

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No 10624-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STUART GEMMELL MCPHAIL

First Respondent

and

[RESPONDENT 2]

Second Respondent

Before:

Mr L. N. Gilford (in the chair)

Mr K. W. Duncan

Mrs L. Barnett

Date of Hearing: 14 February 2011

Appearances

Mr Jonathan Greensmith, Solicitor, Russell Jones & Walker Solicitors of 50-52 Chancery Lane, London, WC2A 1HL for the Applicant.

Mr Stuart Gemmell McPhail, the First Respondent, did not appear and was not represented.

[Respondent 2] the Second Respondent, appeared in person.

JUDGMENT

Allegations

First Respondent

1. The allegations against the First Respondent were that he:
 - 1.1 Failed to pay professional fees due to another solicitor, contrary to Rules 1.02 and 1.06 of The Solicitors' Code of Conduct 2007 ("SCC");
 - 1.2 Misled a fellow solicitor, contrary to Rules 1.02 and 1.06 SCC;
 - 1.3 Failed to cooperate with the Solicitors Regulation Authority ("SRA") and the Legal Complaints Service ("LCS") in an open, prompt and cooperative manner, contrary to Rules 20.05 and 20.08(1)(a) SCC;
 - 1.4 Practised as a solicitor without holding a practising certificate, contrary to Rule 20.02 SCC;
 - 1.5 Failed to deliver a Reporting Accountant's Report, contrary to Rule 35 Solicitors' Accounts Rules 1998 ("SAR");
 - 1.6 Failed to comply with the order of an Adjudicator, contrary to Rule 1.06 SCC;
 - 1.7 Failed to comply with Notice made under Section 44B Solicitors Act 1974, contrary to Rules 20.05 and 20.08(1)(b) SCC.

Second Respondent

2. The allegations against the Second Respondent were that he:
 - 2.1 Practised as a solicitor without holding a practising certificate, contrary to Rule 20.02 SCC;
 - 2.2 Practised as a sole practitioner without first obtaining the necessary recognition from the SRA to do so, contrary to Rules 14.04 and 20.03 SCC;
 - 2.3 Misled lender clients as to the nature of his practice, contrary to Rules 1.02, 1.04 and 1.05 SCC;
 - 2.4 Failed to reply to correspondence from the SRA, contrary to Rule 20.05 SCC.

Documents

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

Applicant:

- Application dated 15 September 2010;

- Rule 5 Statement, and Exhibit "GM1";
- Statement of Costs for the hearing on 14 February 2011.

First Respondent:

- Email from the First Respondent to Jonathan Greensmith and the Tribunal dated 14 February 2011 timed at 8.21 a.m. with supporting medical records.

Second Respondent:

- None.

Preliminary Matter (1)

4. Mr Greensmith referred the Tribunal to the email received from the First Respondent at 8.21 a.m. on 14 February 2011, the day of the hearing, with attached medical records. The email stated that the First Respondent "cannot attend today for health reasons, please see attached. I am sorry for late notification but had hoped to come but cant [sic]". Attached to the email was a letter from a London hospital dated 14 January 2011 with supporting medical records, and a "To Whom It May Concern" letter from a General Practitioner (apparently a locum) dated 10 February 2011. Mr Greensmith stated that the email could be interpreted as seeking an adjournment of the hearing. This was the first time that the First Respondent had engaged with the proceedings before the Tribunal. He had a history of non-cooperation in regulatory matters involving the SRA and the LCS. Mr Greensmith said he was mindful of the Tribunal's Policy and Practice Note on applications for late adjournments. In this case the Tribunal had before it a letter from a General Practitioner dated 10 February 2011. The Applicant was neutral as to whether the hearing, insofar as it related to the First Respondent, was adjourned.
5. The Second Respondent submitted that the Tribunal should proceed to hear the allegations against him, and that neither the First nor the Second Respondent would be prejudiced if the Tribunal went ahead on that basis. He drew the Tribunal's attention to the First Respondent's alleged lack of cooperation with the SRA investigation.

The Tribunal's Determination on Preliminary Matter (1)

6. The Tribunal determined that the proceedings against the First Respondent should proceed notwithstanding that he had failed to attend in person and was not represented, having informed the Tribunal of his proposed non-attendance with reasons for the first time at 8.21a.m. on the morning of the hearing. The Tribunal was satisfied that notice of the hearing was served on the First Respondent in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). Under those Rules the Tribunal had the power to hear and determine the application notwithstanding the First Respondent's absence.
7. The Second Respondent had submitted that the application against him should be heard and determined despite the absence of the First Respondent.

8. The First Respondent had failed to engage with the Tribunal proceedings in any way until 8.21 a.m. on 14 February 2011 when the Tribunal received his email.
9. The Tribunal did not regard the email as a request for an adjournment. Instead it had the appearance of an apology by the First Respondent for his non-attendance at the hearing and an implied request that this non-attendance should not be held against him when the Tribunal considered the allegations. That interpretation was in keeping with the First Respondent's decision not to engage with the Tribunal proceedings.
10. The Tribunal had carefully considered the medical records attached to the email. The letter from the hospital was dated 14 January 2011 and recorded that the First Respondent discharged himself against medical advice.
11. The letter from the General Practitioner, who appeared to be a locum as her name was not on the surgery's headed notepaper, was dated 10 February 2011. The letter was addressed to "To Whom It May Concern" and did not state the purpose for which it had been provided. It was not clear whether the letter was prepared following an attendance on the First Respondent. The Tribunal asked itself whether the letter constituted a reasoned opinion of an appropriate medical adviser as required by the Tribunal's Policy and Practice Direction on applications for adjournment. The doctor did not appear to be a relevantly qualified medical adviser on the face of the letter, and the Tribunal had no other current medical evidence available to consider. On that basis the Tribunal found that the letter was not a reasoned opinion of an appropriate medical adviser.
12. The Tribunal noted that, although the letter from the General Practitioner was dated 10 February 2011, the First Respondent chose not to contact the Tribunal until 8.21 on the morning of the hearing. The First Respondent could have expressly applied to the Tribunal for an adjournment on 10 or 11 February 2011 if he considered that he was too unwell to attend the hearing. He had not done so. His email of 14 February 2010 did not state that he was seeking an adjournment or invite the Tribunal to adjourn the substantive hearing. It was reasonable for the Tribunal to proceed on the assumption that, if the First Respondent, a solicitor, wanted an adjournment, he would have expressly requested an adjournment in his email. The Tribunal was entitled to take the First Respondent's email at face value, rather than attempting to construct what its intended meaning might be.
13. The Tribunal reminded itself that a remedy was available to the First Respondent if he considered that he had suffered any injustice as a result of the Tribunal proceeding in his absence, namely an application under the SDPR 2007 for a rehearing.

Preliminary Matter (2)

14. Mr Greensmith made an application under SDPR 2007 Rule 11 (6) to withdraw allegations 2.1 and 2.4 against the Second Respondent with the consent of the Tribunal. Information had come to light following the filing of the Rule 5 Statement necessitating the withdrawal of allegation 2.1. In respect of allegation 2.4, the Applicant accepted that the Second Respondent had cooperated with the SRA to the best of his ability. The Second Respondent had indicated to the Applicant that he would be admitting allegations 2.2 and 2.3.

15. The Tribunal consented to the withdrawal of allegations 2.1 and 2.4 against the Second Respondent.

Factual Background

16. The First Respondent was born on 20 August 1962 and was admitted as a solicitor on 16 November 1992. His name remained on the Roll of Solicitors. He practised together with the Second Respondent as a partner in the firm of Cameron Solicitors of 264b High Street, Berkhamsted, Hertfordshire until May 2008, and thereafter as sole principal of Cameron Solicitors at the same address until the SRA intervened into his practice on 14 May 2010.
17. The Second Respondent was born on 29 September 1975 and was admitted as a solicitor on 17 January 2005. His name remained on the Roll of Solicitors. He practised together with the First Respondent in the firm of Cameron Solicitors until May 2008 and thereafter as sole principal of Cameron Solicitors Leighton Buzzard, and most recently as Cameron Law from 63-64 Charles Lane, London, NW8 7SB.
18. The allegations in the main arose from an inspection by the SRA into Cameron Solicitors, which commenced on 27 October 2009. The investigations resulted in the preparation of a Forensic Investigation Report ("FIR") dated 27 November 2009 by M. J. Calvert, the SRA's Head of Forensic Investigations. Allegations 1.1, 1.2 and 1.6 against the First Respondent arose from solicitor or client complaints.

First Respondent

19. The First Respondent, then practising alone at Cameron Solicitors, instructed solicitors ("SRS") to attend a hearing at a County Court on 13 February 2009 as the agent of his firm. SRS reported to the First Respondent on the outcome of the hearing by letter dated 17 February 2009. At the same time SRS submitted the firm's invoice 4444, also dated 17 February, for agency fees totalling £664.13 including VAT. The invoice stated that settlement was due within 14 days of delivery. On 9 March 2009 SRS wrote to Cameron Solicitors, quoting the First Respondent's reference, chasing payment of the invoice and inviting contact in the event of any queries. There was no response to this letter. SRS wrote again, quoting the First Respondent's reference, on 27 March 2009. The letter stated that, in the event that the account had not been paid in full within 14 days, SRS reserved the right to issue proceedings. Payment in full by return was requested, but in any event by no later than seven days from the date of the letter. The invoice was not paid.
20. SRS issued proceedings against Cameron Solicitors. Judgment in Default was entered on 26 June 2009 for the sum of £877.12 including the amount of the invoice and interest to date of judgment and costs. As at September 2010, when the Applicant's solicitors last made enquiry of SRS, the judgment was unsatisfied.
21. An SRS internal email dated 10 July 2009 timed at 14.31 recorded a telephone call from Cameron Solicitors stating that:

"... they did not have any papers served on them – shocked to receive Default Judgment against them. Payment must have slipped through the net. Will be

applying to set aside the judgment but nevertheless will be sending a cheque in the post this evening to clear their account".

When payment was not received, SRS wrote to Cameron Solicitors on 15 July 2009, quoting the First Respondent's reference, requiring payment by 17 July 2009 and reserving the right to proceed to enforce judgment. Payment was not received. On 31 July 2009 SRS made a formal complaint to the LCS. The SRA wrote to the First Respondent on 21 October 2009 requiring a response within 14 days to the allegation that, by failing to discharge the invoice leading to judgment being obtained against the firm and by failing to fulfil the judgment the First Respondent had failed to act with integrity and/or behaved in a way which was likely to diminish the trust the public placed in him and/or the profession. The First Respondent was also informed that he was obliged to reply to the request for information in accordance with Rule 20.05 of the SCC which stated that he must deal with the SRA in an open, prompt and cooperative way, and that failure to do so might lead to disciplinary action. The First Respondent did not respond. The SRA wrote again on 5 November 2009 requiring a response within eight days. The First Respondent did not respond.

22. Other occasions on which the First Respondent was said by the Applicant not to have cooperated with the SRA and the LCS were set out in Exhibit "GM1".
23. Arrangements were made by the SRA's Senior Investigation Officer ("IO") to meet with both Respondents to carry out an inspection of the books of account and bank accounts of Cameron Solicitors on 27 October 2009 at the offices of the practice. On the evening of 26 October 2009 the First Respondent sent the IO an email stating that he would be unable to attend due to being unwell, but the Second Respondent was expecting the visit. The First Respondent stated that he was "fully aware" of the importance of managing the current situation and he remained grateful for the IO's involvement. He was "simply unable to attend" [the meeting]. A "To Whom It May Concern" letter dated 21 October 2009 from the First Respondent's General Practitioner stated that he had been prescribed a "brief period of complete rest". When the IO attended at the firm's office on 27 October 2009, it was locked. She was met outside the office by the Second Respondent, his assistant and his reporting accountant. The investigation commenced at the offices of the reporting accountant, where the books of account maintained for the Second Respondent in connection with his sole practice were inspected, and at his premises. No books of account or bank accounts for Cameron Solicitors were produced or made available for inspection. The IO made further attempts by email on 4 November 2009 and 6 November 2009 to arrange a meeting with the First Respondent. She tried to carry out an inspection on 10 November 2009 and specifically asked the First Respondent to contact her in the event that he was still unwell, so that arrangements could be made to provide access to the relevant documents without a meeting taking place. The First Respondent replied on 6 November 2009 stating that a meeting would not be possible as he had been advised by his doctor to continue a period of complete rest. He said that:

"... given the ongoing nature of my illness I have taken steps to provide clarity of information to my clients and I have made arrangements to ensure that client matters were being progressed both effectively and efficiently. I will continue to keep you regularly informed of progress..."

No inspection took place.

24. The First Respondent's practising certificate for the practising year 2007-2008 was terminated on 17 December 2008. The First Respondent did not apply for another practising certificate, although an application form was sent to him on 14 September 2009.
25. In 2009 the First Respondent acted for clients J. and M. in proceedings in a Magistrates Court. In connection with those proceedings, and in his capacity as a solicitor, he wrote to the Court on Cameron Solicitors headed notepaper bearing his name as a partner, and he instructed Counsel by email to attend court on 9 February 2009 and 18 March 2009. The Court provided a detailed chronology dated 18 November 2009 of hearings, events and correspondence in which the First Respondent participated in relation to the cases spanning January to 21 October 2009. A chain of events led to the Court's Legal Team Manager ascertaining from the SRA on 15 October 2009 that the First Respondent had no practising certificate. On the same day the First Respondent attended a hearing at the Court with one of the two clients. It appeared that he intended to address the Court and represent his client in the capacity of a solicitor. The Legal Team Manager took the First Respondent to one side in advance of the hearing and asked for an explanation. The Legal Team Manager then confirmed again with the SRA that the First Respondent was not entitled to practise until an application for a practising certificate had been processed and granted. This information was relayed to the First Respondent.
26. The Accountant's Report for Cameron Solicitors for the year ending 12 December 2008 was due to be delivered to the SRA on or before 12 June 2009. No report was delivered. On 2 September 2009 the SRA wrote to the First Respondent requiring an explanation for the failure to deliver the report. The SRA also wrote to the Second Respondent, who responded by email in terms that he had discussed the matter with the First Respondent, and that although the firm's accountant was away until 17 September 2009, a meeting had been arranged for 18 September 2009 at which the accounts would be signed off and delivered to the SRA. The Second Respondent instructed accountants at his own expense, but the First Respondent stated in a letter to the LCS and SRA dated 2 February 2010 that he "never provided him with the information to produce audited accounts". He said "each time [Respondent 2]... contacted me I informed [them] that I am fully assisting [the accountants] and that the accounts would be completed in days". The accounts were never prepared and the Accountant's Report was not delivered.
27. In March 2009 a complaint was made to the LCS by the First Respondent's client N. In August 2008 she instructed Cameron Solicitors, where the First Respondent was the sole practitioner, to represent her interests in proceedings. The matter did not proceed to N.'s satisfaction resulting in her complaint to the LCS. The First Respondent did not reply to the LCS's correspondence. On 14 May 2010 the SRA intervened into Cameron Solicitors. At that point the LCS was able to obtain some (but not all) of the documents relating to N.'s case. The complaint was referred to an Adjudicator, who made a number of findings against the First Respondent in a formal Decision dated 5 March 2010. The Adjudicator directed that the First Respondent and Cameron Solicitors pay to N. the sum of £1,500 compensation; that their fees be limited to nil; and that N. be given credit of £1,750 plus VAT being the sum paid on

account of costs. The directions had to be carried out within seven days of 11 March 2010. The First Respondent did not comply with the Decision and did not pay N. He did not respond to telephone calls or letters from the LCS or the SRA relating to the matter and requiring an explanation of his conduct, which was referred to the Tribunal by a decision of the SRA's adjudication officer on 17 August 2010.

28. The Applicant sought a direction pursuant to Section 5(2) of Schedule 1A of the Solicitors Act 1974 (as amended) that the directions given by the Adjudicator [on 5 March 2010] be treated for the purposes of enforcement as if they were contained within an Order made by the High Court. The Order sought in favour of N. was for payment of £3,566.25.
29. The SRA wrote to the First Respondent on 6 April 2010 informing him that under the provisions of Section 44B of the Solicitors Act 1974 (as amended) it was satisfied that it was necessary for him to provide information and to produce documents in order for the Society to investigate the matters specified in the letter, and enclosing a formal Section 44 B Notice. The First Respondent did not respond.

Second Respondent

30. The Second Respondent left Cameron Solicitors in May 2008 to practice on his own account, initially at Cameron Solicitors, Leighton Buzzard. He did not obtain recognition from the SRA to practice on his own account. His omission was rectified during the course of the SRA's investigation, when the Second Respondent said that he first became aware of the need to obtain recognition.
31. The Second Respondent did not notify lender clients of the nature of his practice, namely that he was a sole practitioner. During the course of the Forensic Investigation the Second Respondent agreed with the IO that if he changed his trading style, instead of amending personal information with the lending panels, he would have to reapply for membership of the panels which "has become increasingly difficult with the current economic climate and with banks now having their own conveyancers".

Witnesses

32. None.

Findings as to Fact and Law

First Respondent

33. **Allegation 1.1. Failed to pay professional fees due to another solicitor, contrary to Rules 1.02 and 1.06 of The Solicitors' Code of Conduct 2007 ("SCC")**
 - 33.1 This allegation related to the failure to pay fees due to SRS invoiced under their invoice no. 4444 dated 17 February 2009 claiming the sum of £664.13. Proceedings were commenced against the First Respondent's firm and Judgment in Default for £877.12 obtained on 26 June 2009. Satisfaction of the Judgment was outstanding as at September 2010 and, as far as the Tribunal was aware, remained outstanding. The

First Respondent had provided no explanation for why the agency fees remained unpaid. During a telephone conversation with SRS on or about 10 July 2009 a representative of Cameron Solicitors suggested that papers had not been served on them, that an application would be made to set aside the Judgment and that a cheque would be sent in the post to clear the account. The Tribunal had not been told that the Judgment had been set aside and no cheque was received by SRS. The First Respondent wrote to the LCS and the SRA on 2 February 2010, when he provided some information about this allegation. He confirmed that the proceedings in which SRS had been instructed were never in the care of the Second Respondent and/or his firm. The First Respondent did not explain why the invoice had not been paid.

- 33.2. One of the core duties of a solicitor was to act with integrity as required by Rule 1.02 of the SCC. This encompassed demonstrating personal integrity in all professional dealings, including those with other lawyers. The Tribunal found that the First Respondent had not acted with integrity when he failed to pay SRS's invoice. The long agency report from SRS dated 17 February 2009 set out a breakdown of work done and referred to an estimate of fees, of £500 plus VAT, having been provided, presumably on receipt of the agency instructions. The report stated that the invoiced fees only slightly exceeded the estimate (by £77.50), for reasons which were fully set out in the report. The Tribunal had not been provided with any evidence from the First Respondent to suggest that he had disputed the invoice. In their first chasing letter dated 9 March 2009, SRS had invited contact from the First Respondent in the event of queries about the invoice. The First Respondent had been reminded of the outstanding invoice again on 27 March 2009 and warned that proceedings might be issued against his firm. Proceedings were duly issued and Judgment in Default obtained. The address quoted on the Default Judgment was the registered address of the First Respondent's practice. The Tribunal was therefore satisfied that the First Respondent had ample opportunity to dispute the invoice if he wished to do so.
- 33.3 The Tribunal also considered the allegation that the First Respondent had breached Rule 1.06 of the SCC 2007 by behaving in a way that was likely to diminish the trust the public placed in him or the legal profession. The Tribunal found that failure by the First Respondent to settle another solicitor's invoice for agency fees in circumstances when the invoice was not subject to dispute, resulting in proceedings and a Default Judgment being obtained, followed by a complaint to the LCS resulting from failure to satisfy the Judgment, was behaviour likely to diminish the trust the public placed in the First Respondent and the legal profession. The public was entitled to rely upon solicitors to pay invoices promptly in accordance with the terms of any contract entered into, or to challenge disputed invoices appropriately in a prompt and professional manner.
- 33.4 The Tribunal found the allegation substantiated on the facts and the documents.
34. **Allegation 1.2. Misled a fellow solicitor, contrary to Rules 1.02 and 1.06 SCC**
- 34.1. This allegation also related to non-payment of SRS's agency fees. It was specifically alleged by the Applicant that the First Respondent, as the sole principal of Cameron Solicitors, misled SRS by stating that payment was to be made on 10 July 2009 when it was not. The Tribunal noted that an SRS internal email dated 10 July 2009 contained reference to "phone call received from them [Cameron Solicitors]". The

letter dated 15 July 2009 sent by SRS to Cameron Solicitors referred to that telephone conversation as "your telephone message". The letter dated 21 October 2009 from the SRA to the First Respondent merely referred to "a representative" from Cameron Solicitors having contacted SRS on 10 July 2009, explaining that a cheque would be sent in settlement of the invoice.

34.2 The Tribunal was not satisfied so that it was sure on the evidence before it that it was the First Respondent who made the telephone call to SRS on 10 July 2009 stating that a cheque would be sent in the post that evening to clear their account. The Tribunal therefore found allegation 1.2 not proven.

35. **Allegation 1.3. Failed to cooperate with the Solicitors Regulation Authority ("SRA") and the Legal Complaints Service ("LCS") in an open, prompt and cooperative manner, contrary to Rules 20.05 and 20.08(1)(a) SCC**

35.1 The Applicant referred the Tribunal to specific examples of the First Respondent's failure to respond to correspondence, email messages and telephone calls from the SRA and the LCS. The SRA wrote to the First Respondent in relation to the outstanding Accountant's Report on 2 September 2009. It received no response. A different SRA department wrote to him regarding his practising certificate on 9 September 2009, again without response. The SRA wrote to the First Respondent on 21 October 2009 concerning SRS's outstanding invoice. It received no response. The letters dealt with serious matters. The First Respondent did respond to the IO on 26 October 2009 to tell her that he was unable to attend the 27 October 2009 meeting at which the books of account would be inspected due to his being unwell. He wrote again on 6 November 2009 when he referred to the ongoing nature of his illness, and provided a medical certificate on 10 November 2009. He did not reply to a chasing letter from the SRA dated 5 November 2009 in relation to the SRS invoice. Emails were sent to him by the IO on 11 November 2009 to which he did not respond. On 2 February 2010 the First Respondent wrote to the LCS and SRA, apparently in response to their investigation into the complaint by N. The letter went into some detail about events, but did not provide any explanation for the First Respondent's behaviour. There was no suggestion that his past ill health caused his lack of communication and failure to comply with regulatory requirements. What the First Respondent did say in response to this allegation was that he told the Second Respondent that he was fully complying with and assisting the LCS as well as the SRA in their respective investigations into his professional conduct. He stated that the Second Respondent had no cause to distrust his word and he would have been under the impression that:

"...I am fully assisting the Legal Complaints Service and the SRA in their respective investigations".

He recalled that the Second Respondent contacted him on several occasions to remind him of his duty to assist the SRA and the LCS with their investigations.

35.2 The Tribunal found that the First Respondent had failed to cooperate with the SRA and the LCS in an open, prompt and cooperative manner. The Tribunal found the allegation substantiated on the facts and the documents.

36. **Allegation 1.4. Practised as a solicitor without holding a practising certificate, contrary to Rule 20.02 SCC**

36.1 The First Respondent's practising certificate had been terminated on 17 December 2008. SRA records confirmed that the First Respondent had not applied for another practising certificate. His letter dated 2 February 2010 suggested that an application might have been made at some stage, but that the cheque sent to pay the fee had been dishonoured. The Tribunal read documents produced by the Magistrates Court confirming that the First Respondent acted for J. and M. in proceedings before it during 2009, together with an email from Counsel's clerk confirming that the First Respondent instructed Counsel on 6 February 2009 and attempted to do so again in the autumn of 2009. On 15 October 2009, only one week before the investigation into his practice, the First Respondent attended at the Magistrates Court, apparently intending to represent a client at a hearing. The chronology prepared by the Lead Team Manager at the Court set out in detail the events that had taken place on that day and the steps taken to ensure that the First Respondent was made aware that he did not have a practising certificate and therefore could not address the Court in the capacity of solicitor. It was apparent from these documents that the First Respondent had practised as a solicitor when he did not hold a practising certificate entitling him to do so.

36.3 The Tribunal found the allegation substantiated on the facts and the documents.

37. **Allegation 1.5. Failed to deliver a Reporting Accountant's Report, contrary to Rule 35 Solicitors' Accounts Rules 1998**

37.1 The SRA wrote to the First Respondent several times concerning the failure to file his practice's Accountant's Report for the period ending 12 December 2008 which was due on or before 12 June 2009. The First Respondent was asked to provide an explanation, but did not do so, leaving it to the Second Respondent to pay for accountants in an attempt to ensure that accounts were produced. In his letter dated 2 February 2010 the First Respondent stated that the accountants instructed by the Second Respondent had made several attempts to contact him in order to obtain bank statements, paying-in books, etc and to meet to discuss the accounts. He said that he did not meet the accountant and despite repeated calls from him for assistance he did not provide the information to enable the audited accounts to be produced. When the Second Respondent enquired about client ledgers the First Respondent stated that he told the Second Respondent that a relative was dealing with the matter. The First Respondent admitted that on one occasion he told the Second Respondent that he had arranged a meeting with the accountant to approve and sign off the accounts. He accepted that the Second Respondent had no cause to doubt his words of assurance and that he would have been under the impression that the accounts would be filed in time to comply with the regulations. When the Second Respondent contacted the accountants directly, he learnt that no arrangements had been made for the accounts to be reconstructed. When confronted with this information, the First Respondent again said that he had instructed accountants. He confirmed in his letter to the LCS and SRA that, if he had heeded the calls for assistance from the accountants and the Second Respondent, full audited accounts would have been filed with the SRA well in time to comply with the regulations. The Reporting Accountant's Report was never delivered.

- 37.2 The Tribunal found the allegation substantiated on the facts and the documents.
38. **Allegation 1.6. Failed to comply with the order of an Adjudicator, contrary to Rule 1.06 SCC**
- 38.1 This allegation related to the Order of the Adjudicator dated 5 March 2010 in the case of N., a former client, sent to the First Respondent by letter dated 11 March 2010. The directions in the Order were to be complied with by 18 March 2010. As at the date of the Tribunal hearing the directions had not been complied with, and £3,566.25 remained owing to N. The Tribunal noted that N. appeared to have paid £1,750 plus VAT in respect of costs, which the First Respondent had failed to return to her in accordance with the direction. The First Respondent had provided no explanation for his failure to comply.
- 38.2 The Tribunal found the allegation substantiated on the facts and the documents.
39. **Allegation 1.7. Failed to comply with Notice made under Section 44B Solicitors Act 1974, contrary to Rules 20.05 and 20.08(1)(b) SCC**
- 39.1 The SRA gave the First Respondent Notice under Section 44B of the Solicitors Act 1974 (as amended) by letter dated 6 April 2010. The Tribunal was satisfied that the Notice had been properly given in the light of the First Respondent's non-cooperation. Its terms were clear and there was no right of appeal. The First Respondent failed to comply with the Notice and provided no explanation for his conduct.
- 39.2 The Tribunal found the allegation substantiated on the facts and the documents.

Second Respondent

40. **Allegation 2.2. Practised as a sole practitioner without first obtaining the necessary recognition from the SRA to do so, contrary to Rules 14.04 and 20.03 SCC**
- 40.1 The Second Respondent left the partnership with the First Respondent in May 2008 and practised on his own account, first as Cameron Solicitors, Leighton Buzzard and later as Cameron Law. He admitted that he had not obtained the necessary recognition from the SRA, by submitting RSP1 with the requisite fee, enabling him to practise on his own account. Rule 20.03 of the SCC stated that a solicitor must not practise as a sole practitioner unless the SRA had first authorised the solicitor as a recognised sole practitioner by endorsing the practising certificate to that effect. The Second Respondent's practice did not fall within the exemptions described at Rule 20.03(2). The Second Respondent told the Tribunal that he was not aware that he had to obtain recognition from the SRA. The Applicant confirmed that, as soon as the Second Respondent became aware of the requirement to obtain recognition, he did so.
- 40.2 The Second Respondent admitted the allegation and the Tribunal found the allegation substantiated on the facts.

41. **Allegation 2.3. Misled lender clients as to the nature of his practice, contrary to Rules 1.02, 1.04 and 1.05 SCC**

41.1 The Applicant alleged that the Second Respondent had misled lender clients as to the nature of his practice, namely that he was a sole practitioner. On 12 April 2010 the Second Respondent informed the IO by email that his firm, Cameron Solicitors, Leighton Buzzard, was a member of the panel of a bank, and that he had recently received a new application form for membership. He had been unable to register with the panel of another bank because he had not traded for more than three years. The Second Respondent accepted during the investigation and before the Tribunal that he had not informed his lender clients that he was practising as a sole practitioner. The Second Respondent did not dispute that during his meeting with the IO on 27 October 2009, he said:

"If I change my trading style, instead of amending my personal information with the lending panels, I will have to reapply for membership of the panels, which has become increasingly difficult with the current economic climate and with the banks now having their own conveyancers. I know that viewing it on paper it might be trivial, however, as a sole practitioner being a member of a lending panel is imperative to earning your keep."

41.2 The Second Respondent told the Tribunal that it had not been his intention to mislead lender clients, although he accepted that if lenders had instructed him they might have been misled. He said that he made amends immediately he became aware that he should have notified lenders that he was a sole practitioner and stopped taking instructions at that point. He drew the Tribunal's attention to his headed notepaper, on which it was stated that he was the principal and that his application for sole practitioner status was pending with the SRA. He also made it clear on the notepaper that his firm had no relation to Cameron Solicitors, Berkhamsted or to Mr Stuart McPhail. The Second Respondent said that, as soon as he wrote to lenders using his headed notepaper, it would have been apparent to them that he was a sole practitioner. He could not have made it any clearer to the public that he was in practice alone.

41.3 The Second Respondent admitted the allegation and the Tribunal found it substantiated on the facts.

Previous Disciplinary Matters

42. None recorded against either Respondent.

Mitigation

43. The First Respondent had not submitted any mitigation to the Tribunal.

44. The Second Respondent expressed his gratitude to the Applicant and its solicitors for the way in which the proceedings had been conducted. He informed the Tribunal that he had unintentionally found himself in breach of the rules. He had been cooperative with the SRA investigation, having done all that he could to assist by communicating regularly with the SRA throughout their enquiries. He readily accepted at the meeting on 27 October 2009 that he should have amended his practice records with the SRA

by completing Form RSP1 and submitting it with the necessary fee. His practice was distinct from that of the First Respondent and he had stated on his stationery and his website at all times that he was a sole practitioner with an application for recognition to the SRA pending. The Second Respondent said that he could not have provided any clearer illustration of his intentions, demonstrating that he had no intention to mislead the public or the legal profession. However he had accepted full responsibility for his actions and would continue to do so.

45. The Second Respondent told the Tribunal that he was suffering from health problems to the extent that he was in receipt of disability living allowance at the time when he should have completed Form RSP1. His health had been a cause for concern, as it restricted his ability to communicate. Due to his illness completing the form was not “at the top of his agenda”. The Second Respondent said that no member of the public had suffered harm as a result of his inaction and maintained that his clients were always his first priority.
46. In relation to the allegation that he had misled clients, the Second Respondent repeated that he had made amends immediately he became aware of the problem. He had stopped taking instructions from lender clients. He found it difficult to accept that lenders had in fact been misled, but did accept that they might have been misled had they instructed him. With hindsight he should have acted differently, and he reminded the Tribunal that no complaint from lender clients had resulted from his actions.
47. The Second Respondent informed the Tribunal that he currently worked in his own practice and did not do residential conveyancing, having retrained into a different area of law.

Sanction

First Respondent

48. The Tribunal had found proven six out of seven allegations against the First Respondent. The First Respondent had not explained the reasons for his actions during the course of the SRA’s investigation or these proceedings. He had repeatedly failed to cooperate with the SRA and the LCS. He wrote a single letter to both on 2 February 2010, in which he appeared to accept responsibility in respect of some allegations and absolved the Second Respondent from any responsibility. However he did not explain why he behaved as he did. The First Respondent showed no evidence of any remorse, perhaps best demonstrated by his decision to disregard the directions of the Adjudicator dated 5 March 2010. The First Respondent’s action in ignoring those directions left his former client, N., out-of-pocket in respect of payment of compensation and reimbursement of costs totalling £3,566.25. Whilst this fact did not appear to be of any concern to the First Respondent, it did concern the Tribunal.
49. The Tribunal noted that the First Respondent had produced time-limited sickness certificates in October and November 2009. Proceedings were served on the First Respondent on 23 September 2010. The First Respondent had not made the Tribunal aware of any other periods of sickness until the morning of the hearing. This was the

first occasion on which he had engaged with the Tribunal. There was therefore no evidence that ill health had caused or contributed to the events leading to the allegations against him.

50. The First Respondent's conduct demonstrated blatant disregard for his professional obligations, the SRA (his regulatory body), the LCS (the organisation charged at that time with investigating client complaints), the Second Respondent (his former partner), SRS (his fellow legal professionals), and J., M., and N. (his former clients) and the Magistrates Court where he had represented J. and M. without a practising certificate until restrained from doing so by the Court's Legal Team Manager.
51. 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 honoured that duty whilst at the same time being reasonable and proportionate.
52. 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 practise. Solicitors were required to deliver an Accountant's Report so that the SRA could reassure itself by looking at a financial snapshot of the practice that the public was not being placed at risk and that the firm was well run. The SRA had the facility to give notice to solicitors under Section 44B of the Solicitors Act 1974 to ensure that documentary evidence and information required for the regulation and investigation of a practice were produced in the event of particular concerns coming to the SRA's attention. The SCC existed to ensure that solicitors behaved with integrity, essential to their role as the client's trusted adviser and characterising all their professional dealings, including those with the Court, other lawyers and the public. When matters of concern were brought to the attention of the SRA and the LCS, it was essential that solicitors responded in an open, prompt and cooperative manner, so that the Regulators could ensure that the public was protected and the reputation of the profession maintained.
53. The First Respondent had abdicated all responsibility for his practice. He had disregarded the gravity of his situation and had avoided facing the reality of the consequences of his actions. The only positive comment that the Tribunal could make was that the First Respondent had shown some courage in exonerating the Second Respondent from responsibility. If allowed to continue to practise, the First Respondent posed a very significant risk to the public. The Tribunal found it very difficult to identify any means by which he could rehabilitate himself. His conduct had caused financial damage to his former client N., which the First Respondent had made no effort to redress in response to the Adjudicator's direction. 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 legal profession. The result of that balancing exercise was that in the circumstances of this case the Tribunal had to strike the First Respondent off the Roll of Solicitors.

Second Respondent

54. The Second Respondent had admitted two allegations. The Tribunal was satisfied that he had done all he could to assist the SRA with its investigations into Cameron Solicitors. The Second Respondent had found himself in a difficult position. He had been admitted for only six years so was still relatively inexperienced. He had taken steps to extricate himself from the practice once he became aware of the true nature of the First Respondent's conduct. He had set himself up as a sole practitioner without making himself aware of the requirement to obtain recognition from the SRA or having notified his lender client(s) of his change in status. The Tribunal had considered whether the Second Respondent had been manipulative in his failure to notify his lender client(s), but had concluded that he had merely been naive and ill-informed. Once his shortcomings had been brought to his attention he had taken immediate steps to make amends, in stark contrast to the First Respondent.
55. The Second Respondent impressed the Tribunal as a frank and open individual who had faced his undoubted difficulties with a degree of courage. He had not been afraid to admit his mistakes, and had conducted himself with dignity. The Tribunal did not consider the Second Respondent to be any threat to the public, the reputation of the profession or the public's confidence in that reputation. No client appeared to have suffered any loss as a result of his actions. The Tribunal was satisfied that the Second Respondent had learnt from his recent experiences and that he would not repeat his mistakes.
56. In all the circumstances the Tribunal decided that it was reasonable and proportionate to impose a Reprimand on the Second Respondent.

Costs

57. The Applicant's solicitor submitted a claim for costs totalling £16,508.52. The Tribunal heard representations from the Applicant and the Second Respondent. It accepted that the proceedings had been properly brought. However it noted that two allegations against the Second Respondent had been withdrawn and that he had admitted the remaining two allegations. In the circumstances and having considered all of the papers submitted, the Tribunal did not consider that it was reasonable or proportionate to require the Second Respondent to pay the costs equally with the First Respondent. The Tribunal also considered that the claim for costs was too high, including as it did duplication of work, which although due to very unfortunate circumstances, was not the fault of the Respondents. In the circumstances costs were reduced to the fixed sum of £10,000, to be paid to the extent of 80 per cent, namely £8,000, by the First Respondent and 20 per cent, namely £2,000, by the Second Respondent.

Statement of Full Order

58. The Tribunal Ordered that the Respondent, Stuart Gemmill McPhail of 92 Winslow Road, Wingrave, Buckinghamshire, HP22 4QB, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £8,000, the total costs having been fixed in the sum of £10,000.

The Tribunal further Ordered pursuant to Section 5(2) of Schedule 1A of the Solicitors Act 1974 that the Direction of the Adjudicator dated 5 March 2010 be treated for the purposes of enforcement as if it were contained within an Order of the High Court.

59. The Tribunal Ordered that the [*Respondent 2*], solicitor, be Reprimanded and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £2,000, the total costs having been fixed in the sum of £10,000.

Dated this 7th day of March 2011
On behalf of the Tribunal

L. N. Gilford
Chairman