SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10603-2010
Case No. 10750/2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

LESLEY MARIANNA ALBERICI — Respondent

Before:

Mrs J. Martineau (in the chair)
Mr K. W. Duncan
Mr M. Palayiwa

Date of Hearing: 30th January 2012 - 3 February 2012

Appearances

Richard Coleman, counsel of Fountain Court Chambers, Temple, London EC4Y 9DH for the Applicant.

Paul Parker, counsel of 4 New Square, Lincoln's Inn, London WC2A 3RJ for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent in relation to clients Mr J, Mr and Mrs Fain (joint instructions), Mr C-I, Mr B and Mr M and Mr H (joint instructions) were that:

1.1 She failed to provide clear and accurate information to clients and in so doing compromised her integrity and the good repute of the profession in breach of Rule 1 of the Solicitors' Practice Rules 1990 ("SPR");

1.2 She failed to act in her client's best interests, contrary to Rule 1 of the SPR;

1.3 She made misleading representations to clients;

1.4 She failed to place fees received from clients within client account as required by Rule 19 of the Solicitors Accounts Rules 1998 ("SAR");

1.5. She failed to keep books of accounts properly written up for the purposes of Rule 32 of the SAR;

1.6 She provided a service so poor as to amount to professional misconduct in breach of Rule 1 of the SPR;

1.7 She failed to comply promptly or at all with Directions dated 16 June 2009, 12 November 2009 and 13 November 2009 made by an Adjudicator of the Legal Complaints Service ("LCS"), acting pursuant to delegated powers;

1.8 She failed to deal with correspondence from the Solicitors Regulation Authority in an open, prompt and co-operative way, or at all;

1.9 She provided legal services and carried out reserved work from or whilst sufficiently connected to an entity not regulated by the Law Society or Solicitors Regulation Authority, contrary to Rule 1 of the SPR and, post July 2007, contrary to Rules 12 and 21 of the Solicitors' Code of Conduct 2007 ("SCC");

1.10 She acted as a solicitor whilst uncertificated;

2. Further allegations against the Respondent in relation to Mr A, Miss R, Mr R and Ms P ("Mr A and friends") (joint instructions) were that:

2.1 She failed to provide clear and accurate information to clients and in so doing compromised her integrity and the good repute of the profession in breach of Rule 1 of the Solicitors' Practice Rules 1990 ("SPR");

2.2 She failed to act in her client's best interests, contrary to Rule 1 of the SPR;

2.3 She made misleading representations to clients;

2.4 She provided a service so poor as to amount to professional misconduct in breach of Rule 1 of the SPR.

3. A second Rule 5 Statement dated 17 May 2011 was filed under case number 10750/2011 and was consolidated with the existing proceedings on 28 July 2011. The purpose of the additional Rule 5 Statement was to seek orders that Adjudicator's Directions be enforced as if they were contained in an Order made by the High Court pursuant to Paragraph 5 (2) of Schedule 1A of the Solicitors Act 1974.

Documents

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

Applicant:

- Application dated 25 August 2010
- Rule 5 Statement dated 25 August 2010
- Rule 7 Statement dated 17 May 2011
- Second Application dated 17 May 2011
- Second Rule 5 Statement dated 17 May 2011
- Civil Evidence Act Notices dated 15 September 2010, 15 April 2011, 27 May 2011 and 1 August 2011
- Exhibit Bundles "JCM1" (I and II), "JCM2", "JCM3" and "JCM4"
- Bundle of Rules and Authorities
- Witness Statement of Mr David Fain and exhibit bundle "DF/1" dated 15 April 2011
- Witness Statement of Mr MSB and exhibit bundle "MSB/1" dated 27 January 2012
- Counsel's Note and Chronologies dated 25 January 2012
- Counsel's Second Note dated 27 January 2012
- Counsel's Third Note dated 3 February 2012
- Statement of Costs dated 2 February 2012

Respondent

- Defence to the Rule 5 and Rule 7 Statements dated 15 November 2011
- Rule 4 Statement of the Respondent and exhibit bundle "LMA1" dated 18 November 2011
- Statement of Means dated 25 January 2012
- Counsel's Note dated 2 February 2012
- Testimonials

Factual Background

5. The Respondent was born on 27 February 1964 and admitted as a solicitor on 3 July 2000. According to the records of the Applicant, the Respondent had not held a

Practising Certificate since 12 November 2008. The Respondent's name remained on the Roll of Solicitors.

6. The Applicant's records showed that the Respondent had carried on practice in partnership under the style of Conveyancing UK ("the firm") (firm identification number 349079). Conveyancing UK had commenced trading on 19 September 2001 and had ceased to trade on 6 May 2002.

7. At all material times the Respondent had carried on practice in partnership and later on her own account under the style of CUK Solicitors (firm identification number 330827) of 21-25 Coleshill Street, Sutton Coldfield, West Midlands, B72 1SD. Records held by the Applicant showed that CUK Solicitors had commenced trading on 1 November 2000 and had ceased to trade on 30 September 2008.

8. In or about 2005, a prospective property development located in Spain, the Estepona Beach and Country Club ("EBCC") had been advertised in the UK national press. Ocean View Properties ("OVP") had promoted the scheme and represented the developers in the UK. OVP had been a trading name of OVP International Limited. Purchasers of EBCC properties had been required to pay initial deposits to OVP. The intended developer of the scheme had not owned the land on which the development was to have been constructed and no buildings licence (the equivalent of planning permission) had ever been granted by the relevant Spanish authorities.

9. OVP International Limited had gone into compulsory administration in or about July 2009.

10. During the period 2003 to 2007 approximately, the Respondent's firm had acted for prospective purchasers of properties in Spain; this included in 2005 and 2006 clients Mr J, Mr and Mrs Fain, Mr C-I, Mr B and Mr M and Mr H in relation to EBCC and in 2003 Mr A and friends in relation to another Spanish development. In total, the Respondent acted in over one hundred Spanish property transactions similar to the six exemplified transactions the subject of the allegations before the Solicitors Disciplinary Tribunal ("the Tribunal").

Mr and Mrs Fain

11. By letter dated 24 June 2005 and headed "Conveyancing Spain" Mr and Mrs Fain had been requested, inter-alia, to provide an advance payment of £464.63 in respect of legal fees. The letter had been signed as Conveyancing UK. The foot of the letter stated that the partnership comprised of the Respondent and Mr RP and indicated that Conveyancing Spain was a department of Conveyancing UK Solicitors, regulated by the Law Society.

12. On 7 July 2005, Conveyancing Spain/Conveyancing UK wrote to Mr and Mrs Fain and acknowledged receipt of £464.53. During the course of their dealings with the Respondent's firm, Mr and Mrs Fain were provided with copies of the following documents:

- "Investing In A New Build? Make sure you know the ground rules!";
- "Step-by-step guide to buying a Spanish property off – plan";

- "Spanish New Build Purchase Money Laundering Advice and Information";

13. Mr and Mrs Fain also received a document produced by Conveyancing Spain entitled "Client Care and Terms of Business – Instruction Form" the content of which included the following text:

    - "All Solicitors have an obligation to their clients to make it clear from the outset of any matter the likely costs involved.....";

    - "Spanish developers may be represented by Agents or Lawyers who will submit documentation to you and conduct the transaction on their clients' behalf. Once we have received a copy of the Contract from the developers or their Agents or Lawyers, we will send a "Contract Pack" report by post to you";

    - "A fixed fee of 1% is charged for acting on your purchase. This fee covers our services to you in the initial stages of the transaction and the services of our Spanish associated Solicitor to complete the purchase. Our services include receiving your instructions, opening a file, receiving your Contract and approval of the same, reporting to you with our "Contract Pack" report, and answering any general enquiries you may have relating to the Contract";

    - "By signing the instruction form at the end of this brochure, you will be deemed to have formally instructed us, and a file will be opened".

14 The Instruction Form bore the Conveyancing Spain logo and contained the following introduction:

> "In order for us to proceed with your matter, please sign below to confirm that you have read and understood our Client Care and Terms of Business. Please note that we cannot proceed with your matter without you signing this form to formally instruct us".

15. Mr and Mrs Fain also received a document headed "Frequently Asked Questions" ("FAQs"), the introduction to which document included the following text:

    - "I have taken the opportunity to consider some of the other issues that affect your obligations under the Contract you have (or may) entered into with a Spanish developer. May I point out that Ocean View has no contractual obligation to you, as they are not the developer, but the developers Agents";

    - "this is my legal advice to you as my client, and takes into account our own extensive experience of matters not too dissimilar to that when we act for buyers on new build "off – plan" developments here in England";

    - "Our obligations are to you as our clients. However, this obligation also requires us to advise you of your position as it is, and, unfortunately this is not always as you would perceive it or want it to be".

16. The FAQs document also stated in the context of any dispute which might arise between the parties to the contract:

> "….Should any legal dispute between you and the developer get to such an unfortunate stage, it will be for YOU, as our client, to decide if you wish to take the matter to litigation. We can only advise you of the options open to you. We cannot make that decision for you".

The FAQs document further stated:

> "Ocean View are the Agents, and they have no obligation to us, as solicitors, under your Contract to keep us informed of the progress of your property. If, however, we are made aware of anything we believe is of interest to you, we shall advise you to this affect (sic)".

17. The Contract Report was provided to Mr and Mrs Fain by letter dated 7 July 2005 on the headed stationery of Conveyancing Spain. Amongst other matters, the Report advised:

- that no payments would be made to the developer until receipt and approval of the bank guarantee;
- that Ocean View would hold funds until the issue of a bank guarantee or insurance;
- that a bank guarantee or insurance could only be provided once a building licence had been issued.

18. Under a heading "Paying the sellers/developers Agents", the Report further advised Mr and Mrs Fain:

> "Your Spanish Lawyers understand the seller/developers Agents have obtained "Criminal Theft" Indemnity Insurance to protect the buyers deposit monies whilst they hold this for the seller/developers, a copy of which can be obtained from their Agents".

19. On 20 July 2005 Mr Fain wrote to the Respondent and raised questions for clarification, including matters concerning the timing of the application for the buildings licence and in respect of the bank guarantee/insurance. Also on that date Mr Fain wrote to Mr O'D at OVP and raised a number of questions for clarification. Mr Fain expressed his understanding that there was an option to pay deposit money to OVP "or to our solicitors to hold on instructions until the building licence is granted". Mr Fain also sought clarification as to when the buildings licence might be granted.

20. By letter dated 26 July 2005 the Respondent's firm informed Mr and Mrs Fain that their letter had been forwarded for the attention of J Olleros & Asociados ("JO"). On 29 July 2005 the Respondent's firm wrote to Mr and Mrs Fain and enclosed what was described as the response of JO to the questions raised.

21. On 29 July 2005 Mr O'D of OVP replied to Mr Fain by e-mail and confirmed, inter-alia, the existence of an option to pay deposit money to Mr Fain's solicitors or OVP to hold on instructions until grant of the building licence. He confirmed that OVP had a bonded indemnity policy in place which provided cover against losses incurred so that all client monies held would be safe. Mr O'D referred to this as being something of which Mr Fain had already been informed by his solicitors.

22. By fax dated 16 August 2005 Mr Fain had received details of arrangements under which clients' money would be held by Conveyancing Spain, including rates of interest and charges that would be applied. Mr and Mrs Fain made two payments to OVP, on 31 May 2005 two amounts of €7,100 and on 16 September 2005 the sum of €87,550.

23. In June 2009, Chubb Insurance informed Mr Fain that the only party entitled to claim for losses under the OVP "Crime Policy" was OVP International Ltd, since it was a first party policy and the policyholder was the party which suffered loss.

24. On 13 November 2009, an Adjudicator of the Legal Complaints Service ("LCS") acting pursuant to delegated powers, made a finding that the firm had provided inadequate professional service and directed, inter alia:

- the Respondent pay £10,000 to Mr and Mrs Fain as compensation for the financial effects of the inadequacies of service;
- the Respondent pay £5000 to Mr and Mrs Fain as compensation for the distress and inconvenience arising from the inadequacies of service;
- the Respondent waive any rights to charge for her services or those of her former firm and refund the sum of £464.53 to Mr and Mrs Fain.

25. Four other exemplified transactions were detailed in the First Rule 5 Statement, namely Mr J, Mr C-I, Mr B, Mr M and Mr H (joint instruction) which followed a similar pattern. In the case of Mr J only, the Respondent had complied with the Adjudicator's direction.

Mr A and friends

26. In or about November 2003, Mr A and friends paid a reservation fee of €7,000 to OVP in relation to the joint purchase of an apartment at Los Corales de Estepona ("Los Corales"), receipt of which was acknowledged by letter from OVP dated 7 November 2003. The letter advised the purchasers that if their intention was to instruct a solicitor, it would be advisable to choose one specialising in the conveyance of Spanish property. Conveyancing UK was recommended as the solicitor used by the majority of OVP clients. The letter gave the Respondent's contact details and enclosed forms for the appointment of Conveyancing UK for completion and return to OVP.

27. Mr A and friends signed Conveyancing UK's terms of business on 9 November 2003. The terms of business indicated that the Respondent had overall responsibility for the

matter. After the Contract had been signed Mr AC (of the firm C in Marbella in Spain) would advise on the Spanish aspect of the purchase.

28. By letter dated 20 November 2003 the Respondent acknowledged receipt of instructions from Mr A and friends. The Respondent advised that she would write again with the Spanish Contract Pack to help them understand the terms of the Contract to be provided by OVP.

29. On the 5 December 2003 OVP wrote to Mr A and friends and acknowledged receipt of €7000 and enclosed a purchase agreement. Mr A and friends were informed that they would be required to pay a deposit of €39,162 within ten days, followed by €40,648 within three months of receipt of the Contract. The balance of the purchase price was payable upon "building completion".

30. Mr A and friends received a letter from the Respondent dated 18 December 2003 which bore the heading "Your Spanish Contract Pack". Several documents were itemised as enclosures. The letter gave advice regarding a Bank Guarantee/Insurance to be provided by a bank/insurance company. The following paragraph was emphasised:

> "We will not release your signed Contract or any monies to the Developer until we have a copy of the Bank Guarantee or Insurance. Once received, our associate solicitors will checklist to ensure it is in order".

The letter then advised:

> "We will not release your signed Contract, deposit or initial stage payments to the Developer until we have all the requisite documents in place" and "Upon receipt of your signed Contracts, these will be released to the developer for signing, thus creating a formal exchange of Contract. At this point, your deposit money will be released to the developer, of course subject to the Bank Guarantee being in place. Should you wish to give your express authority for either ourselves of (sic) Ocean View NOT to release any money to the developer upon issue of the Building License and Bank Guarantee, please do so in writing to us, with a copy of the same to Ocean View".

31. The purchasers were informed of the information required to accompany an authority of that kind and warned of the possible consequences should they decide to proceed in such a manner. The letter further informed Mr A and friends of the payments required upon signing the Contract. Two options were given in respect of such payments, one being to pay OVP and thereby to benefit from a favourable currency exchange rate, or alternatively, to pay monies to Conveyancing UK to hold.

32. Under the subheading "What happens to my money whilst it is in Conveyancing U.K.'s account?", the Respondent's letter gave the following information:

> "We will open a special Designated Client Deposit Account in Euros with our bank in YOUR name. Every payment made by you whilst we retain the Contract, pending our receipt of any outstanding documents from the Seller/Developer will be transferred from our general client account to your

> Euros account. You will benefit from any interest paid on your monies for the period your money is in your account. .....Once we have all the requisite documents in place, we will then close your account and transfer the monies to the Seller/Developer".

33. Included with the letter of 18 December 2003 was a bill of costs from Conveyancing UK dated 17 December 2003 in the sum of £662.22. The bill gave a VAT registration number for the firm. The amount of VAT was not itemised.

34. In January 2004 Mr A and friends paid the first deposit instalment amounting to €40,000 to Conveyancing UK, receipt of which was acknowledged by the firm by letter dated 21 January 2004 and signed by Ms AR of Conveyancing UK.

35. By e-mail dated 3 March 2004, Ms AR wrote to Mr R in response to his enquiry of the previous day. Ms AR advised that there had been no further developments in the purchase and that OVP were waiting for the Bank Guarantee to be issued. Mr R was informed that he would be provided with a copy of the Bank Guarantee upon receipt of such by the firm from OVP. It was said that a Building Licence had been issued and works "would have started" despite there being no Bank Guarantee in place. Mr R was reminded that he was required to pay the balance of purchase monies in the sum of €39,810 by 14 April 2004.

36. By e-mail dated 12 March 2004, Mr R informed Ms AR that a further €40,000 would be received by Conveyancing UK within days. Ms AR confirmed receipt of €40,000 "into our General Euro Account on 15th March 2004". OVP was to be advised accordingly.

37. By e-mail dated 1 June 2004, Mr R wrote to Ms AR and informed her of a letter received from OVP which advised that they had "received all the funds for the 40% down payment". Mr R asked "Is this correct, if so I assume you have received a suitable bank guarantee from the developer".

38. Mr A and friends received a letter dated 4 June 2004 which confirmed receipt of the Developers Insurance, confirmation of which was said to be enclosed and stated "we are currently awaiting the hard copy and will forward to you once we are in receipt of it". The letter requested the purchasers sign a letter of authority for release of their part of the signed contract to OVP. Attention was drawn to protection afforded by the Developers Insurance.

39. A Barclays Bank statement of account in the account name "Conveyancing UK Client re R and P", addressed to Mr [sic] LM Alberici of Conveyancing UK recorded receipt of €40,000 on 3 February 2004 and receipt of €40,000 on 23 March 2004. The statement showed a transfer out of the account of approximately €80,000 on 18 May 2004 and a closing balance of interest transferred out on 21 May 2004.

40. A further letter to Mr A and friends dated 4 June 2004 confirmed that the necessary documents were in place and that the contracts needed to be signed by the developer. The letter requested the purchasers sign an enclosed letter of authority to confirm their agreement to the release of their parts of the Contract to OVP for forward transmission to the developer.

41. Both letters dated 4 June 2004 were signed by Ms AR on behalf of the Respondent. The letters were produced on headed paper of Conveyancing Spain. The foot of the letters indicated Conveyancing Spain was a department of Conveyancing UK Solicitors and was regulated by the Law Society. Mr A and friends signed the required authority for release of the Contracts by Conveyancing UK to OVP for forward transmission to the developer.

42. By e-mail dated 19 February 2006 Mr R and Ms P wrote to Ms SB at Conveyancing UK and complained that OVP were not responding to their e-mails and requested information regarding the progress of the purchase. Ms SB responded on 24 March 2006 and said that Mr R and Mrs P should have received a booklet which gave information regarding completion of the development in June/July 2006 but that Conveyancing UK had not heard anything.

43. On 30 March 2006 the Respondent wrote to Mr A and friends and advised that matters were reaching the stage such as required the involvement of one of the firm's Spanish associate lawyers. The Respondent advised that she had worked with three firms in Spain who had provided a high level of service to her clients in completing their purchases. The firm's were ADVC, GV&AA ("GVAA") and JO. The purchasers were informed that they would be advised which of the firm's associate Spanish lawyers would be responsible for completing the purchase.

44. Mr A and friends experienced difficulties obtaining information regarding the purchase and in September 2007 instructed Messrs A to obtain the insurance and other documentation referred to in correspondence from Conveyancing UK. By letter dated 11 December 2007, Conveyancing UK provided Messrs A with a copy of a letter from GVAA which was said to have been provided by OVP. GVAA was described as Conveyancing UK's associate lawyers in dealing directly with the developer and approving all legal documentation. The letter further advised:

> "In reliance of this letter/confirmation, the clients deposit monies was (sic) transferred to the selling agents. However, we are unable to locate a copy of the said developers insurance on our files".

45. By letter to Messrs A dated 31 December 2007, Conveyancing UK expressed concern that GVAA had denied knowledge of the fax dated 7 May 2004. The letter set out the firm's view of the relevance of the developers insurance and referred further enquiries regarding the whereabouts of the deposit monies to OVP.

46. Mr A and friends complained to the LCS. On 15 April 2010, an Adjudicator of the LCS made a finding that the firm had provided inadequate professional service. These matters were considered by an Authorised Officer of the Applicant on 17 May 2011 and authorised for inclusion in the Respondent's existing referral to the Tribunal.

47. On various dates between September and December 2009 the Applicant had written to the Respondent (c/o RHF Solicitors) and requested her response to the matters of professional conduct set out in those letters.

48. In the absence of any substantive response, between October and December 2009 the Applicant had again written to the Respondent in respect of her failure to respond to

the previous letters. The Respondent failed to provide any substantive response to those letters or to subsequent correspondence from the Applicant.

49. This matter was considered by an Adjudicator of the Applicant on 11 December 2010 when a decision was made that the Respondent's conduct should be referred to the Tribunal. On 18 December 2010 the Applicant wrote to the Respondent and notified her of the Adjudicator's decision.

50. No client ledgers were evident for those matters where the Respondent had received client monies.

51. The LCS received complaints from twenty of the clients for whom the Respondent's firm had acted in the Spanish property matters including Mr and Mrs F, Mr A and friends, Mr J, Mr C-I, Mr B, Mr M and Mr H, regarding the Respondent's conduct and the quality of service provided by the Respondent's firm. In due course, the LCS referred matters for the consideration of Adjudicators.

52. The Adjudicators made findings that the firm had provided inadequate professional service in all twenty complaints and gave directions for payment by the Respondent of compensation and made directions in respect of costs charged for the services which had been provided.

53. The Respondent failed to satisfy nineteen of the awards made.

54. In each matter, the Respondent had been directed to comply with the directions within seven days. The Adjudicators stipulated that non-compliance with their directions would result in reference, without further notice, to the Applicant to consider making applications to the Tribunal. The Respondent and/or her solicitor representatives had been informed of the decisions by letter and/or e-mail correspondence.

55. The Respondent failed to comply with the Adjudicators' directions other than in the matter of Mr J. Those matters were considered by an Authorised Officer of the Applicant on 17 May 2011 when a decision was made to refer the Respondent's conduct to the Tribunal.

Hertford Avenue

56. On 7 April 2008, a letter was written to R Solicitors on the headed paper of Conveyancing UK & Overseas which responded to enquiries in connection with a property Hertford Avenue. The letter bore the reference JB/3387-1 and was signed as Conveyancing UK Limited and transmitted by fax on 7 April 2008. The foot of the letter provided the company registration number for Conveyancing UK Limited and the organisation's address as 21-25 Coleshill Street, Sutton Coldfield, West Midlands B72 1SD.

57. The fax header sheet under which the letter of 7 April 2008 was transmitted included a request for the recipient to forward the letter to the Respondent "who is currently in a meeting with LR at your office".

58. On 8 April 2008 a letter was written to C Solicitors on the headed paper of Conveyancing UK & Overseas in connection with Hertford Avenue. C Solicitors were advised that Mr RB was the client and the intended purchaser of the property. The letter bore the reference JB/3367/3387-1 and was signed as Conveyancing UK Limited.

59. On 14 April 2008 CUK Solicitors (of 21-25 Colehill Street, Sutton Coldfield, West Midlands B72 1SD) wrote to C Solicitors in connection with Hertford Avenue and undertook to transfer £100,000 on completion of the purchase of Hertford Avenue. The letter bore the Respondent's name and reference LA/JB/3367. The foot of the letter showed the Respondent as the principal of CUK Solicitors. CUK Solicitors was recorded as being the trading name of Conveyancing UK Solicitors, regulated by the Applicant.

60. On 16 April 2008 Conveyancing UK Limited wrote to Mr RB (under reference JB/3387-1) and advised that the simultaneous sale and purchase of Hertford Avenue had been completed that day.

61. On 11 September 2008 Conveyancing UK Limited wrote to Mr RB (under reference JB/LB/3387-1) in respect of Hertford Avenue and informed him that his application for registration of the transaction had been cancelled by the Land Registry.

62. On 20 March 2009 Mr IT, who signed as a director of Conveyancing UK Limited (c/o 21–25 Coleshill Street, Sutton Coldfield, West Midlands B72 1SD) wrote to Mr RB and informed him that Conveyancing UK Limited had ceased trading on 30 September 2008. Mr IT confirmed his authorisation for the Respondent to correspond with Mr RB in connection with Hertford Avenue. The Respondent was referred to as having been the principal of CUK Solicitors. The letter bore the reference LA/Brown.

63. On 20 March 2009 the Respondent wrote to Mr RB (under reference LA/Brown) in connection with Hertford Avenue and informed him that CUK Solicitors had ceased to practice on 30 September 2008 and that she had been the principal of that firm. The Respondent advised that she was completing the outstanding work on the files of Conveyancing UK Limited and, in this regard, was unable to complete registration of his property with the Land Registry until she was in receipt of the Stamp Duty Land Tax ("SDLT") Certificate from the Inland Revenue. The Respondent's letterhead described her as a "Legal Consultant in Compliance, Property and Financial Claims".

64. The Respondent wrote to Mr RB on 17 April 2009 (under reference LA/Brown) and informed him that the purchasers of Hertford Avenue were unable to complete registration and were becoming impatient.

65. On 30 April 2009 the Respondent wrote to HM Customs & Revenue Stamp Taxes Office (under reference LA/Brown) in connection with Mr RB and Hertford Avenue and advised that the firm CUK Solicitors had ceased to practice on 30 September 2008, that the Respondent had been the principal of that firm and had been "instructed by Conveyancing UK Limited to deal with the registration" of the property with the Land Registry.

66. On 30 April 2009 Mr IT signing as a director of Conveyancing UK Limited wrote to HM Customs & Revenue Stamp Taxes Office under reference LA/Brown and advised that Conveyancing UK Limited had acted for Mr RB in the simultaneous purchase and sale of Hertford Avenue. Mr IT advised that his company had ceased trading on 30 September 2008. He asked that any response to the letter be sent to the Respondent.

67. On 22 June 2009 the Respondent wrote to R Solicitors LLP (under reference LA/Brown) in respect of Hertford Avenue and enclosed a Land Transaction Return Certificate.

68. The Applicant had no record of Conveyancing UK Limited, Conveyancing UK Solicitors, Conveyancing UK & Overseas and Conveyancing Spain. As stated, Conveyancing UK had ceased to trade on 6 May 2002 and CUK Solicitors had ceased to trade on 30 September 2008.

69. Companies House documentation showed that the Respondent had been appointed as a director of Conveyancing UK Limited on 7 April 2005 and that she had resigned from her position on 22 March 2007.

70. The Respondent had last held a practising certificate for the practice year 2007/2008 and had not been certificated since 12 November 2008.

71. These matters were raised by the Applicant with the Respondent in correspondence dated 29 October 2009 and 3 March 2010 to which there had been no substantive response from the Respondent. The matter had therefore been considered by an Authorised Officer of the Applicant and had been authorised for inclusion in the Respondent's existing referral to the Tribunal.

Witnesses

72. Mr David Fain and the Respondent gave evidence.

Mr David Fain

73. Mr Fain was sworn into evidence and affirmed the truth of his witness statement and exhibit bundle dated 15 April 2011. Mr Coleman confirmed that Mr Fain's statement stood as his evidence in chief.

74. Mr Coleman referred Mr Fain and the Tribunal to paragraphs 15 and 16 of his witness statement which referred to a letter he and his wife had received from OVP dated 1 June 2005. The letter stated:

> "We acknowledge receipt of your signed reservation form and reservation fee of £5000/€7,100...
> If using a solicitor we would advise that you choose one who specialises in the conveyancing of Spanish property. The majority of our clients who use a solicitor have used J.Olleros & Asociados and their agents Conveyancing Spain, (details below), an independent firm who offer competitive rates and who have vast experience within this market".

75. Mr Fain confirmed that enclosed with the letter had been a number of documents including a "Proceeding to Contracts Notice", a "Spanish New Build Purchase – Client Information Form", "Conveyancing Spain – Money Laundering Advice and Information", a Money Laundering declaration, a "Law Society – Regulations mean you must prove who you are" document and a "Photographic Identification Form". Mr Fain said that he had received two copies of these documents as he had originally reserved two plots but had only proceeded with one.

76. Mr Coleman referred Mr Fain to paragraph 17 of his statement and Mr Fain confirmed that he had also received a document entitled "Investing In A New Build – Make sure you know the ground rules!" which showed a photograph of the Respondent and appeared to have been written by her. Mr Fain said that he and his wife had not been put under pressure to use Conveyancing Spain (the Respondent's firm) but that, having fully considered the matter, they had been influenced by certain points. This had included that in Conveyancing UK's client care and terms of business brochure under the heading "Good Practice Matters" it had stated:

> "Miss Lesley Alberici, a Partner of this firm, has the overall responsibility for your file and will deal with any legal queries you may have. Her assistants in the Spanish Conveyancing Department are able to deal with administrative enquiries only".

77. Mr Fain confirmed that the firm had also provided a form, which bore the Law Society logo and the words "New Government Regulations mean you must prove who you are" and this had been emblazoned white on a black background just below the firm name "Conveyancing Spain a department of Conveyancing UK".

78. Mr Coleman referred Mr Fain to a letter dated 7 July 2005 from the Respondent's firm to Mr and Mrs Fain. Mr Fain confirmed that he had been aware of the risk in buying the property "off-plan" in that he had had to transfer monies before the property had been built but he said that he had been led to believe that the bank guarantee stood behind the development and ensured that it was completed or that monies would be refunded if not, for whatever reason. The letter of 7 July 2005 had also stated:

> "Please Note: When you purchase a New Build property in England from a Developer, this Guarantee is <u>not</u> provided".

79. Mr Fain said that this had led him to believe that this was an added safeguard compared with the UK property legal system.

80. In response to a question from Mr Parker, Mr Fain confirmed that he had a background in asset finance and that he had worked in litigation for approximately eight years after he had left school albeit in a very junior role for the first four years. He said that he liked to think he knew his way around a contract document.

81. In relation to the OVP letter dated 1 June 2005 and the various enclosed documents, Mr Fain agreed that reference to the "Spanish Lawyer Instruction Form" should have been included at paragraph 16 of his witness statement. He acknowledged that the

document appeared to have a page number "2" but could not recollect whether there had been a page number "1" and could not recall having seen it.

82. Mr Fain acknowledged that the document referred to Conveyancing Spain as Agents for JO and stated, inter alia:

> "Should you decide not to proceed with the transaction, for whatever reason, J.Olleros & Asociados appoints Conveyancing Spain to act as their Agents in the collection and recovery of their fees based upon the above fee scale".

83. Mr Fain said, however, that he did not accept that JO had been acting for him and his wife and that the Respondent had been their Agent. He said that there were a number of documents he had relied on and this had been only one of those documents. He said that it had been far from clear and he had genuinely believed that Conveyancing UK/Spain had been one and the same organisation; he had viewed it as dealing with Conveyancing UK.

84. Mr Parker referred Mr Fain to the letter dated 24 June 2005 to Mr and Mrs Fain from Conveyancing Spain which stated:

> "We are Agents acting on behalf of your Lawyers J.Olleros & Asociados. J.Olleros & Asociados have approved the contract documents on your behalf and have commissioned us as their Agents to send to you under separate cover letter a Spanish Contract pack report..."

85. Mr Fain said that this had to be read in context; when he had received this letter, he had not read into the letter that Conveyancing UK/Spain were acting as Agents for JO. He referred back to the brochures he had received from Conveyancing UK/Spain/the Respondent and that he had believed that OVP had been working with the Respondent's firm and subsidiary because it was regulated by the Law Society; this had been all over the literature he had received from the Respondent. In addition, he said that it was stated clearly that the Respondent understood Spanish law.

86. Mr Fain said that reading the documents, with hindsight and knowing what he now knew, the references to "Agents" were clear but he repeated that was not how he had read it back in 2005. He said that he had thought at the time that JO was a Spanish division of Conveyancing UK/Spain and simply a trading style. Similarly he had viewed the reference in the covering letter from Conveyancing Spain dated 7 July 2005 to "We are writing to you on behalf of J.Olleros & Asociados..." as "legalese"; he had further been convinced of this by having paid by bank transfer to Conveyancing Spain, not JO.

87. Mr Fain was referred to the Contract Report document dated 7 July 2005 from Conveyancing Spain which stated "We are writing to you as Agents for your Spanish Lawyers J.Olleros & Asociados". Mr Fain said that he had read it as lawyers familiar with Spanish law and that JO were a division of Conveyancing UK. He confirmed that the annotations on the letter were his and that he had made them as he had read through the Report. He accepted that where he had underlined something he had flagged this up as a potential risk, such as "<u>The final approved Building Licence (Licencia de Obra)</u> – This is the equivalent of the English Planning Permission and

must be in existence before the building works can be commenced. In your transaction this is yet to be obtained".

88. Mr Fain confirmed that he had asterisked alongside the reference in the Report to monies to be transferred to the "Developer's Agents" who in this case had been OVP; he had felt uncomfortable in principle paying the monies to OVP and it had been different to UK practice. He said that the annotation had been to remind him to investigate that further. He said that references to OVP had been where he needed to consult OVP to ask further questions or to clarify something.

89. Mr Parker referred to the section in the Report which stated:

> "It is understood in respect of your above property that the developer has entered into a Private Contract with the owners of the land for the transfer of the land into it's (sic) name, but this has not yet been registered. Your Spanish principles (sic) are satisfied that the position is acceptable to enable you to proceed. We enclose a copy letter from your Lawyers, J.Olleros & Asociados, confirming the position".

90. Mr Fain said that he believed that his solicitors (Conveyancing UK/Spain) were telling him that he had no need to be concerned and it was for that reason that he had written "ok" alongside that paragraph. He said that he had also taken comfort from the fact that his solicitor was happy for him to proceed. He said that whilst he now saw a clear distinction between "We" and "Spanish principles (sic)", at the time he had thought they were one and the same and it had been very confusing.

91. In relation to the "Criminal Theft" policy, Mr Fain said that he had also underlined this as it had been a crucial point and he thought that the reference to "...their Agents" had been referring to OVP and for that reason he had marked "OV" alongside that paragraph.

92. Mr Fain said that he had written to the Respondent by letter dated 20 July 2005. He said that he had done so because he believed the Respondent to have been his solicitor and he needed to ask various questions of her regarding the EBCC transaction. He said that at the same time he had also written to Mr O'D of OVP seeking answers to questions and clarification of certain points. Mr Fain said that he had particularly wanted to know about the building licence having been told that it would take three months and he had wanted an update. He had also wanted to raise the insurance with OVP and the length of time it could be relied upon and he had wanted details of the insurance product.

93. When his letter had been referred to JO by the Respondent as confirmed in her letter to him dated 26 July 2005, Mr Fain said that he had found that odd and similarly when the Respondent had forwarded the reply from JO on 29 July 2005. In response to a question from the Tribunal regarding provenance of the reply from JO, Mr Parker said that it had been received in that format, on plain not headed notepaper and had been passed on by the Respondent in that format. Mr Fain said that the reply from JO had been most unsatisfactory and he had been very dissatisfied and Mr O'D of OVP had agreed to take matters up with the Respondent.

94. Mr Parker referred Mr Fain to his letter to Mr O'D dated 20 July 2005 which stated:

> "They state that OV have a "Criminal Theft" indemnity policy to protect any deposits we may send you ahead of your releasing to the developer (it is understood that once a licence is granted, a Bank guarantee is granted supporting the developer). Does this mean all monies held by OV on our behalf are covered against all eventualities, including any winding up of OV?"

Mr Fain said that he needed to be satisfied in relation to the insurance. Mr O'D had replied on 29 July 2005 and had referred to OVP having:

> "...a bonded indemnity policy in place that provides cover against losses incurred so all client monies held such be very safe (sic)".

Mr Fain said that he had thought this provided insurance protection which safeguarded his money. He said that he had believed that there was an insurance policy in place, confirmed in writing which his lawyer had said would protect his money; he said that this had been a key risk to him and he had been re-assured by the Respondent and by OVP.

95. In re-examination, Mr Coleman referred Mr Fain to the letter from Conveyancing Spain dated 24 June 2005 and the "agency relationship" between JO and the Respondent/Conveyancing UK/Spain. Mr Fain said that he had genuinely believed that he had been dealing with and had been a client of a UK regulated solicitor. He said "If I had smelt a rat I'd have run a mile".

96. Mr Coleman said that the Applicant relied on Mr Fain's witness statement and exhibit bundle in addition to the oral evidence given by Mr Fain.

<u>The Respondent</u>

97. The Respondent was sworn into evidence and confirmed the truth of her Statements. In relation to her Statement of Means she confirmed that she was currently unemployed but said that she had done some commission-based work although she had not yet been paid for it. She had been undertaking some training and if delegates signed up for that she would receive a commission.

98. Mr Parker confirmed that the Respondent's Statements stood as her evidence in chief.

99. In cross-examination Mr Coleman referred the Respondent to her Rule 4 Statement. The Respondent confirmed that she had met Mr CT of OVP in the Spring of 2002. She said that she had gone abroad with her partner to look at holiday homes and the tour company had been OVP. She confirmed that she had not worked with Mr CT before. Mr Coleman referred to the purported developers of Los Corales (Mr A and friends), namely "Inmobiliara Corales Dos De Estepona, S.L" ("Inmobiliaria") and the Respondent said that she had never worked with them before and had not had dealings previously with any of the developers.

100. The Respondent explained that new builds in Spain were sold through either an Agent such as OVP or an Estate Agent. It was the "norm" for the Agent to act as the "selling

solicitor", for example they sent out the Contract on behalf of the developer. The Respondent said that OVP had been the Agents for a number of different developers and had been engaged to issue Contracts in the United Kingdom on their behalf.

101. The Respondent said that when she had first met Mr CT of OVP he had told her that they wanted to ensure that clients understood the Contracts and have a lawyer acting in England. The Respondent said that this was before the EBCC matters and when she had acted for other buyers (including Mr A and friends – Los Corales). Mr Coleman referred the Respondent to "Mr JAML" and "Mr FDA" who had been the Directors of the Los Corales development company Inmobiliaria. She said that she had not known them previously although she had known some of the developers by reputation. She said that she relied on the Spanish lawyers she knew to tell her if developers had a good reputation or not and whether they were well established.

102. The Respondent confirmed that she had not made any enquiries of her own and had relied on the Spanish lawyers to tell her whether a particular developer was reputable or not. She said that the developers would not disclose their accounts and she had not requested banker's references but her Spanish lawyer colleagues would have known whether they were reputable.

103. The Respondent confirmed that she had worked with a Spanish lawyer, Mr EC who had his own firm in Marbella and who had been well established and well respected in Marbella. She said that he had been practising for approximately twenty-five years. She had not worked with him before. The Respondent said that she had met Mr EC in 2003 and that she had also worked with another Spanish law firm, GVAA in 2003 which was part of a larger firm based in Marbella. She had worked with an English barrister who worked for GVAA and he had assisted with the drafting of the "Step-by-step Guide" document produced by the Respondent.

Mr A and friends

104. Mr Coleman referred the Respondent to the Contract Report she had sent to Mr A and friends dated 18 December 2003 which stated:

> "When reading the following information you must appreciate that Spanish property law and conveyancing is different from that in England. Because of this, many people treat the process with suspicion. Please read the following as guidance to the Spanish conveyancing process together with the terms of the contract and what they mean and trust your legal advisers".

105. The Respondent confirmed that she had expected the clients to trust the advice she had given them.

106. The Respondent accepted that, in the case of Mr A and friends, they had been her clients. She said that the advice she had given to them was in relation to the Contract issued by OVP. The Respondent said that she had understood that Mr A and friends had been required to pay a deposit of €39,162, that the building licence had not yet been provided and that the building had not been due for completion until September 2005, approximately two years later; the Respondent said that she had cross-referenced with the Contract and this had clearly stated that the building licence was

expected to be issued in September 2003 and the completion date would be approximately twenty-four months from that date. She said that she had understood that the clients would not acquire an interest in the property until completion at which point it would be conveyed to them.

107. The Respondent said that she was unsure whether there had been a risk that the property would never be built. She said that most off-plan developments in Spain had been sold without the building licence being in place but she had wanted to ensure that the clients knew about the building licence and that it would take twenty-four months to complete. She said that she had had only limited experience of Spanish property transactions at the time but she had been ninety-nine per cent certain that most building licences were granted, according to advice from her Spanish lawyer colleagues. If a licence was rejected, she said it was for technical reasons and it would then have to be re-submitted.

108. Mr Coleman referred to the bank guarantee/insurance reference in the Contract Report which the Respondent had sent to Mr A and friends dated 18 December 2003, which stated:

> "NOTE: Yet to be provided:-
> Bank Guarantee/Insurance – This is the warranty being provided by a bank/insurance company over the development in the highly unlikely event that the Developer becomes insolvent (bankrupt) and is unable to complete the development".

109. The Respondent said that it had been highly unlikely that the developer would become insolvent; the economic climate at that time had been buoyant and she believed that this statement was correct at the time it had been made. She said that she had never heard of a developer "going bust" at that time. She said that she had made enquiries but nothing had led her to believe that this was a risk. She had, however, appreciated the importance of the bank guarantee.

110. Mr Coleman referred the Respondent to further extracts from the Contract Report:

> "We will not release your signed Contract or any monies to the Developer until we have a copy of the Bank Guarantee or Insurance. Once received, our associate solicitor will check this to ensure it is in order"; and
>
> "We will not release your signed Contract, deposit or initial stage payments to the Developer until we have all the requisite documents in place"; and
>
> "Upon receipt of your signed Contracts, these will be released to the developer for signing, thus creating a formal exchange of Contracts. At this point, your deposit money will be released to the developer, of course subject to the Bank Guarantee being in place"; and
>
> "We will open a special Designated Client Deposit Account in Euros with our bank in YOUR name. Every payment made by you whilst we retain the Contract pending our receipt of any outstanding documents from the Seller/Developer will be transferred from our general client account to your

> Euros account. You will benefit from any interest paid on your monies for the period your money is in your account. We will not benefit from any interest on your money. Once we have all the requisite documents in place, we will then close your account and transfer the monies to the Seller/Developer".

111. The Respondent said that she did agree not to release the deposit until the bank guarantee was in place. She said that she knew that it was important to the clients not to release the deposit until then and she accepted that the clients would have taken comfort from these passages.

112. Mr Coleman referred the Respondent to the letter dated 21 January 2004 from Ms AR at Conveyancing UK to Mr A and friends; the Respondent said that Ms AR had been an administrative assistant working on the Spanish matters and supervised by her. The letter stated:

> "I acknowledge receipt of your payment relating to Deposit monies in the sum of €40,000.00, in to our General Euro Account on 16th January 2004. I have arranged to open a Designated Euro Account in your name, into which your monies are being transferred.
>
> Once the outstanding documentation had been issued and approved, monies held by us will be transferred to Ocean View. You will be notified of this and receive copies of the documentation".

113. The Respondent accepted that Ms AR had repeated to the clients the assurances she herself had given to the clients in the Contract Report document.

114. Mr Coleman referred to email correspondence, which had passed between the clients and Ms AR; from Mr R (of Mr A and friends) to Ms AR on 2 March 2004:

> "...Please could you let me know if theres (sic) been any more movement in our purchase? The last time we spoke the developer was waiting to secure a bank guarantee, is this still the case or has he now secured everything he needs to start the development".

And from Ms AR to Mr R:

> "In response to your email below I can inform you that there had not been any further development on your Spanish property purchase. Ocean View are still waiting for the Bank Guarantee to be issued, once this had been done they will send us a copy which we will then forward to you.
>
> I would like to take this opportunity to inform you as the Building Licence on this development has been issued Building (sic) works would have started regardless that the Bank Guarantee is not in place."
>
> "Under the terms of your contract you need to pay the balance of purchase monies before mortgage in the sum of €40,648.00 within 3 months of signing the contract. (As you overpaid on your deposit the actual balance due is €39,810.00) I received your signed contracts 14th January 2004 which gives a

> deadline date of 14th April 2004. As you are paying your purchase monies to us your money is secure you are free to pay the amount above at any time so long as it is before the deadline date stated above".

115. The Respondent agreed that Ms AR had assumed that the clients' monies were secure since they were being held by the Respondent's firm.

116. Mr Coleman then referred to the Barclays Bank statement for the account opened by the Respondent's firm for Mr A and friends. The Statement showed two receipts on 3 February 2004 and 23 March 2004 for €40,000 respectively and the payment out of €80,003.03 on 18 May 2004.The Respondent confirmed that this was payment out of the deposit for Mr A and friends and that she would have authorised this.

117. Mr Coleman referred the Respondent to a fax dated 7 May 2004 from GVAA to OVP, which had confirmed that Los Corales was covered by developers insurance and a letter dated 11 December 2007 from the Respondent to A Solicitors who were by then acting on behalf of Mr A and friends, which stated:

> "On the assumption there is a misunderstanding on your part regarding the above, we enclose a copy of the letter from GV&AA received by us, via JKS of the selling agents, Ocean View Properties, stating that the development was now covered by the developers insurance. GV&AA were, at the time, this firms (sic) associate lawyers in dealing directly with the developers and approving all legal documentation. In reliance of this letter/confirmation, the clients deposit monies was (sic) transferred to the selling agents. However, we are unable to locate a copy of the said developers insurance on our files".

118. The Respondent accepted, that in reliance on the letter from GVAA, she had authorised release of Mr A and friends' deposit monies. She accepted that she had received a copy of the faxed letter from Mr JKS at OVP and not direct from GVAA and that she had relied on it in relation to the guarantee/insurance having been in place for Los Corales. She agreed that she had not seen the guarantee/insurance itself but she said that, as far as she was concerned, GVAA had been a well established firm and she had had no reason to doubt them.

119. The Respondent could not remember if she had seen the guarantee/insurance but she had been unable subsequently to find it on her files. She explained that the firm had held an administrative file for each development and all important documents had been held on those files. She said that any such guarantee/insurance would have been placed in the relevant administrative file but she had been unable to find this one.

120. In relation to the correspondence from GVAA, the Respondent acknowledged that it had not been signed but said that she had not considered that to be a problem. She said that Spanish lawyers practices were not the same as UK solicitors. She could not recall if she had spoken to GVAA at the time but if she had done, that she would have made a file note but since she had been unable to locate the administrative file, she had not located such a note..

121. The Respondent accepted, as put to her by Mr Coleman, that she had released funds without having received the bank guarantee first.

122. Mr Coleman referred the Respondent to her first letter dated 4 June 2004 to Mr A and friends which stated:

> "As you are aware, I currently hold your three signed Contracts in connection with your purchase of the above development (Los Corales).
>
> The necessary documents are now in place on the above development...".

123. The Respondent's second letter dated 4 June 2004 continued:

> "I am more than pleased to confirm that I am now in receipt of the Developers Insurance in connection with the above development and I herewith enclose confirmation for your records; we are currently awaiting the hard copy and will forward to you once we are in receipt of it".

124. The Respondent accepted that this had suggested to the clients that the developer's insurance/guarantee had been in her possession. She said that she should have said that she had received confirmation of it and she was confused as to why she would have said she had received it when she had not. The Respondent acknowledged that she had been unable to locate the guarantee/insurance although she said that she had received guarantees for a number of other developments. She said that it had been her practice to send the client a copy of the guarantee/insurance document and she had evidently not done so in the case of Mr A and friends.

125. Mr Coleman referred the Respondent to the letter dated 30 October 2007 from Messrs A Solicitors on behalf of Mr A and friends which stated:

> "We have contacted Ocean View Properties who have explained that they do not have a copy of the Bank Guarantee.
>
> We should therefore be grateful if you would please confirm in writing whether you have been able to locate a copy of this Developer Insurance (referred to in your letter of 4 June 2004), as this matter is now extremely urgent".

126. Mr Coleman also referred to a further letter dated 23 November 2007 from Messrs A Solicitors which stated that they had received no response from the Respondent to their letters dated 28 September and 30 October 2007. The Respondent accepted that she had not responded to them but said that she had no idea why she had not done so. She said that she had eventually replied on 11 December 2007 but that without the bank guarantee, she had been unable to provide a satisfactory explanation.

<u>Mr and Mrs Fain</u>

127. Mr Coleman referred the Respondent to Mr Fain's witness statement exhibit and the letter dated 1 June 2005 from OVP to Mr and Mrs Fain. The Respondent said that this was a standard letter which had been sent by OVP to all clients. She said that she had not necessarily been aware of the contents of such letters as they quite often changed format and she had not always seen them. She said that she had mentioned to OVP

that she would have liked to see the letters but, whether that had happened, was another matter. The letter stated:

> "...The majority of our clients who use a solicitor have used J.Olleros & Asociados and their agents Conveyancing Spain, (details below), an independent firm who offer competitive rates and who have vast experience within this market".

128. The Respondent acknowledged that the paragraph was confusing since it referred to two different firms and it was not clear which firm was being referred to as "independent". In the context of how it had been written, the Respondent said that she did not accept that it had been referring to Conveyancing Spain but she agreed it must have been confusing for the client as it was confusing for her. She said that, had she been aware that was the way in which OVP referred to her firm, she would have identified the issue to them.

129. The Respondent confirmed that her firm had produced the "Spanish New Build Purchase" document and that she would have authorised sending the document to the clients.

130. In relation to the "Client Information Form" the Respondent said that all new clients of her firm had been asked to complete this form. She said that she had continued to use documentation for the EBCC clients/agency clients which she had used previously for her own clients. She admitted that there had been a cross-over of documents between previous clients and clients of JO.

131. The Respondent said that she had not regarded Mr and Mrs Fain as her clients.

132. The Respondent explained that, at the beginning of the EBCC work, she had thought that she would have conduct of matters as she had previously namely as solicitor for the clients but, within two weeks, OVP had sent Ms TP of JO to meet her; Ms TP had said that she wanted to control and oversee everything as the principal. OVP already had some clients who had reserved properties and the Respondent said that her firm began to send out packs as if they were the acting solicitors. When it became clear that they would not be the solicitors with conduct, the Respondent said that she had then written to those clients and explained that her firm was acting as agent for JO.

133. In response to a question from the Tribunal, the Respondent said that she could not produce an example of such a letter correcting the status of her firm as agent and she could not state categorically that such a letter had been sent to Mr and Mrs Fain. She said that she had told her solicitor about the letter.

134. Mr Coleman referred the Respondent to her letter to Mr and Mrs Fain dated 24 June 2005 which referred to Conveyancing Spain as "Agents acting on behalf of your Lawyers J.Olleros & Associados...". The Respondent acknowledged that no explanation had been provided to the clients as to the meaning of "agency" or what effect that might have on her and her firm's professional obligations to the clients. She acknowledged that this had also not been explained in the Contract Report sent by her firm.

The letter also stated:

> "Once we are in receipt of settlement of the 0.25% legal fees your Contract pack Report will be forwarded to you via Special Delivery post".

The Respondent said that Mr and Mrs Fain paid their legal fees to her and not to JO. She said that there had been a percentage fee split between her firm and JO. They had reached agreement that, rather than send the fees to JO who would then have to send back the firm's fee, the Respondent would receive her fees direct from the client under the agency fee arrangement.

135. Mr Coleman referred the Respondent to the logo in the left-hand corner of her letter which read "Solicitors for purchasers of properties with Ocean View Properties". The Respondent confirmed that she had adopted the OVP logo. She said that her former partner, Mr RP had spoken to the Law Society who had confirmed that the firm could do so and she had believed that it would be re-assuring to OVP clients that the firm dealt with Spanish property. The Respondent said that she had not intended to hold the firm out as being Spanish lawyers and she pointed out the reference on the letter which stated "Conveyancing Spain is a department of Conveyancing UK Solicitors".

136. With hindsight the Respondent agreed that the logo should have been removed for the EBCC clients.

137. The Respondent said that she had confirmed to clients in the Contract Report that it contained advice but that the advice had come from JO and she said that she had only assisted JO in collating the Reports to the clients. She referred to her Contract Report to Mr and Mrs Fain dated 7 July 2005 which stated that:

> "We are writing to you as Agents for your Spanish Lawyers J.Olleros & Asociados. On their behalf we set out in this letter a Report upon the Contract for your purchase...".

The Respondent said that she had relied upon this.

138. The Respondent said, in relation to the monies paid by Mr and Mrs Fain in the sum of €94,650, that she had understood that it had to be paid by the clients on signature of the contracts and before they had acquired any interest in the property. She said that she had also understood at the time that the building licence had not been obtained and it had not been known how long it would take for the licence to be obtained. She said that the clients had been made fully aware of that.

139. The Respondent said that she had relied on JO as the principal and that she had relied on their having made the necessary enquiries and investigations of title on behalf of Mr and Mrs Fain and the other clients since they were JO's clients. She said that she did not have to make enquiries as a result and that she had had no reason to disbelieve JO or to doubt Ms TP's integrity.

140. The Respondent said that she had been aware that OVP were to hold the clients' deposits. She said that she had offered clients the choice for either her firm to hold the deposit monies on trust in their client account or pay the deposits over to OVP; in Mr

Fain's case he had not taken up that offer. Mr Coleman referred to a further passage from the Contract Report to Mr and Mrs Fain which stated:

> "Paying the sellers/developers Agents – As mentioned previously, Ocean View Properties Limited are the sellers/developers Agents. In England, the Contract would state who would hold the deposit monies upon exchange of Contracts. This is generally the seller's solicitor as "Stakeholder" or as "Agent for the Seller". If the Contract provides for the deposit to be held as "Agent for the Seller", then the deposit monies can go to and be used by the seller. Your Spanish Lawyers advise it is usual, under a Spanish Contract, for the deposit to be paid and held by the buyer's solicitors, (but note the next paragraph) until release to the seller/developer when the Building Licence and Bank Guarantee/Insurance have been obtained. Under this Contract however, you have been required to pay your deposit to the seller/developers Agent, to hold the same as "Agents for the seller". Consequently, any payment you have made or are being asked to make to the developers Agent can only be based upon your acceptance of this provision of the Contract. You Spanish Lawyers understand the seller/developers agents have obtained "Criminal Theft" Indemnity Insurance to protect the buyers deposit monies whilst they hold this for the seller/developers, a copy of which can be obtained from their Agents".

141. The Respondent confirmed that, under Spanish law, it was for the buyer's solicitor to hold the deposit. The Respondent accepted that it was in the client's interest for their solicitor to hold the deposit and that she had not asked OVP/the developer for either her firm or for JO to hold the deposits. She said that she had had no relationship with the developer and had not been acting for the clients. Ms TP had kept her informed as to what JO was doing and she had been comfortable with that.

142. In relation to OVP holding the deposits, the Respondent said that she had discussed this with Ms TP. She said that Ms TP had told her that it was a large development for which a large amount of money was required and the developer therefore wanted funds via OVP as soon as possible. The Respondent knew that OVP had an insurance policy in place and she said that she had believed that this would protect clients' money. She said that she and Ms TP had agreed to make the offer to clients as to whom the deposits should be sent to in the Contract Report. The Respondent said that, if the clients were not happy with the payment arrangements, then they did not have to sign the Contract. The Respondent added that the developer would have had to consent to her firm holding the deposits. She accepted that she had not advised clients to pay their deposits to her firm.

143. The Respondent said that OVP had gone into liquidation and she believed that the clients' money was still being held somewhere while the Liquidator identified what belonged to OVP and what belonged to the clients.

144. The Respondent referred to the Chubb insurance policy and said that it had been her firm which had arranged for the policy to be in place and that she had seen the policy itself. She said that her former partner Mr RP had spoken to Chubb about the policy and he had approved it. Mr Coleman referred the Respondent to an e-mail from Mr RP to her dated 15 December 2005 which stated:

> "Further to my e-mails in this connection, if OVP cannot give us any specific information which we can give to the clients in reply to the points I have raised, then we shall have to report to the clients as follows:
>
> 'The Contracts require that your deposit is held by the developer's Agents Ocean Review Properties and not as is the usual practice by your lawyers, or in an accessible escrow account. This is not negotiable and we are told that if you do not accept the same the property will not be sold to you and will be remarketed. We are led to believe that Ocean View Properties deduct their commission from the deposits held by them although they have not provided any details of the amounts that are deducted. They have provided a copy of the theft insurance policy, which they claim will protect your deposits in the event of theft by their employees. However, we have questioned whether you would be covered by the wording of policy and we have not received a satisfactory response. Further even if you are covered it is limited to theft and would not protect your deposit in the event of the liquidation of OVP. In the circumstances we have not been provided with any evidence to show that your deposits are secure if paid to OVP and if you choose to continue on this basis you do so is strictly at your own risk'".

145. The Respondent referred to her e-mail to Ms TP of the same date, 15 December 2005 in which she had raised her concerns regarding OVP:

> "… There have been a number of matters we have not been happy about when dealing with OVP. This has culminated in our decision not to accept any further referrals from them (their franchisees and introducers).
>
> Meanwhile, we still have a small number of already referred clients awaiting a contract report, whereby we need to amend part of the report to reflect the arrangement with remaining clients deposit monies, once it is passed to OVP.
>
> We have drafted the new section, as below, for the report, and would be grateful for your opinion of this".

146. The Respondent confirmed that Mr RP's e-mail to her of 15 December 2005 had been forwarded to Ms TP.

147. The Respondent agreed that she and Mr RP had known that the insurance policy would not cover clients' monies in the event that OVP went into liquidation. She accepted that she had known this when she had written to Mr and Mrs Fain. She agreed that it had been a risk but, having made further enquiries, she had been satisfied that no policy would have covered liquidation. She said that the policy covered criminal theft in circumstances where OVP might disappear with clients' money, but not liquidation. The Respondent said that, at the relevant time, there had been no risk of OVP going into liquidation. She said it had only been subsequently that rumours had surfaced of OVP experiencing financial difficulties. The Respondent confirmed that copies of the insurance policy had been requested by her and/or Mr RP each time the policy had been renewed.

148. The Respondent acknowledged that the e-mail from Mr RP to her had been prompted by the number of telephone calls her firm had received from various buyers who had complained that they had been unable to reach OVP's offices. She said that some clients had experienced problems such as properties being smaller than they expected and complained that they had been misled by OVP. In certain cases OVP had reached agreements with clients for refunds which had not then been forthcoming. In response to a question from the Tribunal, the Respondent said that she had been asked by clients to assist them in contacting OVP and she had wanted to help to resolve matters.

149. In relation to the "Step-by-step guide to buying a Spanish property off-plan" the Respondent confirmed that she had been the author of that document. She said that this had also been provided to Mr and Mrs Fain and contained generic advice regarding off-plan property purchases; she agreed it was intended to be read and believed by the clients. Mr Coleman referred to the "Step-by-step guide" which stated:

> "When you buy a property in England, you would normally enlist the services of a Solicitor or Conveyancer to undertake the legal transaction on your behalf. Nevertheless, many people still purchase property abroad without appointing a Solicitor to approve the Contract documentation and provide proper advice regarding the commitment they are making and what that involves. This could avoid numerous potential problems.
>
> Conveyancing Spain Solicitors will provide you with comprehensive advice in the form of a "Contract Pack" report once Contracts are issued to you by the developers' Agents. This "Pack" contains substantial advice about the Contract and other useful information to assist in your understanding of the purchase process. This will provide you with a better understanding of the Contract and your commitment and what you are entering into. Further, you will have the protection under our Professional Conduct Rules as required by the Law Society (of England and Wales)...
>
> ... Before the contract is issued to a purchaser for signing, we will have worked closely with a reputable firm of Spanish Solicitors in Marbella (our associate solicitors), especially appointed by us for their expertise".

150. The Respondent said that her intention had been for Mr and Mrs Fain to have been aware of her professional obligations to which she accepted she was subject, but that she had not been Mr and Mrs Fain's solicitor and this had been made clear to them. The Respondent confirmed that this document had been prepared for previous clients as an informative document/glossy brochure and she had decided to continue using it for EBCC clients as it had been too costly and time consuming to amend the documentation. Mr and Mrs Fain had therefore received it and the Respondent acknowledged that in that context, it was clear Mr and Mrs Fain had relied upon it and why they had interpreted it as they did, namely that she had been acting as their solicitor.

151. The Respondent confirmed that as far as she was aware, the "Step-by-step guide" had been provided to all six of the clients whose transactions had been exemplified in the

proceedings before the Tribunal and she admitted that she had not reviewed the documentation to ensure that it had been appropriate to send to those clients at the relevant time. When the "Packs" had been sent out to the clients she said that she had not intended to mislead clients and believed that it had been made clear in the Contract Report that she was not acting as their lawyer.

152. Mr Coleman referred the Respondent to a further extract from the "Step-by-step guide" which stated:

> "c) The "Bank Guarantee" (or Insurance) is a form of insurance policy to protect a clients' (sic) money when it is released to the developers (sic) Bank. In England, there is not the benefit of such a guarantee, it may be argued therefore, that there is more security in buying off-plan in Spain than in England".

153. The Respondent said that she had not intended to encourage the clients to believe that this was more secure than an English property transaction; it had merely been a statement that in Spain there was such a thing as a bank guarantee which did not exist in England.

154. Mr Coleman referred the Respondent to the fees information attached to the "Step-by-step guide" which stated "Legal fees - @ 1% of purchase price". The Respondent said that the 1% included her firm's fees. She said that to have altered this to read 0.25% in respect of her agency fees would have been a very costly exercise.

155. Mr Coleman referred the Respondent to the FAQs document which stated:

> "I have taken the opportunity to consider some of the other issues that affect your obligations under the Contract you have (or may) enter into with a Spanish developer. May I point out that Ocean View has no contractual obligation to you, as they are not the developer, but the developers (sic) Agents.
>
> This is my legal advice to you as my client and takes into account our own extensive experience of matters not too dissimilar to that when we act for buyers on new build "off – plan" developments here in England.
>
> … Our obligations to you as our clients…"

156. The Respondent confirmed that the FAQs document would have been sent to Mr J, Mr and Mrs F, Mr C-I, Mr B, Mr M and Mr H. The Respondent accepted that legal advice had been given in this document but said that, as for other documents already referred to, this document had existed prior to her EBCC clients and she had continued to use it to provide those clients with additional information.

157. The Respondent accepted that it was misleading for those clients and agreed that she should have revisited all of her client information and documentation before her dealings with EBCC clients.

158. In relation to the document entitled "Investing In A New Build? Make sure you know the ground rules!" the Respondent said that it was likely to have been provided to Mr and Mrs Fain although she could not remember. She said that the article had been produced by a local free journal in the area in which her firm's offices had been based. The article stated:

> "Lesley Alberici of Conveyancing UK, explains the differences between buying at home and in Spain, the latest boom area for UK investors" and
>
> "If you are interested in using our services in buying a property in the Costa Del Sol with Ocean View Properties, or any of our conveyancing services, Lesley Alberici the Senior Partner of Conveyancing UK solicitors will be happy to discuss your requirements"

159. The Respondent said that she had been happy to discuss the requirements of parties using OVP and the firm's services.

160. Mr Coleman referred the Respondent to the "Client Care and Terms of Business Instruction Form". The Respondent said that this had only been used if a client had directly instructed her firm and it should not have been received by her agency clients including Mr and Mrs Fain; they had not signed the Instruction Form. She said that she understood this may not have been their perception if they viewed themselves as her clients but letters had been sent to those clients to correct the position. She said that those clients had been told to ignore the previous set of papers and proceed on the new agency documents.

161. The Respondent admitted that she could not categorically state that she had taken steps to send every one of those clients a letter instructing them to disregard the previous documents they had been sent. She acknowledged that she had had a number of months to obtain copies of this letter and proof that it had been sent to the relevant clients, and had not done so. She could not recall having provided it to the Applicant but said that it had been provided to the LCS.

162. Mr Coleman referred the Respondent to the "Money Laundering Advice and Information" document which had also been provided to Mr and Mrs Fain. The Respondent said that this had been part of the documents "Pack" provided to the clients who had directly instructed her firm. She repeated that it would have been an immense task to have amended and re-printed the packs for the agency clients and a very expensive exercise. She did not accept that someone would have considered themselves her client merely because they had received a money laundering document from her.

163. Mr Coleman referred to a fax dated 16 August 2005 and an attached document entitled "Terms where we handle a clients (sic) money on an Ocean View Properties purchase". The Respondent said that this had been sent by Ms SB of her firm to Mr Fain. It was a generic letter sent out at the time of the cross-over of clients and it should have been amended to remove the "clients" reference but it had not been.

164. The Respondent acknowledged that she had not told Mr and Mrs Fain about the insurance issue. She said that she was not happy that they had only discovered that

some three years later but that Mr Fain had had numerous opportunities to raise enquiries about the Chubb policy. She said that once her firm had sent them the Contract Report, they had fulfilled their role.

165. The Respondent accepted that the concerns regarding OVP had led her to discuss with Ms TP of JO becoming a joint account holder. She said that this was the further action they had taken in addition to the action taken by Mr RP regarding the Chubb policy. The Respondent did not accept that she could have still written to all the clients to have informed them of her concerns regarding OVP; she said that she had only had suspicions and no proof which could have led to her making untrue statements about OVP. She did accept that had she warned clients, it could have prevented some of them from having paid deposits to OVP.

166. In Mr and Mrs Fain's case, the Respondent said that they had obviously misunderstood or had been confused that they were instructing an English firm. She said that OVP had also offered clients as an incentive a preferential exchange rate which had enticed them into paying their deposits direct to OVP and a number of clients had done that.

167. Mr Coleman referred the Respondent to the Adjudicator's Decision regarding Mr and Mrs Fain's complaint dated 13 November 2009. The Respondent said that her solicitors had replied to the LCS regarding Mr and Mrs Fain's complaint on 16 November 2009. She said that there had been a number of similar complaints and she had asked Mr RF of RHF Solicitors to assist her in dealing with those complaints but they had ultimately overwhelmed him; she said the complaints had therefore been out of her control. She said that if she had known of the difficulties, she would have replied.

168. Mr Coleman referred to the Finding of the Adjudicator in relation to Mr and Mrs Fain's complaint which stated:

> "They (CUK) gave inaccurate and misleading advice about the financial arrangements in connection with payment of the deposit for the purchase".

169. The Respondent said that she had not understood the Adjudicator's Finding.

170. The Respondent said that she did not agree with the Adjudicator's comments in relation to the insurance policy which stated:

> "Mr Fain's evidence is that he and Mrs Fain were aware of the risk surrounding the payment of the deposit prior to the Building Licence being obtained. They believed that the "Criminal Theft" insurance policy mitigated this risk and relied on the fact that it seemed to have been endorsed by CUK... The policy in fact provided no protection against the risk that the money would be paid to the developers and the Building Licence would never be granted. This was not made clear by CUK. In my view it was reasonable to expect them to have checked the position before giving the impression in their own documents that the insurance policy provided relevant provided relevant (sic) protection".

171. The Respondent said that the comments by the Adjudicator did not reflect the same scenario before the Tribunal. She said that the Contract Report provided by her/her firm had not contained any endorsement of the insurance policy. It had simply informed the client that the policy was in place and it was for the client to have obtained a copy from OVP and to have made relevant enquiries of it.

172. Mr Coleman referred to a further extract from the Adjudicator's Decision, which stated:

> "The present situation is that the development has not taken place, there is no prospect of it ever taking place and Mr and Mrs Fain's deposit has disappeared… In my view this financial loss was incurred as a direct result of the inadequate service…"

173. The Respondent did not accept this. She said that the liquidator was still investigating monies held by OVP and whether clients' money had disappeared although she agreed that she could not say it had not.

174. The Respondent acknowledged that the Adjudicator had awarded compensation of £10,000 to Mr and Mrs Fain for the financial effects of her firm's inadequate service, albeit not accepted by her and £5000 for their distress and inconvenience. The Respondent accepted that the Adjudicator's Decision had been notified to her and her solicitors on 19 November 2009 and that she had not complied within the required seven days or at all.

175. The Respondent admitted that she had not informed the LCS or Mr and Mrs Fain that she did not intend to comply with the Adjudicator's Decision. She said that her insurers Quinn and her solicitors had been dealing with all of the complaints. Quinn had put a reservation of rights in place in relation to all of the remaining compensation awards. She said that Quinn had been investigating her indemnity insurance and that remained the position and they had engaged their own solicitors for the purposes of the investigation. The Respondent said that the investigation related to whether she had been honest when she had made her indemnity insurance application and no decision had yet been made.

176. The Respondent confirmed that she had not challenged Quinn regarding the reservation of rights as she had been awaiting the outcome of their investigation. She said that she had limited resources and could not afford to engage a solicitor to mount such a challenge. She said that Quinn had provided financial cover for her legal representation before the Tribunal and they had not withdrawn cover altogether.

177. The Respondent acknowledged that Quinn might have been awaiting the outcome of the proceedings before the Tribunal and the Tribunal's decision before concluding the investigation, albeit they had not confirmed this.

178. The Respondent confirmed that she had closed her practice in September 2008 and said that it had taken her between nine and twelve months to deal with closure of all of her files and of the practice itself in accordance with the rules, including the client account. As a result, she had been unable to work and had not been remunerated so that she had no income. She said that by the time Mr and Mrs Fain's matter had been

adjudicated upon, she had been in no financial situation to discharge the compensation awards. The Respondent said that she had seen no point in informing the LCS or the clients of her financial situation as she said they would not have been interested.

179. Mr Coleman referred the Respondent to her Statement of Means dated 25 January 2012. The Respondent confirmed that she owned two properties in the United Kingdom in her sole name, both of which were in negative equity. She said that both properties had been valued for the purposes of her bankruptcy at £235,000, both having outstanding mortgages of £270,000. She said that the Official Receiver had taken control of two other properties from which she had received rental incomes; one of these had been repossessed and the second property was in the process of being repossessed. She confirmed that she had also owned her office building but that had been disclaimed by the Official Receiver as it had also been in negative equity.

180. In relation to properties outside of the United Kingdom, the Respondent confirmed that she had contributed to a joint deposit with her partner, his sister and her husband towards the purchase of a Spanish property which was in negative equity and in relation to which there were arrears on the mortgage. The Respondent confirmed that twelve months previously she had been a joint owner of her parents' property, which she had held on trust with her sister. She said that she had been asked to relinquish the joint ownership due to her financial difficulties.

181. The Respondent confirmed that her partner owned a property in Inverness but said that she had no financial interest in it. She said that it was a furnished holiday let, which he rented out. When Mr Coleman put to her that her e-mail address was given in the advertisement for the holiday let, the Respondent said that, occasionally, her partner had asked her to assist with rental of the property. Mr Coleman confirmed there was no suggestion that the Respondent had a financial interest in this property.

Mr C-I

182. Mr Coleman referred the Respondent to her letter to Mr C-I dated 2 August 2005 which stated:

> "In order to satisfy Law Society regulations…"

183. The Respondent accepted that nowhere in the letter had she explained that she did not owe the client any obligations as a solicitor. She confirmed that the "Client Information Form" had been sent to Mr C–I but said that the form merely required his details such as telephone number and address. She said that Mr C0-I had also received the "Spanish Lawyer Instruction Form", which referred to her firm as "Agents".

184. Mr Coleman referred to a letter dated 7 September 2005 from Ms SB which had referred to "our outstanding Legal Fees". The Respondent accepted that the terminology had not been appropriate in the context of her firm's agency arrangement with JO and that the letter should have read "Spanish Lawyers Legal Fees". In relation to money laundering requirements, the Respondent said that she had taken a "belt and braces" approach and had requested identification in all cases, whether as agent or solicitor and that she had told JO of her approach.

185. The Respondent said that clients were more comfortable dealing with a solicitor in the United Kingdom and she acknowledged that they had felt a lot better for that.

186. The Respondent confirmed that a Contract Report had been sent to Mr C-I on 22 September 2005, and agreed that whilst this had been for a different property and different amount, the Report had not been materially different to that sent to Mr and Mrs Fain. The Respondent accepted that the "Criminal Theft" policy would also have not protected Mr C-I but said that she had been taking steps to open a joint account to protect clients' monies. She acknowledged that she had done nothing to warn Mr C-I of her concerns regarding OVP.

187. Mr Coleman referred the Respondent to the Adjudicator's Decision regarding Mr C-I and the Finding which stated:

> "3.1 They failed to give Mr C–I clear and accurate information about who was responsible for acting on his behalf in connection with his proposed purchase of a flat in Block 5 at the EBCC in Spain.
>
> 3.2 They failed to give adequate advice about the financial arrangements in connection with payment of the deposit for the purchase.
>
> 3.3 They failed to inform Mr C-I that the firm was closing in September 2008".

188. The Respondent said that she did not accept 3.1 of the Adjudicator's Findings and that she had not been acting on behalf of Mr C–I. She said that she had not understood Findings 3.2 and 3.3; in relation to the latter, she said that she would not have informed Mr C–I of closure of the firm since he had not been her client.

189. Mr Coleman further referred to the Adjudicator's Decision which stated:

> "4.10 The present situation is that the development has not taken place, there is no prospect of it ever taking place and Mr C-I's deposit has disappeared. By deposit I mean the sum of Euros 43,800 which he paid on 23 September 2005 together with the further Euros 7,150 paid on 5 January 2006 and Euros 7,050 paid on 3 April 2006. The total is Euros 58,000. In my view this financial loss was incurred as a direct result of the inadequate service".

190. Mr Coleman highlighted that Mr C-I had paid the €43,800 on 23 September 2005 after he had received the Contract Report referring to the "Criminal Theft" insurance policy. Mr C–I had then paid €7,150 in January 2006 and €7,050 in April 2006, which he may not have done had the Respondent warned him of her concerns regarding OVP. The Respondent disputed this. She said that Mr C–I had been in a binding contract with the developer to purchase the property. She said that, whilst she had felt she had a level of duty to these individuals, this had been as agent for JO and not as their solicitor.

191. The Respondent said that she did not agree with the Findings of the Adjudicator in the case of Mr C–I as she considered that the Adjudicator had been premature in his approach at 13 November 2009, since this had not been long after OVP had gone into

liquidation. The Respondent confirmed that she had not complied with the compensation awards for Mr C–I totalling £15,000.

192. Mr Coleman referred the Respondent to her e-mail to Ms TP dated 7 December 2005 which stated:

> "I would be grateful if you would call SJ @ OVP first thing in the morning to reinforce the client's money must be secure and everything must be transparent.
>
> I told S today that we could no longer deal with OVP clients on the basis that we had no idea what was happening to their money, irrespective of there being an insurance policy in place.
>
> S has just called me back and wants us to have another meeting at 11.00 a.m. in the morning with CT to enable us (my firm) to continue to act for their clients until they find another UK lawyer who will take over their work.
>
> We have said to S that if we continue to act for an "interim" period, either the clients money is held by us, or in (sic) a separate designated deposit account is opened with OVP's bank showing the clients money is in this account with monthly statements sent to the client. However, on the latter option, I need to ascertain from their bank the money cannot be taken from each client account without the authority of the client..."

193. The Respondent said that she had understood that clients' money had to be secure and in this regard, matters had to be dealt with transparently. She said that she could not properly act for clients unless arrangements had been made for security of their deposits. She confirmed that she had considered terminating her arrangement with OVP altogether and had wanted to discuss that with OVP. She said that she had decided that she could only continue to work with OVP if clients' deposits were placed in an account over which she or the clients had direct control.

194. Referring again to Mr RP's e-mail to Ms TP of 15 December 2005 in relation to the "Criminal Theft" policy, the Respondent said that she appreciated clients needed to receive a clear warning about the insurance and that Mr RP had also sent a copy of his e-mail to Mr CT at OVP. The Respondent repeated that she had had no proof that OVP had been in financial difficulties.

195. The Respondent confirmed that by January 2006, Mr RP had no longer been a partner in the firm. She said that he had not been generating sufficient fee income and as a result, she had been unable to afford to continue to employ him. She said that her accountant had told her that it was necessary to terminate Mr RP's employment and, in December 2005, she had discussed this with him and asked for his resignation. The Respondent said that this had not been related to the OVP work.

196. The Respondent confirmed that she had been the senior partner of the firm and had had conduct of the Spanish matters. She said that Mr RP had dealt with the Chubb insurance matter and had overseen the Spanish property work when she was on holiday. The Respondent did not accept that it was unfair of her to attribute blame to

Mr RP in relation to the Chubb insurance. The Respondent accepted that Mr RP's name had not been mentioned in any documents other than the e-mail of 15 December 2005.

197. In relation to the "Barclays Bank PLC Appointment of Bankers" document dated 12 January 2006 the Respondent said that she had proposed the account be set up by OVP with herself and Mr DS of OVP as the joint signatories. The Respondent denied that she had referred to herself on the form as "Company Lawyer" and said that this had been completed by someone else as it was not her handwriting.

198. The Respondent said that she had discovered some months earlier through a manager at Barclays that the joint account with OVP had been setup. Mr Coleman said that the Applicant understood that the account had never been setup. The Respondent said that the account was dormant and she had no idea whether it contained any monies.

199. The Respondent said that in her witness statement of 18 November 2011 she had stated her position, namely that she had asked to become a joint signatory. She acknowledged that she had been a joint signatory on the account at the time she had made her statement but had not stated this. She said that she had assumed that her solicitor would have communicated this to the Applicant.

200. The Respondent said that she had never heard from OVP as to whether or not she had been made a joint signatory and had only found out through her own efforts. She said that she had begun to make enquiries of OVP approximately 2 weeks after the bank mandate had been signed on 12 January 2006. She said that she had written to Mr JKS of OVP on 13 March 2006 stating that she had made several enquiries regarding the joint account and had heard nothing and on 31 March 2006 had written to Mr CT of OVP. That letter stated:

> "I have left messages with DS with regards to my obtaining evidence of the opening of my joint account with OVP, with client monies held therein. DS has failed to respond to my calls.
>
> I further sent the enclosed letter to JKS on 13 March regarding this.
>
> I am extremely concerned that there appears to be no importance given in my obtaining this information.
>
> I am afraid to say that if this information is still not forthcoming, I have an obligation to advise the respective clients of the same, as I cannot mislead the client into believing that there (sic) money is held in such an account, when I have no evidence of the (sic)this. Furthermore, I am sure you appreciate that should there be a Law Society monitoring visit of my offices, and they make a request for this information, I will have nothing to show them.
>
> Please arrange to furnish me with this information without any further delay".

201. The Respondent said that she knew that she had an obligation to tell clients if no joint account had been set up. She said that she had not advised clients that she had received no evidence that the account had been set up as she had still been waiting for

it and it had never materialised. She admitted that she knew to some degree she had failed clients but the Report had said that she was awaiting confirmation and that she had "required" to be a joint signatory. She accepted that she could have perhaps said "requested" rather than "required" but it had meant the same.

Mr J

202. In relation to Mr J, Mr M and Mr H and Mr B, the Respondent said that they had also received the letter which referred to her becoming a joint signatory. The Respondent accepted that she had not warned them that their deposits might be at risk, that the Chubb insurance would not protect them against OVP going into liquidation or that she was still awaiting confirmation regarding the joint account. The Respondent accepted that the clients had not been afforded protection against OVP's liquidation but said that she did not believe products existed which could have protected against that.

203. The Respondent said that Mr J would have received the "Spanish New Build" document, the "Step-by-step guide" and the "Client Information Form". She said that the OVP logo had been removed by this time. She said that Mr J would also have received the money laundering documentation but only because she believed that she would have been in breach of the regulations had she not sent this due to the significant risk of money laundering in relation to overseas property purchases.

204. The Respondent said that in relation to Mr J's purchase, the bill dated 5 December 2005 in the sum of £474.14 had been for internal purposes, referred to JO as the client and had not been provided to Mr J. The Respondent acknowledged that the letter dated 13 December 2005 to Mr J had referred to "monies on account for legal fees of £474.14" but said that again, it was a question of terminology and Ms SB had referred to "monies on account", which did not reflect the true position. She said it had not been intended to suggest that she had given legal advice to the client. She accepted that the monies had been paid into the firm's office account.

205. The Respondent said that she stood by her witness statement in relation to her conversation with the "Ethics Committee of the Law Society" regarding payment of costs albeit she could not locate her attendance note of that conversation. She said that she had explained that it was an agency arrangement with 1% to the principal of which she would receive 0.25% and that she confirmed the clients were not her clients. The Respondent admitted that she had kept no ledgers and that payment of her fees had been made straight into office account.

206. The Respondent confirmed that Mr J had received a Contract Report dated 13 January 2006, which was not materially different than for the Contract Reports for Mr and Mrs Fain and Mr C-I. She agreed that Mr J had been asked to pay a substantial deposit in advance with no building licence having been in place. She agreed that Mr J should have been protected and she said that he had been given the opportunity to pay the deposit to her firm. The Respondent said that Ms TP had told her that OVP required the deposit to be paid direct to them and that there could be no other arrangement and unless OVP agreed to alter the terms of the Contract. She said that, as for the other clients, she had not considered at the time that was a significant risk to Mr J and OVP had not gone into liquidation for another two years.

207. Mr Coleman referred the Respondent to the Contract Report sent to Mr J on 13 January 2006 which stated:

> "For your protection, I have required that I become joint signatory to the Bank account of Ocean View Properties Limited in which your deposit is being held, so that NO mnoes (sic) can be transferred without my authority."

208. The Respondent said that, at the time the Report had been sent, she had signed the bank mandate. She acknowledged that reference to the insurance policy had been removed and accepted that Mr J would have taken comfort from this passage in the Report.

209. Mr Coleman referred the Respondent to Mr J's letter to her dated 27 April 2007 which stated:

> "I am extremely disappointed at having to right (sic) this letter, may I remind you that you act on my behalf of the purchase on the above development, and not to answer or return my calls is unacceptable.
>
> I request that you answer the following questions;
>
> Have I exchanged contracts on the above?
>
> Where is the deposit being held?
>
> What is the position with regards to obtaining a build licence for this development?
>
> I require an answer, in writing, to all of the above no later than 4.00 pm on Wednesday, 9th May '07 at which point I will contact the Law Society to make a complaint if you have not done so".

210. The Respondent said that when she replied to Mr J on 5 May 2007 she had explained that her firm acted as agents for JO, who had been the solicitors acting for him in his purchase and that he needed to contact them if he had any questions. She said that Mr J knew that his monies were held by OVP as he had paid his deposit to them. The Respondent confirmed that, at this time, she had not received confirmation that the joint account had been set up and so could not be certain that Mr J's money was safe.

211. Mr Coleman referred the Respondent to the letters from FK Solicitors who had been instructed by Mr J. Their letter dated 21 May 2008 stated:

> "... We consider that as the account was to be protected by you being a signatory it must be a client account so please provide full details of the account along with confirmation that our client's funds are still held in the account and that interest is accruing for the benefit of our client. As the reason for you becoming a signatory was to protect our client, we consider that the solicitor's accounts rules must apply to this bank account. Please confirm that this bank account has formed part of any accounts rules audits that have taken place".

212. The Respondent accepted that she had not answered the question from FK Solicitors in their letter dated 21 May 2008 regarding client's money and that she had not responded to any of FK Solicitors' letters regarding client's money. She said that she did not know why she had not answered other than she had been annoyed to hear from Mr K. The Respondent explained that her relationship with Mr K had been fraught as he had sought to bankrupt her.

213. The Respondent confirmed that her insurers had paid the compensation to Mr J and she had refunded the legal fees; the Adjudicator's decision had therefore been complied with in relation to Mr J.

Mr M and Mr H

214. Mr Coleman referred the Respondent to the letter dated 7 December 2005 from Ms SB to Mr M and Mr H. This referred to the "Client Care Terms of Business". The Respondent agreed that it appeared that Mr M and Mr H had received the "Client Care and Terms of Business" document. It was possible that Ms SB had mixed up documentation which should have been sent for this matter. The Respondent agreed that the Contract Report would have been in the same terms as that for the other EBCC clients.

215. In relation to payment of their deposit, the Respondent said that Mr M and Mr H had already paid €47,450 on 19 December 2005, which had been prior to the Contract Report having been received by them and therefore prior to the assurances having been given regarding their monies.

216. The Respondent accepted as for Mr J that the position was that the clients had not been warned of the potential risk to their monies which had already been paid to OVP but that the Chubb insurance had still been in place.

Mr B

217. Mr Coleman referred the Respondent to the Contract Report dated 8 March 2006 sent to Mr B which stated:

> "For your protection, I have required that I become a joint signatory to the Bank account of Ocean View Properties Limited in which your deposit is being held, so that NO monies can be transferred without my authority".

218. The Respondent said that she had still been contacting OVP by this date. She did not accept that this paragraph in the Contract Report had been misleading but acknowledged that she had still not received confirmation that the joint account had been setup.

219. The Respondent accepted that, following the Adjudicator's decision in the case of Mr B, she had not complied with the decision within seven days and acknowledged that she had not paid the compensation award as her insurers had by then placed a reservation of rights on her insurance.

Hertford Avenue/Mr RB

220. In relation to the Hertford Avenue/Mr RB matter, the Respondent confirmed that she had been aware that dealing with a Transfer of property was reserved activity and that making an application to the Land Registry to register title was a reserved activity.

221. The Respondent said that she had been a director of Conveyancing UK Limited between 7 March 2005 and 22 March 2007 but that the company had been dormant and it had never traded while she was a director and shareholder. The Respondent confirmed that Mr IT was her partner and that he had been a partner in Conveyancing UK Limited in March 2007. She said that he was a property developer and that he had occupied the same premises as Conveyancing UK but that the two entities had been distinct and separate.

222. Mr Coleman referred the Respondent to a fax dated 7 April 2008 from Mr JB of Conveyancing UK Limited to Mr DC of LR Solicitors in relation to Hertford Avenue, which stated:

> "Following our conversation earlier this afternoon, please kindly forward this fax to Lesley Alberici who is currently in a meeting with LR at your office".

223. The Respondent confirmed that she had been asked to provide an undertaking to hold monies on her client account in relation to Hertford Avenue, on behalf of the lender as Conveyancing UK Limited could not hold client money. The Respondent said that she had needed further information as the client was not hers and she could not allow monies to simply be deposited into her client account. The Respondent said that in this transaction, she had had no client but had acted as a Consultant for Conveyancing UK Limited.

224. Mr Coleman referred the Respondent to her letter dated 14 April 2008 to C Solicitors which stated:

> "We hereby undertake to electronically transfer One Hundred Thousand Pounds (£100,000.00) immediately on the completion of our clients purchase of 33 Hertford Avenue…"

225. The Respondent said that she had not acted for Mr RB and he had not been her client. She said that she had been fully aware that Conveyancing UK Limited had not been a recognised body and could not therefore undertake reserved legal activities. She said that Mr JB had worked for Conveyancing UK Limited and that in correspondence, their reference had been adopted.

226. The Respondent acknowledged that she had prepared documentation, including the Transfer on behalf of Conveyancing UK Limited. She said that she had still been practising at that time and that she had been paid by Conveyancing UK Limited in the sum of £25 per document. She confirmed that she would also have made the Land Registry application; in the case of reserved work, the Respondent said that she had dealt with that since Conveyancing UK Limited could not have done so due to it being reserved activity.

227. Mr Coleman referred the Respondent to a letter from her to HM Customs and Revenue Stamp Taxes office dated 30 April 2009 which stated:

> "Please be advised that the firm CUK Solicitors ceased to practice on 30th September 2008. I was the Principal of the firm and instructed by Conveyancing UK Limited to deal with the registration of the above matter with the Land Registry".

228. The Respondent acknowledged that she did not have a practising certificate by this date. She said that she had not completed the registration but had only followed up in relation to the SDLT Certificate. She said that documents had been sent to LR Solicitors to complete the registration. She said that she had still been attempting to conclude matters as part of closure of her practice. Mr LR had also been a sole practitioner whom she knew, and it had always been her intention that he should complete the registration of Hertford Avenue. The Respondent said that if she had given the impression that she had dealt with registration of Hertford Avenue, that had not been her intention and she had not done so.

229. In re-examination in relation to Mr A and friends and the Contract Report sent to them, the Respondent said that the bank guarantee/insurance would have been written in Spanish and that she would have had it translated. It would have been checked by her associate solicitors who dealt with such matters daily.

Closing Submissions on behalf of the Applicant

230. Mr Coleman invited the Tribunal to see the Respondent as an intelligent witness and said that if the Tribunal found the allegations proved against the Respondent, her actions could not be explained by either naivety or stupidity. Mr Coleman submitted that in evidence, the Respondent had said whatever seemed opportune without having regard for its truth. He invited the Tribunal to find that the Respondent had not given honest evidence in relation to two particular matters and that she had either known or not cared that her evidence was untrue:

The Chubb Insurance policy

231. It was the Respondent's assertion that she had had the policy in her possession when she had sent the Contract Report to Mr and Mrs Fain on 7 July 2005. Mr Coleman submitted that it had been clear from the Contract Report that she did not have the policy and the clients had been told that if they wanted to see the policy, it had to be obtained from OVP. Mr Coleman submitted that had not been a credible explanation by the Respondent and that if she had had the policy in her possession, she could have provided it to the clients.

232. She had requested to see the insurance policy on 3 December 2005 and a copy had been faxed to her upon receipt of which, Mr RP had become involved. Mr Coleman submitted that there was a clear inference that the Respondent had not had the policy document prior to that and she therefore either knew that her evidence was untrue or had no real belief in its truth.

Hertford Avenue

233. In relation to the Hertford Avenue transaction, the Respondent's evidence had been that Mr LR had registered the title and not her. Mr Coleman invited the Tribunal to find that this was not true for two reasons; firstly, that the client had not been told that Mr LR was dealing with the matter but that the Respondent was dealing with it and secondly, her witness statement had been entirely inconsistent with the notion that Mr LR had dealt with the matter.

Agency

234. Mr Coleman submitted that even if, as a matter of fact, the Respondent had made clear to clients that she was only acting as agent and that they were not her clients under Rule 1 of the SPR so that she had not been bound by the fundamental obligations of the SPR, this was not the case as a matter of principle. Mr Coleman submitted that a solicitor, giving legal advice does so subject to the SCC and agency does not come into it. Mr Coleman submitted that the concept of "agent" was unknown to the regulatory scheme.

235. Mr Coleman said that the Respondent had clearly represented clients subject to the SCC; he referred to the "Step-by-step guide" which included reference to the SCC and the various other documents which the Respondent had sent to the clients which referred to the solicitor/client relationship. Mr Coleman submitted that the clear message had been that the Respondent was their solicitor and she had provided them with legal advice. Nowhere had the Respondent explained the implications of her acting as agent on behalf of a foreign principal.

Closing submissions on behalf of the Respondent

236. In relation to the core allegations (the Spanish transactions), Mr Parker acknowledged on behalf of the Respondent that the files had not been models of perfection and that, in those circumstances, there was often a temptation to take the view that there was "no smoke without fire". Mr Parker said that such was the invitation being made by the Applicant.

237. Mr Parker urged the Tribunal to resist the temptation that, where a witness had given unexpected or unwelcome answers in their evidence, it followed that those answers must be untrue. Mr Parker submitted that the Tribunal had to be very careful to avoid this trap.

238. Mr Parker referred the Tribunal to the Rule 5 Statement and said that there had been a conspicuous lack of reference to the Rule 5 Statement in the presentation of the Applicant's case.

239. Mr Parker questioned in relation to allegations 1.1, 1.2, 1.3, 1.6, 2.1, 2.2, 2.3 and 2.6 and allegations 1.9 and 1.10, what were the actual allegations;

- in relation to allegations 1.1 and 2.1, what was the "clear and accurate information" that the Respondent had failed to provide;

- in relation to allegations 1.2 and 2.2, this referred to "clients' best interests" but who were her clients;

- in relation to allegations 1.3 and 2.3, this referred to "misleading representations" but there was no reference to a rule;

- in relation to allegations 1.6 and 2.4, this referred to poor service under Rule 1 of the SPR.

240. Mr Parker referred the Tribunal to Rule 1 of the SPR which stated:

> "Rule 1 (Basic principles)
>
> A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:
>
> (a) the solicitor's independence or integrity;
> (b) a person's freedom to instruct a solicitor of his or her choice;
> (c) the solicitor's duty to act in the best interests of the client;
> (d) the good repute of the solicitor or of the solicitor's profession;
> (e) the solicitor's proper standard of work;
> (f) the solicitor's duty to the Court".

241. He submitted that the relevant rules appeared to be 1 (a) and (d) in relation to allegations 1.1 and 2.1, 1 (c) in relation to allegations 1.2 and 2.2 and 1 (e) in relation to allegations 1.6 and 2.4 but it was not clear. In relation to allegations 1.3 and 2.3 and "misleading representations" Mr Parker submitted that this could possibly have been Rule 1 (a) or (e) but it was not clear from the Rule 5 Statement.

242. Mr Parker submitted that, when the Applicant sought to say that allegation 1.1 had been made out by the Respondent having failed to warn Mr and Mrs Fain and Mr C-I of the risks associated with the insurance, that bore no relation to the Rule 5 Statement.

243. In relation to the "client's best interests" at allegation 1.2, Mr Parker said that this related to Mr and Mrs Fain and Mr C-I where the Respondent had not identified to them matters of concern regarding the Chubb policy and to Mr J, Mr M and Mr H and Mr B in relation to the Respondent's failure to disclose that she was not joint signatory. Mr Parker submitted that this was the extent of the focus of allegation 1.2, namely the Chubb insurance policy and the joint account.

244. In relation to allegation 1.3 and the "misleading representations", Mr Parker submitted that this related to the Respondent becoming a signatory on the joint account and the Respondent's use of "I have required..." in relation to which dishonesty had been alleged. Mr Parker said that in the Rule 5 Statement he had been unable to see in the submissions section any allegations in this regard in relation to Mr and Mrs Fain and Mr C-I as they had not received reference to the joint account, only the Chubb policy.

245. Mr Parker said that, in relation to allegation 1.6 and the alleged poor service, this allegation appeared to be an accumulation of allegations 1.1, 1.2 and 1.3 and he submitted that the Applicant was inviting that the Respondent should be penalised twice for the same conduct.

246. Mr Parker invited the Tribunal to re-familiarise itself with the Rule 5 Statement and he invited the Tribunal to interpret the allegations narrowly and focus exclusively on the question of who was the solicitor for each client. Mr Parker acknowledged that there may have been certain elements, which had not been ideal in terms of clarity in relation to Conveyancing UK but the situation had not been nearly as hopeless as suggested.

247. In relation to the Supplemental Rule 7 Statement, Mr Parker accepted that Mr A and friends (Los Corales) were clients of the Respondent. He said that the Rule 7 Statement (allegations 2.1, 2.2, 2.3 and 2.4) had merely repeated allegations 1.1, 1.2, 1.3 and 1.6 as in the original Rule 5 Statement and there were no submissions in the Rule 7 Statement as to what the Respondent had or had not done. Mr Parker said that the particulars set out in Counsel for the Applicant's Note were what would have been expected in the Rule 7 Statement. Mr Parker submitted that the case dated back to 2003 and these proceedings had been ongoing since August 2010. He said that it was not good enough to proceed in this way, on the basis of a Rule 7 Statement which contained no particularised allegations at all.

248. Mr Parker said that in relation to the Rule 7 Statement, it appeared that the case of Mr A and friends amounted to no more than that the Respondent had not done enough to satisfy herself that the bank guarantee/insurance document had been in place before releasing the deposit monies and that this had not been in her clients' best interests.

249. Mr Parker said that it was this case he was before the Tribunal to answer on behalf of the Respondent and that, in relation to all six clients regarding the Spanish property transactions, the allegations were narrower than as submitted on behalf of the Applicant.

250. Mr Coleman then addressed this issue and submitted that the points made by Mr Parker in relation to the narrow interpretation of the Rule 5 and Rule 7 allegations were misconceived. He said that Mr Parker appeared to have made two points; firstly, that the Rule 5 Statement as a document was subject to criticism and secondly, that Mr Coleman's Note and the points made therein had gone beyond the scope of the Rule 5 Statement.

251. In relation to the Rule 5 Statement itself, Mr Coleman said that it was too late to make any valid criticisms. The Rule 5 Statement had been served upon the Respondent in August 2010, the Rule 7 Statement had been served in May 2011 and directions had been given in April and July 2011; no issues had been raised then and nothing had been raised during Mr Coleman's opening submissions.

252. Mr Coleman said that the real issue was whether the Respondent had been given fair notice of the points made by him in writing and orally and Mr Coleman submitted that she had. He said that his Note had been served upon the Respondent's solicitors on the previous Wednesday albeit Mr Parker had not received it until the Thursday. Mr

Coleman said that his Note had identified the key points upon which the Applicant relied and his closing argument had reflected the points in his Note.

253. Mr Coleman said that he had identified each of the points for each allegation in his Note and these had been put fairly before the Tribunal. Mr Coleman said that Mr Parker had not suggested that the Respondent had not had a fair opportunity to deal with all of the points he had made in relation to the allegations and that was what needed to be considered by the Tribunal.

254. In relation to Rule 1 of the SPR, Mr Coleman said that this contained a set of obligations and fundamental principles to which solicitors were subject. He submitted that the sub-paragraphs were not discreet and that they overlapped so that conduct in this case before the Tribunal fell within more than one sub-paragraph. Mr Coleman gave an example that, if a solicitor acted without integrity (Rule 1(a)) this would also impact upon good repute of the profession (Rule 1(d)). Mr Coleman submitted that, in relation to Rule 1(c) and Rule 1(e), the core duty of proper standard of work could stand-alone without a breach of Rule 1(c) in relation to best interests.

255. In relation to the agency point, Mr Coleman submitted as a matter of law that the correct approach was to ask to whom, in substance, the Respondent had provided legal services as a solicitor when she had provided the Contract Report. He said that if the answer was JO then the Tribunal could accept that it had been an agency relationship. If, however, it was to Mr J, Mr and Mrs Fain, Mr C-I, Mr B and Mr M and Mr H, then as a matter of law the agency point fell away.

Findings as to Fact and Law

256. **Allegation 1.1. She failed to provide clear and accurate information to clients and in so doing compromised her integrity and the good repute of the profession in breach of Rule 1 of the Solicitors' Practice Rules 1990 ("SPR");**

Allegation 2.1. She failed to provide clear and accurate information to clients and in so doing compromised her integrity and the good repute of the profession in breach of Rule 1 of the Solicitors' Practice Rules 1990 ("SPR");

256.1 Mr Coleman said that it was accepted that Mr A and friends were clients of the Respondent. In the Contract Report the client had been told that money would not be released from the client account until the bank guarantee/insurance had been provided. Money had, however, been released at a time when the Respondent did not have a copy of the bank guarantee/insurance but an unsigned letter from GVAA. The Respondent had said in evidence that she may have had a copy but that it would have been on an administrative file and she had been unable to locate this; she had relied upon the GVAA letter.

256.2 In relation to Mr and Mrs Fain and Mr C-I, Mr Coleman said that their Contract Report had referred to the "Criminal Theft" insurance policy having been in place to provide protection for the clients' deposits. Mr Coleman invited the Tribunal to find this misleading on the basis that the insurance had not covered the clients making a direct claim and the Respondent had accepted in evidence that the policy did not cover OVP going into liquidation.

256.3 Mr Coleman submitted that this had been an obvious risk against which the clients should have been protected. The clients had assumed that the Respondent was their solicitor, she was affording them protection against risk and they had been given the overall impression that the Respondent had been looking after their interests. In his evidence, Mr Fain had stated that he had assumed the policy which was in place was "fit for purpose".

256.4 In relation to Mr J, Mr M and Mr H and Mr B, Mr Coleman submitted that the relevant statement was that made by the Respondent in the Contract Report sent to these clients which stated:

> "For your protection, I have required that I become a joint signatory to the Bank account of Ocean View Properties Limited in which your deposit is being held, so that NO mnoes (sic) can be transferred without my authority".

Mr Coleman submitted that the Respondent had represented to the clients that the joint account had been set up and that she was a joint signatory to the account and the client had acted upon advice which they believed they had received from their solicitor to protect their monies.

256.5 Mr Coleman submitted that allegations 1.1 and 2.1 were made out in respect of all six clients and asked the Tribunal to find it proved.

256.6 Mr Parker said that the starting point was how the relationship between the client and the solicitor arose or where the contract lay. He said that in relation to the five clients for EBCC (Mr J, Mr C-I, Mr and Mrs Fain, Mr M and Mr H and Mr B) the introduction letters had recommended JO and Conveyancing UK as their English Agents. Mr Parker submitted that the retainer was created by the "Spanish Lawyer Instruction Form", which identified the retainer of JO as the solicitors acting for the client and Conveyancing Spain/UK as the Agents.

256.7 Mr Parker referred the Tribunal to the letter from Conveyancing Spain to Mr J dated 5 December 2005 which stated:

> "We are Agents acting on behalf of your Lawyers J.Olleros and Associados..." and "Once we are in receipt of the 0.25% legal fees your Contract pack Report will be forwarded to you via Special Delivery post".

Mr Parker submitted that there had been nothing unclear about the reference to Conveyancing Spain/UK as the clients' Agent and it had not been inaccurate.

256.8 Mr Parker acknowledged that when the Contract Reports were sent out, enclosures to the Reports had included the "Step-by-step guide" and "FAQs" which were pre-printed documents and which the Respondent had referred to in her evidence as having been too costly to replace. She had accepted that certain of those documents had been phrased to refer to the Respondent as the instructed solicitor and not JO.

256.9 Mr Parker submitted however that when the Contract Reports had been sent out, it had been after the point in time when the actual retainers had been entered into between the clients and JO. He submitted that those documents had not affected the

terms of the retainer already entered into between the clients and JO and that clear and accurate information had been provided to the clients that JO was the retained solicitor, for example information from OVP, individual correspondence from Conveyancing UK and the "Spanish Lawyer Instruction Form".

256.10 Mr Parker acknowledged that the waters had been muddied by the pre-printed brochures, but submitted that it was impossible to demonstrate that the Respondent, by virtue of this, had lacked integrity or had brought the profession into disrepute. Mr Parker accepted that it had in part been careless of the Respondent and in part mean not to amend the pre-printed brochures which had been sent to clients with otherwise clear correspondence.

256.11 Mr Parker reminded the Tribunal that they had to be satisfied so as to be sure to the criminal standard that, in allowing the pre-printed documents to be sent, the Respondent had lacked integrity and had diminished the good repute of the profession.

256.12 Mr Parker quoted from the Oxford English Dictionary that integrity was described therein as "soundness of moral principle", "honesty", "sincerity" and "upright". He said that Mr Fain may have been confused as to who was acting for him, and while the Respondent may have allowed the confusion to arise, she had not been lacking in soundness of moral principle or of honesty or sincerity in doing so.

256.13 In relation to Mr A and friends, Mr Parker said that no unclear or inaccurate statements had been identified in the Rule 7 Statement; it had merely contained the same allegations as in the original Rule 5 Statement and a summary of Mr A and friends' file. Mr Parker submitted that allegation 2.1 was superfluous in relation to Mr A and friends and only allegations 2.2, 2.3 and 2.4 were relevant.

256.14 The Respondent denied allegations 1.1 and 2.1.

256.15 The Tribunal was satisfied so that it was sure and found allegations 1.1 and 2.1 proved on the facts and on the documents.

257. **Allegation 1.2. She failed to act in her client's best interests, contrary to Rule 1 of the SPR;**

Allegation 2.2. She failed to act in her client's best interests, contrary to Rule 1 of the SPR;

257.1 In relation to Mr A and friends, Mr Coleman said that the Respondent had failed to comply with numerous assurances given to the clients that monies would not be released until she was in possession of the bank guarantee/insurance but monies had been released when the guarantee had not been in her possession.

257.2 In relation to Mr J, Mr and Mrs Fain, Mr C–I, Mr M and Mr H and Mr B, those clients had had no building licence and had had acquired no interest in the Spanish properties, despite having paid deposits and the Respondent should have protected those clients against risk. On her own evidence, Mr Coleman said that the Respondent had had concerns from Autumn 2005 in relation to OVP; she had referred in evidence

to having been aware of rumours regarding OVP's liquidity in late 2005. In addition, the Respondent had been aware of complaints from client and that OVP had delayed in paying refunds to clients.

257.3 Mr Coleman submitted that the Respondent had failed to put in place appropriate safeguards to protect clients. He said that the Respondent knew what was required in relation to a client account which she could control or which a client could control or to have insurance in place. Mr Coleman said that the e-mails dated 7 December 2005 and 15 December 2005, supported that the Respondent had no excuse for her failure to have put arrangements in place to protect clients' funds in relation to Mr J, Mr M and Mr H and Mr B. Post December 2005, Mr Coleman said that the Respondent had failed to warn Mr and Mrs Fain and Mr C-I about the "Criminal Theft" policy and that they could not rely upon it. Mr Coleman said that, in the case of Mr and Mrs Fain, Mr Fain had only discovered for himself that his money was at risk some years later.

257.4 Mr Parker submitted that the Rule 1 principles were not all dependent upon the existence of a solicitor/client relationship. He gave the example of a solicitor acting in a transaction, who sent an offensive letter to his opponent. In those circumstances, Mr Parker submitted that the solicitor would be liable to professional sanction in relation to integrity, regardless of the fact that there was no solicitor/client relationship as the recipient was the opponent and not client.

257.5 Mr Parker said that, in a situation where the solicitor had not entered into a retainer with the client, but had undertaken work for them, a duty of care was owed in tort. Mr Parker said that having regard to Rule 1(c) in relation to best interests, the words "the client" appeared. He submitted that there had to be a solicitor/client relationship for Rule 1(c) and the allegations in these proceedings to engage. As the Respondent had acted as Agent, the individuals concerned had not been clients of the firm and, whatever other professional duties the Respondent had owed them, this had not included best interests under Rule 1 (c) of the SPR.

257.6 In relation to Mr A and friends, Mr Parker said that the Rule 7 Statement had not particularised how the clients' best interests had not been served.

257.7 Mr Parker submitted that the Respondent had identified the risk of releasing the monies in advance of the bank guarantee/insurance having been in place and had identified that she needed to be satisfied that the guarantee/insurance was in place, both of which were in the clients' best interests. She had received the fax from GVAA and she had believed the fax which stated that the bank guarantee/insurance was in place. Mr Parker said that her evidence had been that the document would have been in Spanish and she would have had to rely on GVAA.

257.8 Mr Parker said that whilst it may have been "negligent" that the Respondent had not had the guarantee/insurance in her hand, he submitted that it was a question of the Respondent's performance of her obligations and not a question of not having served the clients' best interests. If anything, this was a standard of work issue and not best interests.

257.9 Mr Parker submitted similar reasoning in relation to Mr and Mrs Fain and Mr C – I regarding the Chubb insurance policy. He said that the Respondent had identified the

need to protect as best she could the monies clients had paid to OVP and she had identified the Chubb insurance policy with Mr RP and put this in place. The Respondent had believed that this was a means of mitigating the risk and, on that basis, Mr Parker submitted that she had acted in the clients' best interests. Mr Parker said that it might have been "negligence" not to have taken steps sooner to mitigate the risk to clients but it did not follow that the Respondent had failed to act in clients' best interests.

257.10 Mr Parker informed the Tribunal that he put his argument in relation to allegations 1.2 and 2.2 on the basis of the Tribunal not accepting the agency point and that the clients were clients of the Respondent. In response to a question from the Tribunal, Mr Parker said that, if evidence suggested that the solicitor had been wholly reckless as he/she went about their business, that would fall into the category of gross negligence in which courts recognised that it was for the Tribunal to say whether there had been a dereliction of the proper standard of work from which disciplinary consequences could flow.

257.11 Mr Parker submitted that, on the facts, the Respondent had done that which ought to be done to safeguard clients' best interests. He said that the Respondent's evidence had been that no policy could have protected against the risk of liquidation and no such policy was available. If the Respondent's failure had been not to have pursued that further, Mr Parker submitted that was a standard of work issue and not best interests.

257.12 In relation to clients Mr J, Mr M and Mr H and Mr B, Mr Parker said that this related to the Respondent seeking to become a joint signatory with OVP. Mr Parker said that the Respondent had already identified by December 2005 the issue regarding the insurance and had then considered how else to protect clients' funds. This had led to the Respondent seeking to become joint signatory on the account where client monies were held. Mr Parker said that the Respondent had taken steps to that end, and that no criticism should have been levelled at the Respondent for her desire to act in clients' best interests to mitigate that risk.

257.13 Mr Parker acknowledged that the Respondent had not continued to check whether the account had been opened and client monies paid into it. In evidence, the Respondent had said that she had attempted to discover whether the account had been opened. Mr Parker accepted that the Respondent could have been criticised for her lack of transparency with clients about this, but submitted that this was a proper standard of work issue.

257.14 The Tribunal was satisfied so that it was sure and found allegations 1.2 and 2.2 proved on the facts and on the documents.

258. **Allegation 1.3. She made misleading representations to clients;**

Allegation 2.3. She made misleading representations to clients;

258.1 Mr Coleman referred to Mr A and friends and that the Respondent had told the clients that the necessary documentation had been received, including the bank

guarantee/insurance but that had been an untrue representation; the Respondent had not seen the guarantee/insurance at the relevant time.

258.2 Mr Coleman said that, in relation to Mr and Mrs Fain and Mr C-I, the statement made by the Respondent in relation to the Chubb insurance policy had been misleading such that Mr Fain had thought that appropriate protection was in place regarding his deposits.

258.3 In relation to Mr J, Mr M and Mr H and Mr B, Mr Coleman said that the misleading representations related to the Respondent's statements regarding the joint account. The Respondent had used the word "required", not "requested" or "asked". The clients had read this as appropriate arrangements for the joint account with OVP had been put in place and they had not appreciated the nuances or subtleties of the Respondent's use of the word "required".

258.4 Mr Coleman confirmed that allegations 1.3/2.3 were put on the basis of dishonesty and referred the Tribunal to his first Note dated 25 January 2012. Mr Coleman submitted that the Respondent had been dishonest in relation to allegations 1.3/2.3 or, in the alternative, reckless. He submitted that the Respondent must have known or suspected that the statement that she was a joint signatory was untrue. Mr Coleman submitted that the Respondent had appreciated the importance of the statement and, in particular, that the clients would pay money to OVP in reliance upon it. Mr Coleman said that, by the time of 8 March 2006, the Respondent must have suspected that she had not been made a joint signatory to the account as two months had passed and no evidence had been produced to her of a joint account and her calls had been ignored by OVP.

258.5 Mr Coleman submitted that the Respondent must have known that her conduct was dishonest by the ordinary standards of reasonable and honest people as per the "test" set out in Twinsectra v Yardley [2002] 2 AC 164 and Law Society v Bryant [2007] EWHC 3043 (Admin). Alternatively, Mr Coleman submitted that the Respondent had been reckless as to the truth of the statement and as to the harm that it was liable to cause her clients.

258.6 Mr Parker said that, in relation to the Rule 5 Statement, it was silent regarding Mr and Mrs Fain and Mr C–I as to allegation 1.3.

258.7 In relation to Mr A and friends, Mr Parker said that the allegation of misleading representations in the Rule 7 Statement was silent. Mr Parker said that the Respondent had made the representations she did because she had chosen to rely on her associate solicitors GVAA. Mr Parker submitted that nothing had appeared unusual about the facts to her and in her judgement, there had been nothing suspicious about the fax from OVP. Mr Parker said that GVAA had been a reputable and competent firm in the Respondent's eyes. The Respondent had seen the letter, which confirmed existence of the bank guarantee/insurance to the Respondent's satisfaction. Mr Parker said that if anything, this was poor standard of work but not misleading representation.

258.9 In relation to Mr and Mrs Fain and Mr C–I, the Respondent had represented that the "Criminal Theft" policy had been in place and that it was satisfactory to the Spanish lawyers. Mr Parker submitted that the Respondent had believed that the policy was fit

for purpose. She had identified the risk and had taken steps to cover the risk other than for liquidation on the basis that she said that had been uninsurable.

258.11 Mr Parker said that there was no hint of lack of integrity regarding both issues, nor of dishonesty on the part of the Respondent. Instead, he said that these appeared to be service issues rather than misleading representations or deliberate lies.

258.12 In relation to Mr J, Mr M and Mr H and Mr B, Mr Parker referred to the "...I have required..." issue. He referred the Tribunal to the case of Law Society v Bryant which stated:

> "[Counsel for Mr Bultitude] submitted, and I would accept, that the test to be applied when deciding dishonesty is as formulated by the House of Lords in Twinsectra… Namely, in the context of this case: first, did Mr Bultitude act dishonestly by the ordinary standards of reasonable and honest people, and if so; secondly, was he aware that by those standards he was acting dishonestly?"
>
> "... In any event there are strong reasons for adopting such a test in the disciplinary context and for declining to follow in that context the approach in the Barlow Clowes case. As we have observed earlier, the test corresponds closely to that laid down in the criminal context by R v Ghosh [1982] QB 1053; and in our view it is more appropriate that the test for dishonesty in the context of solicitors' disciplinary proceedings should be aligned the criminal test than with the test for determining civil liability for assisting in a breach of a trust. It is true, as Mr Williams submitted, that disciplinary proceedings are not themselves criminal in character and that they may involve issues of dishonesty that could not give rise to any criminal liability (eg lying to a client as to whether a step had been taken on his behalf). But the tribunal's finding of dishonesty against a solicitor is likely to have extremely serious consequences for him both professionally (it will normally lead to an order striking him off) and personally. It is just as appropriate to require a finding that the defendant had a subjectively dishonest state of mind in this context as the court in R v Ghosh considered it to be in the criminal context. Indeed, the majority of their Lordships in the Twinsectra case appeared at that time to consider that the gravity of a finding of dishonesty should lead to the same approach even in the context of civil liability as an accessory to a breach of trust. The fact that their Lordships in the Barlow Clowes case has now taken a different view of the matter in that context does not provide a good reason for moving to the Barlow Clowes approach in the disciplinary context.
>
> Accordingly, the tribunal in the present case should, in our judgment, have asked itself two questions when deciding the issue of dishonesty: first, whether Mr Bryant acted dishonestly by the ordinary standards of reasonable and honest people; and, secondly, whether he was aware that by those standards he was acting dishonestly".

258.13 Mr Parker said that, if the Respondent had said "I have become a joint signatory on the account" then she might be in difficulties, but she had not. Mr Parker submitted that it was more than "I have suggested" but less than "I have insisted". The

Respondent, by using "required" had meant "requested" or "asked" and that had been her evidence.

258.14 Mr Parker said that the Tribunal had to be satisfied that the Respondent had been so deceitful that she had deliberately chosen the formulation of words to have given a misleading impression that she could subsequently deny. Mr Parker said that the Tribunal had to be satisfied that the Respondent had acted dishonestly by the standards of reasonable and honest people and that she had known that she had acted dishonestly.

258.15 Mr Parker submitted that in many respects in the way in which the Respondent had conducted the work, it had shown her to have been naive, lacking in common sense and not quite clever enough. He said that the Applicant had to satisfy the Tribunal to the criminal standard that the Respondent had that level of sophistication to tell such lies and then believably dispute the words that she had used. Mr Parker said that the Respondent had never made any representation that she had definitely become a signatory to the joint account; there had been no misleading representation therefore and subsequently no dishonesty on the part of the Respondent.

258.16 The Tribunal found allegations 1.3 and 2.3 not proved on the limited basis upon which it had been put and did not find that the Respondent had acted dishonestly or recklessly in this respect.

259. **Allegation 1.6. She provided a service so poor as to amount to professional misconduct in breach of Rule 1 of the SPR;**

Allegation 2.4. She provided a service so poor as to amount to professional misconduct in breach of Rule 1 of the SPR.

259.1 Mr Coleman referred the Tribunal to the case of Re A Solicitor [1972] 2 All ER 811 and submitted that, by virtue of the Respondent's grossly negligent conduct, such conduct had constituted professional misconduct. In Re A Solicitor, Mr Coleman submitted that it was common ground that negligent conduct could be professional misconduct if the negligence was serious, as here.

259.2 Mr Parker referred the Tribunal to the submissions he had already made in relation to allegations 1.1, 2.1, 1.2, 2.2, 1.3 and 2.3. In relation to allegations 1.6 and 2.4, that of poor service, Mr Parker questioned whether negligence could be professional misconduct as suggested in Re A Solicitor. Lord Denning's Judgment stated:

> "... Mr Owen, for the solicitor, challenges the finding of professional misconduct. Mr Owen has quoted cases to show that professional misconduct should only be found when the solicitor has been guilty of conduct which is disgraceful or dishonourable and is such as to be condemned by his colleagues in the profession. I do not think that definition is exhaustive. In my opinion negligence in a solicitor may amount to a professional misconduct if it is inexcusable and is such as to be regarded as deplorable by his fellows in the profession. We were referred to In re M [1030] N.Z.L.R. 285, in which it was said, at p.286, that the failure of the solicitor to have his trust accounts audited amounted to professional misconduct. In that case it was argued [see per

> Myers C.J. at p. T86] that his failure was due merely to carelessness, and that as there had been no dishonesty, it was not professional misconduct. But the Court of Appeal in New Zealand held that neglect amounts to professional misconduct. So here. The negligence of the solicitor was reprehensible...".

259.3 Mr Parker submitted that, as per Lord Denning in Re A Solicitor, mere negligence was not enough to find professional misconduct. Lord Denning had referred to conduct that was "inexcusable", "deplorable" or "reprehensible". Mr Parker also referred the Tribunal to the more recent case of Aaron v Law Society [2003] EWHC 2271 (Admin) which stated:

> "As stated in Cordery on Solicitors, 9th Edition, at paragraphs 1430-1440 and 1407, solicitors are not liable in conduct for simple mistakes or errors of judgment, but negligence may, depending on the circumstances amount to professional misconduct. It may be helpful for me to set in full the latter paragraph, which draws on passages from the judgments of Sir Thomas Bingham MR, as he then was, in Ridehalgh v Horsefield [1994] Ch 205, CA, at 232D, and of Lord Denning MR in Re a Solicitor [1972] 2 All ER 811, at 8151:
>
> "Professional misconduct is simply conduct which the Solicitors' Disciplinary Tribunal and the Judges from time to time regard it to be. 'Conduct which would be regarded as improper according [to] the consensus of professional, including judicial, opinion could be fairly stigmatised as such whether it violated the letter of professional code or not.' Conduct does not have to be 'regarded as disgraceful or dishonourable by his professional brethren of good repute and competency' to amount to professional misconduct as even negligence may be misconduct if it is sufficiently reprehensible or 'inexcusable and such as to be regarded as deplorable by his fellows in the profession'. It will be noted that these quotations preserve the assessment of professional conduct, as to whether or not it amounts to professional misconduct, to the profession itself and to the judges".

259.4 Mr Parker submitted that, in relation to Mr A and friends, it could be said that the standard of service was lacking by the Respondent having failed to check the veracity of GVAA's facts or not having demanded to see a hardcopy of the bank guarantee/insurance. It was open to the complainants to argue the grounds in civil proceedings, but Mr Parker submitted that this was not the calibre of mistake as to constitute gross negligence.

259.5 In relation to Mr and Mrs Fain and Mr C–I, Mr Parker said the reality was that the Respondent should have taken great steps to check that the Chubb insurance policy was fit for purpose. Had she done so, she would have realised sooner that it was not and taken earlier steps to address that. Mr Parker said that the complainants again could rely on this in the civil courts as an action in negligence but the Respondent had said in her evidence that it had been her partner, Mr RP, who had dealt with the Chubb policy and that the Spanish lawyers had been satisfied with the policy.

259.6 In relation to Mr J, Mr M and Mr H and Mr B, Mr Parker said that it had been submitted by the Applicant that the Respondent had failed to take greater steps to

establish the position regarding the joint account and that she had failed to warn clients when concerns had arisen as to the liquidity of OVP. Mr Parker acknowledged that it was possible that her failure to do so might have been negligent but the calibre of her mistake was not reprehensible, inexcusable or deplorable.

259.7 Mr Parker submitted that, unless the Tribunal was satisfied so as to be sure that the allegations fell into the reprehensible, inexcusable or deplorable category, the Tribunal could not find allegations 1.6 and 2.4 proved.

259.8 Mr Parker referred the Tribunal to allegations 1.1, 1.2, 1.3 and 1.6 and 2.1, 2.2, 2.3 and 2.4 and submitted that they relied upon the same facts and related to issues of file handling by the Respondent. Mr Parker submitted that if any of the allegations were appropriate, it was allegations 1.6 and 2.4 regarding the Respondent's proper standard of work. Mr Parker said that his criticisms of the Rule 5 and Rule 7 Statements as to allegations 1.1/2.1, 1.2/2.2 and 1.3/2.3 similarly related to allegations 1.6/2.4.

259.9 The Tribunal was satisfied on the facts and on the documents and found allegations 1.6 and 2.4 proved on the same bases as allegations 1.1, 2.1, 1.2 and 2.2.

260. **Allegation 1.4. She failed to place fees received from clients within client account as required by Rule 19 of the Solicitors Accounts Rules 1998 ("SAR");**

Allegation 1.5. She failed to keep books of accounts properly written up for the purposes of Rule 32 of the SAR;

260.2 Mr Coleman submitted that it was improbable that Ethics would have made such an error if they had been given the full facts, including that the solicitor's fees were being charged in advance and on account for work which had not been done in accordance with the Respondent's evidence.

260.3 Mr Coleman said that it was common ground that no ledger had been kept and that in relation to office money, a ledger was still required.

260.4 Mr Parker said that, apart from Mr A and friends the Tribunal needed to consider the actual relationship between the Respondent and the other clients. Mr Parker said that he relied upon there having been an agency relationship between the Respondent and those other clients and that, if the Tribunal accepted that, then it was perfectly proper for the Respondent to have accounted for fees in the way that she did.

260.5 Mr Parker referred the Tribunal to Rules 13, 19 and 32 of the SAR. He said that Rule 13 identified client money and office money and that monies received as agency fees did not fall within those categories. Mr Coleman challenged this by reference to Rule 13 (i) (a) which stated:

> " 'Client money' includes money held or received:
>
> (a), as agent, bailee, stakeholder, or as the donee of a power of attorney, or as a liquidator, trustee in bankruptcy or Court of Protection receiver;".

260.6 Mr Parker said that money held by the Respondent had been held as agent for JO and not for the client. Mr Parker said that, in the Respondent's evidence, she had explained that she had received monies belonging to JO and that because they had not wanted onerous administrative responsibilities, it had been agreed that the Respondent would receive the fees, deduct her fees and pass the balance onto JO.

260.7 Mr Parker referred the Tribunal to note (xi) D to Rule 13 which stated:

> "Office money includes:
>
> (D) money paid for or towards an agreed fee – see rule 19 (5);".

260.8 Mr Parker submitted that fees charged by the Respondent had been agreed fees; the Respondent had only been required to prepare and send out the Contract Report and then her firm's work had been concluded. Mr Parker acknowledged that correspondence had referred to "money on account" but said that there had been a set fee of 0.25% in each case, charged by the Respondent. Rule 19 (5) of the SAR required that an agreed fee be paid into office account.

260.9 In response to a question from the Tribunal, Mr Parker said that the agreed fee was for provision of the Contract Report and that, if it had not been provided, there would have been a failure of consideration and the client's fee would have been repaid out of office account. Mr Parker submitted that the conveyancing transaction had to be distinguished from provision of the Contract Report and that Rule 19 (5) created the exception in this case.

260.10 Mr Parker acknowledged that there had been a lack of terms of engagement between JO and Conveyancing UK other than the 0.25% fee agreement. He said that nothing in the papers suggested that the Respondent had been required to do anything other than provide the Contract Report and that she had only offered herself as in effect a "post box" between JO and the UK clients. Mr Parker said that the Respondent had merely been a link with Spain to afford some comfort to the clients. The Respondent had wanted to feel that she had added value to the process.

260.11 Mr Parker said that, if the Tribunal accepted the agency point, then none of the individual purchasers were clients of the firm and the obligation under Rule 32 of the SAR (allegation 1.5) to maintain accounting records did not rise as the obligations under that rule related to client records. Other than Mr A and friends, Mr Parker said that the Respondent did not accept that Mr J, Mr and Mrs Fain, Mr C-I, Mr M and Mr H and Mr B had been her clients and she therefore had been under no obligation to maintain client/office accounts.

260.12 The Tribunal was satisfied on the facts and on the documents and found allegations 1.4 and 1.5 proved.

261. **Allegation 1.7. She failed to comply promptly or at all with Directions dated 16 June 2009, 12 November 2009 and 13 November 2009 made by an Adjudicator of the Legal Complaints Service ("LCS"), acting pursuant to delegated powers.**

261.1 Mr Coleman submitted that by the Respondents failure to comply with the Adjudicator's Decisions, this had been professional misconduct. Mr Coleman said that Mr Parker sought to rely on the case of Francis Joel Aaronson Case No. 10099-2008 previously before the Tribunal which had decided that the Tribunal could not hold that a solicitor had breached any professional duty in not complying with an Adjudicator's Direction because it was not enforceable without an order of the Tribunal. Mr Coleman submitted that the reasoning was flawed and that the approach taken by the Tribunal in the cases of Desmond James Corlis Case No. 10402-2009 and Thompson, Khan and Khan Case No. 10438-2010 should be preferred.

261.2 Mr Coleman submitted that it did not follow from the fact that a direction was unenforceable without a Tribunal order that a solicitor had no professional obligation to comply with it. The question of the enforceability of the direction through the judicial enforcement process was distinct from the solicitor's professional obligation to comply with it. The purpose of requiring a Tribunal order before a direction was legally enforceable was to allow a solicitor to make a proper challenge to it; it was not to enable the solicitor to delay or obstruct compliance with it.

261.3 Mr Coleman submitted that failure to comply with an Adjudicator's Direction without good reason was liable to diminish the trust the public placed in the profession. Mr Coleman said that the onus was on the solicitor to demonstrate that he or she had taken all reasonable steps to pay the award. He accepted that there might be circumstances when a solicitor could not pay and, in those circumstances, public confidence would not be diminished, for example by the solicitor being communicative, cooperative and transparent. Mr Coleman said that it was not acceptable to assert before the Tribunal sometime later, as the Respondent had, that she could not afford to pay at the time but without having provided any evidence of the same.

261.4 In relation to clients Mr and Mrs Fain, Mr C-I and Mr B, Mr Coleman said that the Directions had all been made in December 2009 and each required payment within seven days. The Respondent had not then been bankrupt but no explanation had been forthcoming to the LCS or the clients as to why the Respondent could not pay and no proof of this had been provided.

261.5 Mr Coleman said that, whilst the Respondent had given evidence about the reservation of rights by her professional indemnity insurers, no further information or documentation had been provided of the circumstances surrounding the reservation and the Respondent had not pursued any challenge or resolution. Some two years later, Mr Coleman submitted that the obligation to make further enquiries was on the Respondent and not on the Applicant.

261.6 Mr Parker submitted that the wrong allegation had been made against the Respondent in relation to allegation 1.7. He submitted that the Applicant should have applied to convert the Adjudicator's Decisions to High Court orders subject to the changes in the law.

261.7 Mr Parker said that the Tribunal should not find misconduct in relation to this allegation as a distinction should be made between "can't pay" and "won't pay". Mr Parker submitted that the Respondent's case was the former.

261.8 Mr Parker referred the Tribunal to the case of Casson v Law Society [2009] EWHC 1943 (Admin). Mr Parker said that the Administrative Court had addressed whether an Adjudicator's award was of itself an enforceable obligation and had reached the conclusion that, in the context of bankruptcy, unless the award was converted into an Order of the High Court, it would not be legally enforceable. In Casson, Maddison J stated in the Court's Judgment:

> "Applying that principle, the SDT was also in my judgement clearly right to decide that the appellants' liability to pay the sums awarded by the adjudicators had not arisen before their bankruptcies, and had thus not been discharged upon their discharge from bankruptcy. This can be seen by considering what must happen before a complaint to the LCS (if made at all) results in an enforceable award of compensation.
>
> i) First, the LCS has to decide to investigate whether inadequate professional services have been provided. Nothing in Sch. 1A to the 1974 Act imposes a duty on the LCS to do so, and we were informed by Mr McLaren QC for the respondent that in practice the LCS sometimes declines to entertain complaints at all. This is borne out by a LCS publication entitled "Common Questions" with which this Court has been provided, on page 1 of which it is said that "There [are] some types of complaints that are not appropriate for us to deal with." Six examples then follow. One is "complaints made where would be more appropriate for you to take court proceedings".
> ii) If the LCS does decide to investigate the complaint, an adjudicator then has to decide whether inadequate professional services have been rendered.
> iii) If the adjudicator decides that such services have been rendered, and thus upholds the complaint, it is in my view clear that the adjudicator then has discretion whether or not to direct the payment of compensation. Such a direction is only one of four steps available to the adjudicator under para.2(1) of the Sch. 1A; and the word "may" in para.1(1) in my judgment confers the discretion whether or not to take any of the steps. Indeed, para.1(2) requires the adjudicator not to take any of the steps unless satisfied that it is appropriate to do so.
> iv) If the LCS decides to investigate the complaint, the adjudicator upholds it and (notwithstanding para.1(2)) exercises his or her discretion, to direct the payment of compensation, the award is not at that stage enforceable, and may never become so. It becomes enforceable only if:
>
> a) a complaint is made to the SDT arising out of the failure to comply with the direction (see para.5(1) of Sch.1A); and
> b) the SDT, in the exercise of its further discretion, sees fit to direct that the direction be treated for the purpose of enforcement as if it were contained in an order made by the High Court (see para.5(2)). The fact that an adjudicator's award is not enforceable without more is a factor which in my view points strongly away from the award's (sic) constituting a debt or liability. The observations of Sir Martin Nourse in Steele to

> which I referred earlier in this judgment are consistent with that view.
>
> In the circumstances, it is in my view impossible to describe the prospect of a complaint to the LCS as creating a liability or debt, either contingent or of any other description. To adopt the words used by Thorpe L.J.in Glenister it creates no more than a risk of a liability. The fact that there may be a concurrent liability in tort or contract does not affect this conclusion, for the reasons explained by Arden LJ in Steele. A complaint to the LCS is entirely different in nature and consequences from an action in the County Court or High Court".

261.9 Mr Parker submitted that Casson set the foundation for concluding that LCS/Adjudicators' awards were "toothless" and that a further step was necessary for such awards to become enforceable.

261.10 Mr Parker said that the SDT case of Aaronson Case No.10099-2008, heard on the 4 May 2010 and post Casson, decided that because an adjudicator's award did not create any liability on a solicitor to pay, it could not be misconduct for said solicitor to fail to pay since there was no liability to do so. In Aaronson, Mr Parker said that the Applicant sought an order for enforcement of an Adjudicator's Direction and it was alleged that having failed to comply with said direction, Mr Aaronson had breached Rule 1.06 of the SCC. The Tribunal in that case decided:

> "Allegation 4 related to the direction made by the Law Society that the First Respondent should pay to Ms B the sum of £1000 in respect of inadequate professional services. The direction had been made under the statutory provisions in Schedule 1A to the Solicitors Act 1974 and it was clear, from the detailed analysis of those statutory provisions into previous cases, that the direction was not enforceable unless made so by the Tribunal and that the Solicitor could not appeal against the direction. Unless and until the matter was before the Tribunal and an order made it did not appear to the Tribunal that it could hold the solicitor to have been in breach of any duty. Therefore the Tribunal considered itself to be constrained in holding that the non-payment of the sum, directed to be paid, was a breach of professional conduct. Accordingly, the Tribunal did not find the allegation proved but on the basis of the facts established in relation to the First Respondent's professional services rendered to Ms B, the Tribunal had reviewed the matter and had no hesitation in deciding that the Direction had been properly made and that the Tribunal should therefore make the order sought, that the Direction be enforceable as if it were an Order of the High Court".

261.11 Mr Parker submitted that the Tribunal, on that occasion, had concluded that, given there was no enforceable liability created by the LCS award, it could not be misconduct to have failed to meet it unless and until it had been returned to the Tribunal and an order for enforcement had been sought. Mr Parker said that he relied on that point exactly.

261.12 Mr Parker also referred the Tribunal to the SDT case of Thompson, Khan and Khan, Case No.10438-2010, but said that in this case, the Tribunal had "ducked" the issue and had not reached a contrary conclusion. Thompson, Khan and Khan had stated:

> "During the course of legal argument, the Tribunal was invited to consider whether allegation (iii) could be sustained in the circumstances. The Tribunal noted that the issue had been dealt with only briefly in the case of Casson and had not been argued during the proceedings. In contrast, the Tribunal had previously, in the case of Aaronson, made a clear and unambiguous finding that failing to comply with the decision of an Adjudicator in relation to inadequate professional services, did not, in itself, amount professional misconduct.
>
> Whilst the Tribunal did not wish to lay down any points of general principal (sic), it was clear, in the circumstances of this particular case, that allegation (iii) could not be substantiated. Following the Inadequate Professional Services Decision, the Respondents indicated that they were unhappy with the Decision and that they were contemplating seeking judicial review. Within a relatively short period of time, and despite their continuing protestations, they did comply with the Decision and paid the sums ordered by the Adjudicator. Therefore the Tribunal found that allegation (iii) was not proved".

261.13 Mr Parker then referred the Tribunal to the SDT case of Corlis Case No.10402-2009 in relation to which the Respondent did not attend and which stated:

> "The Tribunal gave careful consideration to the question of whether the Respondents failure to comply with the Adjudicators' Decisions amounted to breaches of the SCC. The Tribunal reminded itself that the Inadequate Professional Service procedure is designed to compensate clients and not punish solicitors. It is an important part of the professions regulatory framework and it is incumbent on all members of the profession to comply with their obligations. Whilst there may be cases where failure to comply would not amount to a breach of the SCC, in the case of the Respondent he had not engaged in any way with the process. He had not sought to explain why he considered the decisions of the Adjudicators to be incorrect; he had merely ignored the Decisions and the consequential obligations that fell upon him as a member of the profession.
>
> The Tribunal reminded itself that the burden of proof is on the applicant and that a disciplinary allegation is substantiated only if the Tribunal is satisfied so that it is sure that the allegation is proved. In this case, the Tribunal was satisfied that all of the allegations against the Respondent had been proved to the requisite standard".

261.14 Mr Parker said that there was nothing to suggest that Casson or Aaronson had been brought to the Tribunal's attention in Corlis. The necessary point was not argued on the basis that there was no one to argue it (the Respondent was not represented and did not attend) and it was difficult therefore to be satisfied that the Tribunal was aware of all sides of the argument. Mr Parker submitted that there was a flaw in the Tribunal's reasoning in relation to the enforceability or otherwise of an adjudicator's

award. Mr Parker said that, in relation to Corlis, the Respondent had not engaged at all and the Tribunal may therefore have felt unsympathetic towards him. Mr Parker submitted that this Respondent (Ms Alberici) was not that Respondent.

261.15 Mr Parker said that a solicitor might think that it would be in his/her best interests to comply with an adjudicator's award or be at risk of costs if an application was made to the Tribunal and the risk of the resulting adverse publicity; any solicitor would want to avoid that if they could pay. In this case, the Respondent had given evidence both orally and in writing of her means. She had closed her practice in 2008 and had continued to work unpaid for between nine and twelve months to finalise closure of her practice. She had received a huge amount of correspondence from the LCS/Applicant and had admitted that she had not dealt with all of it. This was not the case of "won't pay" but rather a case of "can't pay" and Mr Parker submitted that it was distinguishable from Corlis and the result in that case. Mr Parker questioned whether the Respondent had professionally miss-conducted herself by failing to do something which she physically could not do.

261.16 Mr Parker referred the Tribunal to the correspondence of the LCS caseworkers in relation to the Respondent's clients in whose favour inadequate professional service awards had been made. In the case of Mrs L, the LCS caseworker's letter dated 6 December 2010 stated:

> "Further to your email of 2 December 2010 advising me that Miss Alberici does not have the means to pay the award, I am have (sic) now referred Mrs L to the insurers and confirm that my file is closed.
>
> As Miss Alberici is unable, rather than unwilling, to pay the compensation awarded, I have not referred the matter to the SRA".

261.17 In the case of Mr D the email from the LCS caseworker to the Respondent's solicitor stated:

> "As you have now confirmed that Ms Alberici will not be complying with the decision in this matter, in view that she is not in a financial position to do so, I am now closing my file".

261.18 In relation to Mr C-I and Mr B, Mr Parker referred the Tribunal to the correspondence from the Respondent's solicitor to those clients in January 2010 which had explained the position regarding the Respondent's insurer Quinn and the Respondent's employment situation. Mr Parker submitted that there had been transparency.

261.19 The Tribunal was satisfied on the facts and on the documents and found allegation 1.7 proved.

262. **Allegation 1.8. She failed to deal with correspondence from the Solicitors Regulation Authority in an open, prompt and co-operative way, or at all.**

262.1 Mr Coleman said that this allegation had been admitted by the Respondent.

262.2 Mr Coleman referred the Tribunal to his Note and that this allegation related to the Respondent's failure to respond to letters from the Applicant in relation to Mr J, Mr and Mrs Fain, Mr C-I, Mr M and Mr H and Mr B and in relation to the Hertford Avenue matter.

262.3 Mr Coleman said that, in her witness statement and in evidence, the Respondent had accepted that correspondence with the Applicant had not always gone as smoothly as she would have liked and Mr RF, upon whom she had relied, had been overwhelmed by the complaints correspondence. The correspondence from the Applicant had warned the Respondent that her failure to engage with her regulator would be regarded as unprofessional conduct but the Respondent had persisted in not engaging with the Applicant.

262.4 Mr Coleman said that the Respondent had admitted allegation 1.8 and asked the Tribunal to find it proved on the evidence.

262.5 Mr Parker confirmed that the Respondent had acknowledged in evidence the breach of Rule 20.05 and this was admitted by her.

262.6 The Tribunal was satisfied on the facts and on the documents and found allegation 1.8 proved. The Respondent had admitted allegation 1.8.

263. **Allegation 1.9. She provided legal services and carried out reserved work from or whilst sufficiently connected to an entity not regulated by the Law Society or Solicitors Regulation Authority, contrary to Rule 1 of the SPR and, post July 2007, contrary to Rules 12 and 21 of the Solicitors Code of Conduct 2007 ("SCC").**

Allegation 1.10. She acted as a solicitor whilst uncertificated.

263.1 Mr Coleman referred the Tribunal to allegations 1.9 and 1.10 in relation to the Hertford Avenue transaction. He said that it was alleged that the Respondent had provided legal services and undertaken reserved work contrary to Rule 1 of the SPR and Rules 12 and 21 of the SCC.

263.2 Mr Coleman said that the preparation of a Transfer Deed and registration of a property at the Land Registry constituted reserved work. The Respondent's evidence had been that Conveyancing UK Limited had not and could not conduct these activities and that she had and could at the relevant time as she was a solicitor. Mr Coleman said that the client Mr RB had however been the client of Conveyancing UK Limited and not of the Respondent. Mr Coleman said that in that case, the Respondent had been carrying out reserved legal activities as Agent for Conveyancing UK Limited which had not been a recognised body.

263.3 Mr Coleman submitted that the key facts were not in dispute; these had been very similar entities, working out of the same offices with a common reference "JB", the Respondent having provided an undertaking regarding monies and having referred to the purchaser as her "client".

263.4 Mr Coleman said that, after 12 November 2008, the Respondent had not had a practising certificate and, in those circumstances, she could not have registered title to Hertford Avenue. Mr Coleman referred the Tribunal to the correspondence between the Respondent and C Solicitors, Mr RB (the client) and HM Customs and Revenue Stamp Taxes office which he submitted supported that the Respondent had acted for Mr RB and had attempted to register title to the property. In her witness statement the Respondent said that she had dealt with the transaction and had made no mention of Mr LR's involvement.

263.5 Mr Coleman invited the Tribunal to find that the Respondent had provided legal services and carried out reserved work contrary to Rule 1 of the SPR and Rules 12 and 21 of the SCC. He asked the Tribunal to also find that the Respondent had acted as a solicitor whilst uncertificated.

263.6 Mr Parker referred the Tribunal to the wording of allegations 1.9 and 1.10. He submitted that the wording in allegation 1.9 was not language recognised in Rule 12 or Rule 21 of the SCC. He referred the Tribunal to Rule 12 of the SCC and said that Rule 12 did not refer to unregulated entities.

263.7 In relation to Rule 21 of the SCC, Mr Parker submitted that the wording of the allegation was not evident in the Rule and that this had been deliberately manipulated to bring the Respondent into this category.

263.8 Mr Parker said that it was not disputed that the Respondent had ceased to be a director of Conveyancing UK Limited and that she had given up her shareholding in the limited company approximately one year before the event to which the complaint related. Mr Parker submitted that nothing relied on in the documents showed that she had signed anything off wearing the limited company "badge". On the evidence relied upon by the Applicant, Mr Parker said that it showed that she had carried out work and charged the limited company for that work; anything done by the limited company after that had been nothing to do with the Respondent.

263.9 Mr Parker said that the Respondent had not provided legal services or carried out reserved work through the limited company and submitted that the Tribunal could not be sufficiently satisfied beyond reasonable doubt that the Respondent had traded through Conveyancing UK Limited.

263.10 In relation to allegation 1.10, Mr Parker said that it had been April 2009, after the Respondent's practising certificate had lapsed, that she had corresponded with Mr RB. He said that it was alleged that she had completed the transaction for Hertford Avenue by arranging registration of the title. Mr Parker submitted that nowhere in the correspondence seen by the Tribunal had this been stated. The Respondent's evidence had been that she had categorically not undertaken registration of the property but that she had only paid the SDLT. Thereafter she had sent the paperwork to Mr LR to complete the transaction and Mr Parker said that nothing to dispute that had been produced by the Applicant.

263.11 Mr Parker referred the Tribunal to the Respondent's witness statement and her oral evidence on this point and submitted that there had been nothing inconsistent in the

Respondent's evidence. Mr Parker said that the Tribunal had to be satisfied beyond reasonable doubt and he submitted that allegation 1.10 had not been proved.

263.12 The Tribunal did not find allegation 1.9 proved. The Tribunal was satisfied on the facts and on the documents and found allegation 1.10 proved.

Application for enforcement of Adjudicator's Directions by High Court Order

264. Mr Coleman referred the Tribunal to the Second Rule 5 Statement dated 17 May 2011 which contained the Applicant's application that the directions having been made by the Adjudicators for payment of compensation in favour of nineteen of the Respondent's clients be enforced as if it were contained in an Order of the High Court.

265. Mr Coleman said that the application was made under Schedule 1A of the Solicitors Act 1974 (as amended) ("SA 1974"). The Respondent had been ordered to pay compensation to clients for their financial losses, distress and inconvenience occasioned by her inadequate professional services in relation to various Spanish properties and also to refund the legal fees they had paid to the Respondent. In all but one case, the Respondent had been ordered to pay the maximum £15,000 compensation. Mr Coleman said that six of the directions had been made prior to 6 October 2010 and thirteen post 6 October 2010.

266. Mr Coleman said that the statutory regime under which the directions had been given had since been replaced as from 6 October 2010 by arrangements under the Legal Services Act 2007 ("LSA"). There was now an issue as to whether the Tribunal retained the power to make an order under paragraph 5(2) of Schedule 1A to the SA 1974.

267. Mr Parker objected to such an enforcement order being made on the basis of its futility, namely the Respondent's bankruptcy and submitted that the Tribunal should not make an order in vain.

268. Mr Coleman referred to Mr Parker's Note dated 2 February 2012 which set out his submissions regarding the enforcement issue. Mr Coleman said that it was Mr Parker's case that the Adjudicator's decisions remained enforceable under the new regime but by the Legal Ombudsman ("LeO"), not by order of the Tribunal. Mr Coleman submitted that this was not correct. He said that under the new system complaints could be enforced by court order, but nothing appeared to exist which addressed directions previously given under the old regime.

269. Mr Coleman said that the issue was whether the Tribunal's power to make enforcement orders under paragraph 5 (2), Schedule 1A had survived to deal with directions lawfully made under the old regime. Mr Coleman submitted that the power did remain and he referred the Tribunal to the SDT case of Toper Hassan Case No.10702-2011 in which the Tribunal had concluded the same.

270. Mr Coleman submitted that, if the Tribunal no longer possessed the ability to make enforcement orders, then this was a regulatory gap which Parliament and the Lord Chancellor could not have envisaged or intended. Mr Coleman said that if such had

been the intention, these categories of complaint would then have to be re-launched with the LeO to be enforced; Mr Coleman said that could not be right.

271. Mr Coleman referred the Tribunal to the LeO Scheme Rules which stated:

> "4.5 Ordinarily, a complainant must also refer a complaint to the Legal Ombudsman within:
> a) one year from the act/omission; or
> b) one year from when the complainant should reasonably have known there was cause for complaint without taking advice from a third party;
> whichever is later.
>
> 4.6 When the complainant should reasonably have known there was cause for complaint will be assessed on the basis of the complainant's own knowledge, disregarding what the complainant might have been told if he/she had sought advice.
>
> 4.7. If an ombudsman considers that there are exceptional circumstances, he/she may extend any of these time limits to the extent that he/she considers fair.
>
> 4.8 For example, an ombudsman might extend a time limit if the complainant was prevented from meeting the time limit as a result of serious illness or where the time-limit had not expired when the complainant raised the complaint with the authorised person".

272. Mr Coleman said that there appeared to be power for the LeO to extend the time-limit for the complainant to complain but, whether this would happen or not, did not assist. Mr Coleman submitted that, even if the LeO possessed the power to enforce these Adjudicators directions, the complainants/clients would have to start again under a new regime.

273. Mr Coleman referred the Tribunal to section 37A of the SA 1974 which stated:

> "Schedule 1A shall have effect with respect to the provision by solicitors of services which are not the quality which it is reasonable to expect of them".

274. Mr Coleman said that section 37A and Schedule 1A established the redress scheme for inadequate professional services provided by solicitors. Paragraph 1 of Schedule 1A stated:

> "(1) The Council may take any of the steps mentioned in paragraph 2 ("the steps") with respect to a solicitor where it appears to them that the professional services provided by him in connection with any matter in which he or his firm have been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of him as a solicitor.
>
> (2) The Council shall not take any of the steps unless they are satisfied that in all the circumstances of the case it is appropriate to do so.

(3) In determining in any case, whether it is appropriate to take any of the steps, the Council may –

(a) have regard to the existence of any remedy which it is reasonable to expect to be available to the client in civil proceedings; and

(b) where proceedings seeking any such remedy have not been begun by him, have regard to whether it is reasonable to expect him to begin them".

275. Mr Coleman referred the Tribunal to paragraph 2 of Schedule 1A, which detailed the steps which might be taken and included the power to determine costs to which the solicitor might be entitled for his services and the power to direct compensation to be paid to the client. Paragraph 3 set the limit on compensation of £15,000 and paragraph 4 addressed the taxation of costs. Mr Coleman said that paragraph 5 detailed the power of the Tribunal:

"(1) If a solicitor failed to comply with the direction given under this Schedule, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever shall be brought in respect of it.

(2) On the hearing of such complaint. The tribunal may, if it thinks fit (and whether or not it makes any order under section 47(2)), direct that the direction be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court".

Mr Coleman said that section 37A referred to "Redress for inadequate professional services".

276. In relation to redress, Mr Coleman said that Schedule 1A provided a unified scheme to address inadequate professional service by solicitors in two stages; firstly, the Law Society handled complaints and decided what directions should be given by way of redress and secondly, if the solicitor did not comply, the Tribunal had power to make an order for enforcement under paragraph 5 (2). The Tribunal then had discretion to make the enforcement order and it was only once that order had been made that it was enforceable in a court.

277. Mr Coleman referred the Tribunal to the case of R (Thompson) v Law Society [2004] 1 WLR in which Lord Justice Clarke stated:

"Despite that general approach, if it were not for paragraph 5 (1) of Schedule 1A, I would hold that the direction does determine the solicitors civil obligations but as I see it the purpose of that paragraph is to avoid that effect. It is intended only once the SDT has determined that the direction is to be enforced is it to have legal effect. The only order with legal effect would then be the order of the SDT and not the direction of the Law Society or (if different) of the adjudicator all the adjudication panel. Until the complaint is made to the SDT and an order made, the effect of the second part of paragraph 5 (1) seems to me to be that the direction has no legal effect because no

> proceedings can be taken for its enforcement. I can see no other sensible explanation for the second part of paragraph 5 (1).
> I reach this conclusion on the basis that the decision of the SDT in the recent Fitzpatrick's case is wrong. It would make no sense to construe the paragraph as set out above if it were the case that, on a complaint to the SDT, the tribunal had no jurisdiction to review the direction made by the adjudicator all the panel. In the course of the oral argument Mr Dutton submitted that it is the view of the Law Society that the SDT has full powers to review the direction both as to the law and as to the facts. I would so construe the paragraph, if necessary, in the light of section 3 of the Human Rights Act 1998."

278. Mr Coleman said that the complaints regime had been addressed in the Clementi Report and subsequently by the LSA 2007; one of its purposes had been to introduce a more effective complaint handling regime for the consumer and for consumer protection. Mr Coleman said that it was necessary to provide transitional arrangements and referred the Tribunal to his second Note and section 157 of the LSA 2007. Mr Coleman said that section 157(1) prohibited approved regulators from including provisions relating to redress in their regulatory arrangements. Section 157(2) stated that, if at the time of that section coming into force the regulatory arrangements of an approved regulator contravened section 157 (1), any provision which related to redress included in those regulatory arrangements then ceased to have effect at that time, subject to section 157(3).

279. Mr Coleman said that section 157(3) provided for transitional arrangements in respect of matters pending when the prohibition came into force. He submitted that Parliament recognised the need for a smooth transition from the existing complaints handling regime and for it to be a unified regime established by the LSA 2007. Section 157 had come into force on 6 October 2010, subject to Articles 5 and 6; Mr Coleman said that it was Article 6 which was relevant. Article 6 of the LSA 2007 (Commencement No.8, Transitory and Transitional Provisions) Order 2010 stated:

> "Section 157(1) and (2) of the Legal Services Act 2007] does not apply in relation to proceedings which immediately before 6 October 2010 have not been determined under any provision relating to redress made by an approved regulator, and such proceedings will continue to be determined under the regulatory arrangements, including any provisions relating to redress, in force immediately before 6th October 2010".

280. Mr Coleman said that Article 1 (3)(d) provided that:

> "Reference to proceedings not having been determined includes proceedings which have not been withdrawn, discontinued or closed in accordance with the rules of the approved regulator or the Legal Services Ombudsman, as the case may be."

281. Mr Coleman submitted that the words "regulatory arrangements of the approved regulator" were capable of being read to include powers and provisions contained in Schedule 1A without unduly straining the language of section 157 (3). Mr Coleman submitted that the clear intention of the 2010 Order was that the powers under Schedule 1A should be regarded as "regulatory arrangements of an approved

regulator" and that Article 6 of the 2010 Order should operate so as to retain the powers contained in Schedule 1A in respect of complaints against solicitors concerning inadequate professional services that had not been determined immediately before 6 October 2010. Mr Coleman also submitted that "proceedings" commenced when the complainant/client lodged their complaint, and did not conclude until the solicitor had either complied or the Tribunal had made an order for enforcement. He submitted that this was what Parliament had intended.

282. Mr Coleman referred the Tribunal to Lord Bingham's discussion in R (Quintavalle) v Health Secretary [2003] 2 AC 687 as to what "purposive interpretation" involved. Mr Coleman said that the plain intention of section 157 (3) was to enable transitional arrangements to be made so that there was no gap between the old and new regulatory regimes into which complainants could fall. Such a gap could only be avoided if the words "proceedings awaiting determination under any provision relating to redress made by an approved regulator" in section 153 (3) were read as including both (1) complaints that were still pending before the Law Society when section 157 came into force and (2) complaints where directions had already been given, but the directions had not been either complied with or ordered by the Tribunal under paragraph 5 (2) of Schedule 1A to be enforced as if they were contained in Orders of the High Court.

283. Mr Coleman submitted that thirteen of the directions fell squarely within Article 6 of the 2010 Order having been given after 6 October 2010 but, in respect of complaints which had been made to the LCS before 6 October 2010 they had not been determined immediately before 6 October 2010 and Mr Coleman submitted that the Tribunal's power to make an order under paragraph 5 (2) of Schedule 1A continued in relation to those directions.

284. Six of the directions had been given before 6 October 2010 and Mr Coleman relied on the Tribunal's decision in Toper Hassan Case No.10702-2011, which decided that the power to make an order under paragraph 5 (2) survived in respect of directions given before 6 October 2010. Mr Coleman said that the Tribunal had also made orders after 6 October 2010 under paragraph 5(2) of Schedule 1A that directions given before 6 October 2010 be treated for the purpose of enforcement as if they were contained in an order of the High Court in the matters of Needleman and Treon Case No. 10335-2009 and Cresswell Case No. 10735-2011. Mr Coleman submitted that the Tribunal's practice of making orders in respect of directions given before 6 October 2010 was therefore well established.

285. In the alternative, Mr Coleman submitted that this might be a rare instance where the Tribunal could interpret legislation so as to repair a mistake in that legislation. Mr Coleman referred the Tribunal to Craies on Legislation [Ninth Edition 2008] ("Craies") in relation to Casus Omissus, which stated:

> "The passage of Lord Greene's speech in Hankey v Clavering cited above records that the desirability of supporting the legislative purpose does not permit the courts to supply actual deficiencies and remedy actual errors. This was originally the general approach of the courts to ensure that they did not stray into usurping the legislative function. A specific instance of this approach is the rule that a casus omissus is not to be created or supplied, so

> that a statute may not be extended to meet the case for which provision has clearly and undoubtedly not been made...
>
> Although casus omissus is still rule of considerable importance, and the judges' reluctance to usurp the legislative function is as real as ever, the courts are nowadays prepared to go a little further than was once the case in supplying deficiencies, where there is no reason to doubt what the legislative intention really was, whether or not they have accurately achieved it...".

286. Mr Coleman submitted that, on the Applicant's primary argument, the Tribunal was not being asked to repair a mistake in that legislation, but rather to give effect to the meaning of the words used, construed in light of their purpose and statutory context. Mr Coleman submitted that three conditions had to be satisfied for interpreting legislation as if the mistake in the legislation had been corrected and referred the Tribunal again to Craies which stated:

> "This power is confined to plain cases of drafting mistakes. The courts are ever mindful that their constitutional role in this field is interpreted. They must abstain from any course which might have the appearance of judicial legislation. A statute is expressed in language approved and enacted by the legislature. So the courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way, the court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed…".

Mr Coleman submitted that the Tribunal could be sure that all three conditions were herein satisfied.

287. Mr Parker said that it was clear from the various provisions of the legislation and Statutory Instruments that "proceedings" was not being used to mean legal proceedings. He submitted that "matters which are proceeding" was being used in a wider context.

288. Mr Parker referred to the Tribunal to Article 1 (3) (d) of the 2010 Order which did not define "proceedings" at all. Mr Parker said that what was defined was reference to "not having been determined" and that this included not having been withdrawn. Mr Parker said that it was a straightforward issue and that there were four issues the Tribunal had to consider in its interpretation exercise. He said that the Tribunal had already been referred to and read the relevant statutory provisions. The four issues were therefore:

1. Did the transitional provisions under Article 6 permit the "determination" of matters proceeding currently before the LCS as at the 6 October 2010? Mr Parker said that this was permitted and the provisions had been precisely designed to do this. Article 6 referred to "...such proceedings will continue to

be determined under the regulatory arrangements, including any provision relating to redress, in force immediately before 6th October 2010";

2. What did "determination" mean? Mr Parker submitted that determination meant the Adjudicator's direction and not conclusion of the complaints process whereby the Adjudicator's direction was complied with or enforced;

3. What is the effect of this interpretation regarding "determination" of proceedings? Mr Parker said that the effect was that any decision made by the LCS prior to 6 October 2010 which had not been complied with or the subject of an application to the Tribunal could not then after 6 October 2010 be subject to an application to the Tribunal because the 6 October 2010 date had operated as the repeal date. In relation to any decision made by the Adjudicator after 6 October 2010 as permitted by the transitional arrangements, the repeal provisions then kicked in and no further application to the Tribunal for enforcement was available;

4. Mr Parker submitted that the current regime set up by the LSA 2007, covered by the Office for Legal Complaints and the LeO did provide consumer protection and an opportunity for enforcement to occur. Mr Parker said that the scheme enabled complainants where they had not received awards further to Adjudicator's decisions to take advantage of the current scheme to secure their monies;

289. Mr Parker referred the Tribunal to Schedule 1A and paragraphs 1 and 2 as to the steps which could be taken by the Adjudicator, including reimbursement of costs and making a direction for a compensation award. Mr Parker said that the Adjudicator had by that stage done all that he could and he dropped out of the picture. Mr Parker referred the Tribunal to paragraph 5 of Schedule 1A, which dealt with enforcement of the Adjudicators direction. Mr Parker submitted that the Tribunal had to consider what the "job" of the LCS/Adjudicator had been, namely to make the direction which had the effect of providing redress to the client/complainant.

290. Mr Parker asked the Tribunal to consider how the LSA 2007 had then sought to deal with the provision of progress and enforcement and referred the Tribunal to section 137 of the LSA 2007 which he said stated that the "determination" of complaints was now the province of the LeO and his "determination" may contain one or more directions including fee remission/repayment and the payment of compensation. Mr Parker said that section 140 of the LSA 2007 contained provisions for the acceptance or rejection of the LeO's "determination" and the means by which the LeO's "determination" became final and he said that where the LeO had directed, for example, the payment of compensation under section 137 and that "determination" was final under section 140, then either the complainant or the LeO had the right to apply directly to the High Court or County Court for an order that the direction such as for repayment, be payable as if pursuant to an Order of the court as per section 141 of the LSA.

291. Mr Parker submitted that these provisions made clear that the word "determination" in the LSA 2007 meant "concluded decision". Mr Parker said that this was consistent with the far more limited use of the word "determined" in Schedule 1A to SA 1974.

In paragraph 1 (3) of Schedule 1A the Council had to have regard to certain things in "determining" in any case the steps to be taken. Those steps included costs and compensation and therefore a decision.

292. Mr Parker submitted that the LSA 2007, having set up its replacement redress scheme, the predecessor schemes had to be terminated. Mr Parker referred the Tribunal to section 157 of the LSA 2007. He submitted that the reference to "proceedings" meant matters which were continuing at the time; the approved regulator was the LCS providing redress by way of paragraphs 1 and 2 of Schedule 1A and determination meant the deciding of directions by the Adjudicator.

293. Mr Parker said that the transitional provisions of section 157 (3) of the LSA related to determination by an Adjudicator under the previous regime. Mr Parker said that having regard to the transitional provisions under Article 6, repeal did not apply to proceedings which had not been determined or anything which had begun its adjudication before 6 October 2010. Mr Parker submitted that if the Adjudicator had not concluded his job by 6 October 2010, Article 6 allowed him to make his decision/direction but once it had been made, Schedule 1A could no longer be relied upon.

294. Mr Parker summarised for the Tribunal his interpretation, namely that all decisions/directions pre-6 October 2010 stood but if they had not been enforced by that date then the power to do so had been lost. He said that decisions/directions after 6 October 2010 could be made but that the repeal provisions kicked in and the power to seek enforcement orders from the Tribunal had been lost.

295. In relation to the question of a "regulatory gap" referred to by Mr Coleman, Mr Parker said no such thing existed. He submitted that the current scheme did permit a process which would have the same effect of enforcing any decision by the LeO. Mr Parker referred the Tribunal to the LSA 2007, Part 6 which stated at section 137 (2):

> "The determination may contain one or more of the following –
>
> (e) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify".

296. Mr Parker then referred the Tribunal to sections 140 and 141, which addressed acceptance or rejection of determination and enforcement by the complainant of directions under section 137.

297. Mr Parker referred the Tribunal to the Legal Ombudsman Scheme ("LOS") rules which stated at paragraph 2.6:

> "The <u>complaint</u> must relate to an act/omission by someone who was an <u>authorised person</u> at that time…"

298. Mr Parker submitted that the complainant/client would not have to start the process again and that for the purposes of enforcement, the complainant/client would have to make representations under the old rules and the new regime; the client would not be left "in the lurch". Mr Parker said that the intention of Parliament had to be analysed

and the consumer would still be protected but by a different route. Mr Parker submitted that if there were no regulatory gap, then there was no need to import new words or to alter the plain meaning of the transitional provisions.

299. Mr Parker referred the Tribunal to paragraph 4.5 of the LOS rules which addressed the time-limit from act/omission and which stated:

> "Ordinarily, a complainant must also refer a complaint to the Legal Ombudsman within:
>
> a) one year from the act/omission; or
>
> b) one year from when the complainant should reasonably have known there was cause for complaint without taking advice from a third party;
> whichever is later".

300. Mr Parker submitted that "ordinarily" opened the door to extension of the time-limit and in relation to paragraph 4.7, he said that if the Ombudsman considered that there were exceptional circumstances then he/she might extend any of the time limits to the extent that he/she considered fair. Mr Parker submitted that one would expect the LeO to undertake this reasoning process when considering "exceptional circumstances" with regard to the transitional provisions.

301. Mr Parker submitted that if any complainants went to the LeO in relation to a solicitor's failure to comply with an Adjudicator's decision, they would be put in no worse or significantly different position than they would have been under the previous regime when they would have come to the Tribunal. Mr Parker submitted that the LeO could give directions that the Adjudicator's Decision should be honoured and there were clear enforcement provisions. Mr Parker said that this was consistent with Parliament's intention in passing the LSA 2007, namely that the consumer remained protected.

302. In relation to the Respondent's position and her bankruptcy, Mr Parker submitted that no Court, Tribunal or Judge would consider making orders in vain. Mr Parker said that the Respondent's insurer had reserved its position. In view of this and the Respondent's bankruptcy, Mr Parker submitted that making an enforcement order was futile and would require the Respondent to do that which she was unable to do.

The Tribunal's Findings

303. The Tribunal applied its usual standard of proof, namely the higher standard, beyond reasonable doubt.

304. The Tribunal noted that Mr Parker had been critical of the Rule 5 and Rule 7 Statements and the lack of particularity in some respects. He maintained that it was not until he had read the Note drafted by Mr Coleman that he had appreciated the exact nature of the allegations against the Respondent. The Tribunal had considerable sympathy with Mr Parker's view and considered that the Statements were not as clear as they might have been; for example in the Rule 7 Statement there had been no indication of the particulars as opposed to general facts upon which the Applicant

relied in putting their case. It had ignored the guidelines as set out in Constantinides v The Law Society [2006] EWHC 725 (Admin). In making their Findings on the allegations and in fairness to the Respondent, the Tribunal decided to adopt a narrow view of the allegations which were actually before the Tribunal.

Allegations 1.1, 1.2, and 1.6 and 2.1, 2.2 and 2.4

305. The Tribunal had found allegations 1.1, 1.2, 1.6, 2.1, 2.2 and 2.4 proved. The Tribunal had not found allegations 1.3 and 2.3 proved.

306. The Tribunal was satisfied so that it was sure that the Respondent had acted for clients Mr J, Mr and Mrs Fain, Mr C-I, Mr M and Mr H and Mr B as their solicitor and not as agent for JO. The Respondent had said in evidence that the client had been more comfortable with a solicitor in the United Kingdom and the Tribunal accepted that this would have reassured the clients. The Tribunal noted that in relation to Mr A and friends, the Respondent had accepted that she had acted as their solicitor. The Tribunal was satisfied that whether acting as principal or agent, a solicitor had to advise and conduct himself/herself in accordance with his/her professional obligations.

307. The Tribunal accepted that the correspondence and documentation it had seen had failed to provide clear and accurate information and that the clients would have believed and understood that they were the Respondent's clients and that she was acting as their solicitor. The documents included the "Step-by-step guide", the "FAQs", "Investing in a New Build", "Spanish New Build Property Purchase Money Laundering and Advice Information" and the "Client Care and Terms of Business" documents. The Respondent had continued to rely upon those documents and send them to the clients even though they were out of date and should not have been sent to the clients.

308. The Tribunal noted that the "Step-by-step guide" which had accompanied the Contract Report document had represented that Conveyancing UK were the purchasers' solicitors as it had stated:

> "...Further, you will have the protection under our Professional Conduct Rules as required by the Law Society (of England and Wales)".

And the "Client Care and Terms of Business" document had stated:

> "All Solicitors have an obligation to their clients to make it clear from the outset of any matter the likely costs involved and also if these are estimated costs".

The Tribunal had also noted that the clients were required to pay 0.25% of the costs to Conveyancing UK and had been told that this sum was "towards your legal fees"; the money had been retained by Conveyancing UK.

309. The Tribunal considered that the Respondent had sought to obscure her true function namely as solicitor for the clients and had sought to evade responsibility for it.

310. The Tribunal was satisfied so that it was sure that the Respondent had not acted in her clients' best interests. The Tribunal accepted that the Respondent had paid Mr A and friends' deposit monies to OVP without having been provided with a copy of the bank guarantee/insurance and having relied upon an unsigned letter provided by OVP. The Tribunal accepted that the Respondent had not been in possession of the "Criminal Theft" policy when she had made representations to Mr and Mrs Fain and Mr C-I that their monies were appropriately protected by the policy and she had not satisfied herself that the monies were so protected. The Respondent had also not alerted the clients to her concerns which she had by December 2005 both in relation to the insurance and OVP's liquidity. The Respondent had also failed to alert her clients when OVP had refused to co-operate with her regarding the proposed joint account.

311. The Tribunal found that by the Respondent having failed to provide clear and accurate information to clients and having failed to act in her clients' best interests, the Respondent had compromised her integrity and the good repute of the profession.

312. In relation to Mr J, Mr M and Mr H and Mr B, the Tribunal was not satisfied so that it was sure that the Respondent had misleadingly represented to each of those clients that she had become a joint signatory to the OVP bank account. She had not said "I am signatory..." but rather "I have required that I become a joint signatory to the bank account of Ocean View Properties Limited...".

313. The Tribunal noted that the bank mandate form had been signed by the Respondent on 12 January 2006 and was satisfied that had reflected the true position. The Tribunal did not accept that the Respondent had been dishonest or grossly reckless when she had written to the clients and informed them that she had sought to become a joint signatory to the OVP bank account; that had also reflected the true position.

314. The Tribunal found allegations 1.3 and 2.4 not proved on the limited basis upon which it had been put and did not find the Respondent to have been reckless or dishonest in that respect.

315. The Tribunal found that allegations 1.1 and 2.1, and 1.2 and 2.2 having been proved, allegations 1.6 and 2.4 had been proved in relation to poor service. The Tribunal was satisfied that having failed to provide clients with clear and accurate information and having failed to act in her clients' best interests, the Respondent had provided a service so poor as to amount to professional misconduct.

<u>Allegations 1.4 and 1.5</u>

316. The Tribunal had found allegations 1.4 and 1.5 proved. The Respondent had admitted failure to maintain a ledger for Mr J. The Tribunal had relied upon Rules 13 and 19 (5) of the SAR and found that the fees received by the Respondent should not have been paid into client account until such time as the work had been done and the bill rendered.

317. The Tribunal could not be satisfied that the Respondent's telephone conversation with the Ethics adviser of the Law Society had been factually correct since no evidence of the conversation had been produced; the adviser was likely to have provided guidance and advice based purely on the information given to him/her by the Respondent.

Allegation 1.7

318. The Tribunal had found allegation 1.7 proved in relation to the Respondent's failure to comply with the Adjudicator's Directions. The Respondent had referred in her evidence to the reservation of rights imposed by her insurer and that she had been made bankrupt. The Tribunal noted that she had not however provided any documentation as to the timing or circumstances of the bankruptcy or of her insurer's reservation and had not demonstrated how this had prevented her from complying with the Directions. The Tribunal accepted that the onus was on the Respondent to show that she had taken all reasonable steps to comply with any of the Directions.

319. The Tribunal was satisfied that the Respondent's failure to comply with the Adjudicator's Directions without good reason was liable to diminish the trust the public placed in the profession.

320. The Tribunal had had regard to the case law before it and had relied upon Corlis and Thompson, Khan and Khan and found that the Respondent had professionally miss-conducted herself by her failure to comply with the Adjudicator's Directions.

Allegation 1.8

321. The Tribunal had found allegation 1.8 proved and the Respondent had admitted this allegation. The Tribunal noted that the Respondent had accepted in her witness statement that "I have to accept that so far as the SRA was concerned the correspondence did not always progress as smoothly as I would have liked within the timescale set". Whilst the Tribunal acknowledged that the Respondent had instructed solicitors to assist her in dealing with the complaints and the LCS, it was apparent that the solicitor Mr RF had not dealt with the complaints, as acknowledged by the Respondent in her evidence.

322. The Tribunal accepted that the Respondent had not engaged with the Applicant, even after she had been warned that failure to do so would be regarded as unprofessional conduct.

Allegations 1.9 and 1.10

323. The Tribunal had not found allegation 1.9 proved. The Respondent's evidence was that she had been instructed by Conveyancing UK Ltd, that she had held a valid practising certificate whilst undertaking work for them and that she had not undertaken reserved work when not holding her practising certificate. The Respondent had admitted in evidence that she had drafted the Transfer Deed but had stated clearly that she had not dealt with the registration of title of the Hertford Avenue property. No documentation had been produced regarding the registration of title and the Respondent's evidence had been accepted by the Tribunal.

324. The Tribunal accepted that the Respondent had not been part of the entity Conveyancing UK Limited, from which she had resigned as a director and shareholder in March 2007.

325. The Tribunal had found allegation 1.10 proved. The Tribunal was satisfied that whilst the Respondent had not held a practising certificate since 12 November 2008, she had continued to act for the purchaser of Hertford Avenue in relation to the registration of the Transfer which was a reserved legal activity. The Tribunal had regard to the letter dated 20 March 2009 which the Respondent had written to the client. This had advised the client that CUK Solicitors had ceased to practice on 30 September 2008 and that she had been the principal of the firm. The letter referred to the Respondent as a "Legal Consultant in Compliance, Property and Financial Claims".

326. The Tribunal accepted that the letter had been liable to give the impression to the client that the Respondent continued to be a solicitor. The Respondent had similarly written to HM Customs and Revenue Stamp Taxes office, which letter had given the same impression.

327. The Tribunal noted that the Respondent's witness statement had made no reference to Mr LR's involvement in the Hertford Avenue transaction and this was not accepted by the Tribunal as having been credible.

Application for enforcement of Adjudicator's Directions by High Court Order

328. The Tribunal noted that it was common ground between the parties that the Adjudicator's Directions were not debts of the bankruptcy.

329. The Tribunal had listened very carefully to the submissions of Mr Coleman on behalf of the Applicant and Mr Parker on behalf of the Respondent with regard to the application for enforcement of the Adjudicator's Decisions as Orders of the High Court and had read all of the documentation to which they had been referred.

330. The Tribunal preferred and adopted the arguments put forward by Mr Coleman. Whilst Mr Parker's interpretation had been creative, the Tribunal did not accept that Parliament had intended that Directions made under the previous regime should be enforced as suggested under the new legislation and the Tribunal found that it retained the power to order enforcement of the Adjudicator's Directions.

Previous Disciplinary Matters

331. Two previous matters had been recorded against the Respondent case numbers 8824/2003 and 8790/2003.

Mitigation

332. Mr Parker submitted that it was important that the Respondent had not been found by the Tribunal to have acted dishonestly nor to have misled her clients. The Respondent's files had shown that the Respondent's skills were more suited to domestic conveyancing and she had been overwhelmed when dealing with the Spanish properties. The Respondent had been unable to cope with the processes or arrangements which she had attempted to put in place with a variety of different Spanish lawyers.

333. Mr Parker submitted that the Respondent's conduct had not been that of a solicitor brazenly ignoring her professional obligations but that she had been naive and had possibly over-estimated her own skills and had been too trusting of others. Mr Parker said that the Respondent had fallen short of her professional obligations by having taken documents at face value and having failed to follow up or question the veracity of certain documents. He submitted that these were not the failings of a solicitor who did not care about her professional obligations.

334. Mr Parker asked the Tribunal to view the Respondent as someone who had attempted to identify risk factors for her client, but had failed to follow through as fully as she should have done. Mr Parker submitted that the Respondent was in the category of a solicitor trying to do her incompetent best. Mr Parker said that the Respondent had been confused about the "agency" arrangement as she had seen it and in the future she would have a clearer understanding of such arrangements.

335. In relation to the SAR breaches, Mr Parker submitted that these had not been examples of the Respondent ignoring her obligations under the SAR. The breaches had resulted instead from her misunderstanding of the "agency" issue. Mr Parker submitted that the Respondent should be regarded as having approached the SAR matters incompetently but not with a wilful disregard of the rules.

336. Mr Parker said that the Respondent had admitted allegation 1.8 in relation to her failure to cooperate with her regulator. It was plain on the facts that she had not cooperated with the Applicant but Mr Parker asked the Tribunal to view this in context. The Respondent had been forced by the economic downturn to close her practice and this had taken her approximately nine to twelve months to conclude, during which time she had received no remuneration.

337. The Respondent had already been corresponding extensively with the LCS and had then received the same degree of correspondence from the Applicant and it had been "the straw which broke the camel's back". Mr Parker said that the Respondent had also been contacted by solicitors on behalf of various ex-clients and the Tribunal had seen the Respondent's reaction to one particular solicitor, namely Mr K and the effect this had had on her emotionally when giving her evidence. Mr Parker informed the Tribunal that he had been asked by the Respondent to apologise for her failure to engage with the Applicant.

338. Mr Parker said that the Respondent wished to impress upon the Tribunal that she had never tried to do anything but her best for her clients, irrespective of her competence or otherwise in relation to the result. He said that the Respondent was relieved that the proceedings had been heard.

339. Mr Parker referred the Tribunal to the testimonials which had been provided on behalf of the Respondent. He said that these had been sent by colleagues and evidenced the high regard with which the Respondent was held by her fellow professionals.

340. Mr Parker asked the Tribunal to consider that the consequences to the Respondent had already been a significant punishment; she was now bankrupt and no longer practising. Mr Parker asked the Tribunal to exercise clemency when considering sanction and such costs order as they saw fit.

Sanction

341. The Tribunal had found eight of the ten Rule 5 allegations proved and three of the four Rule 7 allegations against the Respondent. Two allegations had been found not proved, including that the Respondent had not been dishonest or reckless.

342. The Tribunal had listened very carefully to the submissions of both Counsel, and had had the benefit of hearing lengthy evidence from the Respondent herself and from Mr Fain, one of the victims of the OVP Spanish scheme. Mr Fain's evidence had been clear and straightforward and the Tribunal had been satisfied that Mr Fain had clearly been of the view that the Respondent was his solicitor and had had expectations of her work as such. He had worked in a business environment and was familiar with business concepts. Despite that, it had not occurred to him that the Respondent was acting other than as his solicitor and the Tribunal had accepted his evidence in its entirety.

343. In relation to the Respondent, who had stood up admirably to lengthy cross-examination by Mr Coleman, she had given the impression of being an intelligent lady with a good head for business, but who was economical with the truth and self-serving with the answers she gave. She would say whatever came into her head to attempt to extricate herself from a difficult line of questioning. The Tribunal was particularly surprised that during the course of the Respondent's evidence, the Respondent had come up with new explanations and had referred to new information and documents to which no reference had been made by her previously, despite these having been central to issues in the case, for example the letter she alleged had been written to clients who had been sent the old documentation and so as to explain the new agency arrangements with OVP.

344. Whilst the Tribunal acknowledged that the Respondent had admitted that she had failed to cooperate openly and promptly with the Applicant, it was concerned that she had done so since such a failure suggested that she had little if any regard for her regulator. When matters of concern were brought to the attention of the Applicant, it was essential that solicitors responded in an open, prompt and cooperative manner, so that the Applicant could ensure that the public was protected and the reputation of the profession maintained.

345. The Respondent's conduct had led to her having compromised the good repute of the profession, having failed to act in her clients' best interests and as a result of both, having provided a service to her clients so poor as to have amounted to professional misconduct; these were breaches of core duties and professional obligations and the Tribunal had taken a very serious view of this.

346. The Tribunal had a duty to protect the public and the reputation of the solicitors' profession, including the maintenance of the public's confidence in that profession. It was essential that the sanction imposed by the Tribunal noted that duty whilst at the same time being reasonable and proportionate. Solicitors were required to hold a practising certificate in order to ensure that those instructed by the public were properly qualified, regulated and competent to practice. The SCC existed to ensure that solicitors behaved with integrity, essential to their role as the client's trusted

advisor and characterising all of their professional dealings, including those with the Court, other lawyers and the public.

347. The Tribunal noted that the Respondent's actions had contributed if not led to significant financial losses having been suffered by her clients. This was a matter of grave concern for the Tribunal. The Tribunal had to balance the requirement to impose a reasonable and proportionate sanction with its duty to protect the public and the reputation of the profession. The result of that balancing exercise was that in the circumstances of this case, the Tribunal had to strike the Respondent off the Roll of Solicitors. In ordering that the Respondent be struck off, the Tribunal made clear that it had relied upon its findings in relation to allegations 1.1 and 2.1, 1.2 and 2.2, and 1.6 and 2.4.

348. The Tribunal ordered that the Adjudicator's directions be enforced as if they were contained in an Order made by the High Court.

Costs

349. Mr Coleman provided the Tribunal with a Statement of Costs. He said that the Applicant sought payment of its total costs in the sum of £94,659.89. Mr Coleman said that the Respondent had given evidence that she had two properties and whilst she had said that they were in negative equity, no evidence of this had been produced. Mr Coleman said that although they had no value, nonetheless the Respondent had assets, which could at some point in the future provide a meaningful source of recovery for the Applicant.

350. Mr Coleman said that in order for the Applicant to secure a Charging Order it would require an unqualified costs order and he had been instructed to request the same.

351. Mr Coleman said that the Respondent had said that she was bankrupt, but the Applicant wished to make further investigations regarding her bankruptcy.

352. Mr Coleman said that it was clear that substantial costs had been incurred. This had been a case involving complex legal issues and difficult factual aspects. The Tribunal had found against the Respondent on eight of the ten Rule 5 allegations and three of the four Rule 7 allegations and Mr Coleman invited the Tribunal to make a substantial interim costs order to enable a Charging Order to be obtained by the Applicant if possible in the future.

353. Mr Parker submitted that it was unrealistic to seek a summary assessment of costs of a five-day hearing. He submitted that the Applicant's Statement of Costs required far closer analysis. Mr Parker submitted that in relation to the level of the Bill, it was perhaps not a function for the Tribunal and should be referred to a specialist Costs Judge for consideration. Mr Parker said that there appeared to have been a number of people involved in the case without the Statement of Costs having identified who had done what and why and he submitted that there was a substantial risk of duplication of work. Mr Parker expressed concern that the Applicant's solicitor representatives appeared to have spent not far short of 34 working days on the case, which he submitted was unrealistic and excessive.

354. In addition, Mr Parker said that dishonesty/recklessness had been alleged but not proved against the Respondent and that this had been a significant part of the Applicant's case.

355. As previously stated, Mr Parker said that the Respondent was bankrupt and was in no position to make any payment at this juncture. He said that if an interim costs order was made, the Respondent would be in breach of it immediately. Mr Parker submitted that the usual order for costs for an impecunious Respondent was that the order should not be enforced without leave of the Tribunal.

356. Mr Parker submitted that it was appropriate that there should be an order in favour of the Applicant for costs but that there should be a detailed assessment of those costs and it should not be enforced without leave. In relation to Mr Coleman's application for a Charging Order, Mr Parker said that a Charging Order would not prevent the property being sold and if the property was sold and there was no equity as had been the Respondent evidence, then the Charging Order would fall away.

Statement of Full Order

357. The Tribunal Ordered that the Respondent, Lesley Marianna Alberici, solicitor, be STRUCK OFF the Roll of Solicitors.

The costs of and incidental to this application and enquiry are to be subject to a detailed assessment unless agreed between the parties. It further Orders that she do make an interim payment in respect of the costs in the sum of £40,000 by 17 February 2012. The costs are not to be enforced (save by an application to the Court for a Charging Order in respect of the interim costs) without permission of the Tribunal.

The Tribunal further Ordered that the directions of the Adjudicators of the Legal Complaints Service contained within the attached schedule made in respect of inadequate professional service be treated for the purposes of enforcement as if they were contained in an Order of the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

Dated this 22nd day of March 2012
On behalf of the Tribunal

Mrs J. Martineau
Chairman