform the lender client of the incentive paid to the purchaser because it was 5%. The payment of 10% of the purchase price made to the vendor's solicitor was not an incentive. The Respondents repeated their explanation in relation to the payment of the direct deposit. The Respondents considered that they did have control over that deposit.

- Barking Road: The Respondents repeated the same explanation in relation to the payment of the direct deposit. The Respondents took the view that Mr J. had contributed towards the transaction with his own funds.

66. The Respondents made general points in relation to the transactions as follows:

- Relevant information was communicated to lender clients by telephone. The Respondents regretted that they had not made detailed notes of such communications and accepted that with hindsight the information should have been conveyed in writing.

- Where deposits had been paid direct the Respondents had received confirmation from other solicitors that this was indeed the case and were entitled to rely on such assurances.
- It was accepted that the Respondents were insufficiently formal in their communications of certain information to their lender clients. However this was not the result of intent or an example of misconduct.

- These were a few cases out of a considerable volume conducted by the Firm without any apparent difficulty.

- Where Certificates of Title were signed this was done in good faith.

- Where cheques were issued on a cancelled cheque book these were pure errors and the result of confusion.

- The Respondents readily produced files for inspection by the FIO and assisted as much as they could save where difficulties were place in their way by others.

67. The Tribunal found the allegation to be substantiated on the facts supported by the extensive documentary evidence provided by the Applicant and considered in detail

by the Tribunal. The Tribunal did not accept the Respondents' explanations set out in the letter from Geoffrey Williams QC dated 20 May 2009. Taking the Arthur Road transaction as merely one example, the Tribunal was satisfied that the Respondents failed to be alert to suspicious features. The Second Respondent acted for Mr E. on behalf of the Firm. The First Respondent signed the Certificate of Title which triggered the release of the mortgage advance. The documents exhibited to the Rule 5 Statement provided ample evidence of the suspicious features of the transaction. The Respondents' failure to ensure that the Firm was in control of all purchase monies and that the mortgage advance was not released until the very substantial deposit required to complete the purchase was paid by Mr E. into client account contributed to a substantial loss of funds by the Respondents' lender client when Mr E. defaulted on the mortgage and the property had to be sold by the Receiver. The balance of the mortgage advance was paid out to a company in which the Respondents were officers and the First Respondent held the share capital on the instructions of Mr E. without any reference to or authority from the Respondents' lender client. The Respondents justified this payment by saying that they were acting on the instructions of their client and that the sums paid out were equal to the amount of SDLT paid by Mr E. to HMRC directly. Their suggestion that the Council of Mortgage Lenders' Handbook did not apply to the transaction because it involved commercial lending was found by the Tribunal to be unsatisfactory. Indeed no evidence was provided by the Respondents to support that contention.

68. The same or similar observations applied to all the transactions exemplified in the Rule 5 Statement. Each abounded with suspicious features to which the Respondents failed to be alert when they were acting for both the lender and the borrower.

Allegation (iv) - that the Respondents failed to act in the best interest of their lender clients in a number of conveyancing transactions in breach of Rule 1.04 of SCC 2007

69. It was alleged that by failing to disclose to their lender clients the information relating to the various conveyancing transactions described in detail in the Rule 5 Statement and summarised above the Respondents failed to act in their lender clients' best interest. The Respondents' only explanations for their conduct were those already referred to set out in the 20 May 2009 letter.

70. The Tribunal had no difficulty in finding that the information giving rise to the suspicious features of the conveyancing transactions as set out in the Rule 5 Statement had not been notified to the Respondents' lender clients. That information should have been disclosed in accordance with the instructions from those clients. The Tribunal therefore found the allegation substantiated on the facts supported by the documentary evidence and did not accept the Respondents' explanations. The total sum advanced by the various lenders involved in the sample transactions exceeded £5,830,000. The lender clients suffered significant financial losses, and there were claims pending said to be in the region of £15,000,000 or more. The Respondents' failure to disclose the information as instructed or at all, deprived their lender clients of the opportunity to make an informed choice as to whether or not to proceed with those mortgage advances and to reduce the risk of subsequent losses on the transactions.

Allegation (v) - that the Respondents failed to act in the best interest of their lender client when dealing with an unfamiliar firm of solicitors in breach of Rule 1.04 of the Solicitors Code of Conduct 2007

71. This allegation related to the purchase of the Newick Road property for Ms W., in which persons purporting to be Freeth Cartwright LLP (based at an office in Woodford, London) acted for the vendor. A mortgage advance from BM of £239,965 was received by the Respondents. The sum of £225,082.25 was released from the advance by the Respondents and, at the request of the persons purporting to be from Freeth Cartwright LLP, paid to a bank account in that Firm's name. The money was not returned to the Respondents on demand. The Applicant submitted that the Respondents had not taken steps to identify whether they were dealing with the genuine Freeth Cartwright LLP, a firm of solicitors based in the Midlands and without a London office. The Applicant submitted that it would have been the act of the reasonable solicitor to have taken care to make further investigations. The Applicant further submitted that the Council of Mortgage Lenders' Handbook, and the Law Society Warning Card and Mortgage Fraud Practice Note required solicitors dealing with an unfamiliar firm of solicitors to take certain steps, which the Respondents failed to do, and they therefore failed to act in the best interest of their lender client.

72. The Respondents provided no explanation for their conduct.

73. The Tribunal found the allegation substantiated on the facts as set out in the Rule 5 Statement supported by the exhibited documentary evidence.

Allegation (vi) - that the Respondents failed to comply promptly or at all with the terms of an undertaking given to Humphrey Williams Solicitors, in breach of Rule 10.05(1)(b) of the Solicitors Code of Conduct 2007

74. Mr O, an unadmitted clerk employed by the Firm, gave an undertaking to forward the purchaser's signed contract to HW Solicitors and to hold the £12,000 deposit to the order of those solicitors in respect of the proposed purchase of property at Westwell Road. HW Solicitors did not receive the purchaser's signed contract, and on 18 September 2008 demanded repayment of the deposit. The Respondents had not complied with the Firm's undertaking by 10 April 2009, by which point the Firm had been closed. The Applicant submitted that, as far as it was aware, the Undertaking had still not been complied with by the Respondents.

75. The Respondents had provided no explanation for their conduct. The current whereabouts of the deposit of £12,000 was unclear.

76. The Tribunal found the allegation substantiated on the facts.

Allegation (vii) - that the Respondents failed to make adequate arrangements for the supervision of the Firm's conveyancing work in breach of Rules 5.01 and 5.03 of the Solicitors Code of Conduct 2007

77. This allegation related to the role within the Firm of the Second Respondent, a Registered Foreign Lawyer. He acted for purchasers and lender clients in some of the sample transactions presented in the Rule 5 Statement. He also acted as supervisor of

the Firm's conveyancing work as head of its conveyancing department. The Second Respondent apologised in the letter dated 20 May 2009 for having transgressed the requirements of the Rules. He said that he had ceased to supervise and conduct conveyancing matters as at 1 April 2008. There was no explanation from the First Respondent as to why he had allowed the Second Respondent to conduct and supervise conveyancing transactions when he was not permitted to do so.

78. The Tribunal found the allegation substantiated on the facts.

Mitigation

79. The Respondents had not provided the Tribunal with any written submissions in mitigation and were not present to make oral submissions.

Costs Application

80. The Applicant claimed costs of £35,068.25. The case had involved a large amount of work, not least because matters came to the Applicant piecemeal with numbers of files having to be considered together with documents from the caseworker and material from various sources. The Applicant had had to prepare to deal with the case as a fully contested matter which had also increased costs. In the event the Respondents had not attended before the Tribunal. The Applicant submitted that it was nevertheless appropriate for both Respondents to meet the costs on a joint and several basis, so that they did not fall to be paid by the profession.

Previous Disciplinary Sanctions by the Tribunal

81. None.

Sanction and Reasons

82. The Tribunal applied the well-established principles laid down by the Court of Appeal in Bolton v The Law Society [1994] 1 WLR 512. It had found all allegations against the Respondents proved. Any solicitor who was shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanction.

83. The allegations were denied by both Respondents. They chose not to appear before the Tribunal to provide any explanation for their conduct or to demonstrate remorse for what occurred at the Firm. As a result of that conduct their lender clients lost substantial amounts of money. There were believed to be pending claims against the compensation fund in the region of £15,000,000-£16,000,000. Members of the public also suffered loss, for example, the purchaser of the Westwell Road property who lost his or her £12,000 deposit. A large claim against the compensation fund would have a direct and damaging financial impact on the solicitors' profession.

84. The First Respondent's misconduct had been extremely serious. He was the founding partner of the Firm, and the only partner with a mandate to operate its bank account. The Arthur Road, Deepdale and Woodside transactions involved multi-million pound purchase prices and advances. When signing the Certificates of Title the First

Respondent should have been particularly alert for suspicious characteristics. He should have been regularly reassuring himself that all was in order, and that any aspect of any transaction that was untoward was reported to the Firm's lender clients, either by himself or others. The sample transactions presented to the Tribunal had many worrying features: sub-sales, simultaneous exchange and completion, lack of control over purchase monies, uplifts on purchase prices, and so on.

85. The First Respondent appeared to have abdicated responsibility once matters had become difficult. He had disregarded the gravity of the situation and had absented himself from the hearing before the Tribunal, without explanation.

86. The Tribunal took into account the fact that the First Respondent was a relatively inexperienced solicitor and that he had not been solely responsible for what had occurred. However the Tribunal decided that, in order to protect the public and the reputation of the solicitors' profession, including the maintenance of the public's confidence in the profession, it was a proportionate and appropriate sanction for the First Respondent to be indefinitely suspended from practice as a solicitor. The Tribunal also wanted to make it clear that it would expect the First Respondent to provide a full explanation for his conduct before permitting him to practice again.

Second Respondent

87. The Second Respondent was a Registered Foreign Lawyer at the point at which the facts giving rise to the allegations arose. The Tribunal was informed by the Applicant that he continued to be so registered subject to conditions. The sanction available to the Tribunal in those circumstances was an order that the Second Respondent be suspended from the Register of Foreign Lawyers for an indefinite period. What the Tribunal said in relation to the First Respondent also applied to the Second Respondent. His conduct in the various conveyancing transactions with which he had been involved, both directly and as head of the Firm's conveyancing department had damaged the reputation of the solicitors' profession and exposed it to the cost of claims against the compensation fund. As is apparent from the letter dated 20 May 2009 written on the Second Respondent's behalf by Geoffrey Williams QC, he knew that he should not be involving himself in conveyancing matters, but pressed on regardless.

88. It should be made clear that if either Respondent considered that it was appropriate to depart from instructions from lender clients and/or the provisions of the Council of Mortgage Lenders' Handbook in any way, they should first have obtained express permission from lender clients to do so, after having first given those clients appropriate written advice.

Decision on Costs

89. The Tribunal had received no evidence of the Respondents' means. It was however satisfied that the Respondents should bear joint and several liability for costs in the slightly reduced amount of £34,800, such costs not to be enforced without leave of the Tribunal. Costs had been reduced to reflect the shortened hearing. This would provide an opportunity for the Respondents to put forward representations in relation to their ability to pay costs should the Applicant choose to make an application to

enforce the Order. The Tribunal would then be able to satisfy itself as to the potential effect on the Respondents of enforcement.

Order

90. The Tribunal Ordered that the First Respondent, Matthew Apau Obeng, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 15th day of November 2010 and it further Ordered that he be jointly and severally liable with the Second Respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £34,800.00, such costs not to be enforced without leave of the Tribunal.

91. The Tribunal Ordered that the Second Respondent, Adeyoye Adeyemi (also known as Adeyemi Adeyemi), registered foreign lawyer, be suspended from the Register of Foreign Lawyers for an indefinite period to commence on the 15th day of November 2010 and it further Ordered that he be jointly and severally liable with the First Respondent to pay the costs of and incidental to this application and enquiry fixed in the sum of £34,800.00, such costs not to be enforced without leave of the Tribunal.

Dated this 19th day of January 2011
On behalf of the Tribunal

E. Richards
Chairman