SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10694-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DOREEN ELIZABETH POWELL First Respondent

and

[NAME REDACTED] Second Respondent

and

DESMOND JAMES CORLIS Third Respondent

Before:

Mr J C Chesterton (in the chair)
Mr E Nally
Mr R Slack

Date of Hearing: 23rd November 2011

Appearances

Michael Robin Havard, solicitor of Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant.

The First Respondent did not appear and was not represented.

The Second Respondent appeared.

The Third Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the First and/or Second Respondents were that:

1.1 They have failed to maintain proper books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998;

1.2 They have permitted monies to be withdrawn from client account contrary to Rule 22 of the Solicitors' Accounts Rules 1998, leading to a cash shortage;

1.3 On discovery, they failed to remedy promptly the breach of Rule 22 contrary to Rule 7 of the Solicitors' Accounts Rules 1998 by failing to replace the money improperly withdrawn from client account;

1.4 They obtained a loan from a client without: insisting that the client take independent legal advice; providing any security, preparing any legal documentation to confirm the loan contrary to Rule 3.01 of the Solicitors' Code of Conduct 2007;

1.5 They have failed to provide any, or any adequate, supervision of the Third Respondent contrary to Rule 13 of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rule 5 of the Solicitors' Code of Conduct 2007;

1.6 They have failed to apply appropriate due diligence measures in relation to conveyancing transactions contrary to Regulation 7 of the Money Laundering Regulations 2007;

1.7 They have failed to make any, or any sufficient enquiries, with regard to the source of funding in respect of conveyancing transactions;

1.8 They have continued to act as a firm having failed to renew its recognition as a Limited Liability Partnership in accordance with Regulation 2 of the Solicitors' Recognised Bodies Regulations 2009;

1.9 They filed the Accountant's report for Keepers Legal LLP late for the year ending 31 May 2008 and have failed to file the Accountant's Report for Keepers Legal LLP for the year ending 31 May 2009 contrary to Rule 35 of the Solicitors' Accounts Rules 1998;

1.10 They have failed to arrange indemnity insurance in respect of Keepers Legal LLP for the 2009/2010 practice year.

As against the First and/or Second and/or Third Respondents:

1.11 They have conducted themselves in a manner that was likely to compromise their independence and integrity contrary to Rule 1(a) of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007;

1.12 They conducted themselves in a manner which was likely to compromise or impair their duty to act in the best interests of their clients contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rule 1.04 of the Solicitors' Code of Conduct 2007;

1.13 They have conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work contrary to Rules 1(d) and/or (e) of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rules 1.05 and/or 1.06 of the Solicitors' Code of Conduct 2007;

1.14 They failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions which was material;

1.15 They have allowed themselves to become involved in transactions which bore the hallmarks of property fraud;

1.16 They have acted generally and/or in property transactions where there existed a conflict of interest or a significant risk of a conflict of interest;

1.17 They failed to comply with the requirements of Rule 6 of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1 July 2007, Rule 3 of the Solicitors' Code of Conduct 2007;

1.18 They have failed to account promptly to their clients with clients' money on completion of a conveyancing transaction contrary to Rule 15 of the Solicitors' Accounts Rules 1998;

1.19 They have acted recklessly.

As against the First Respondent alone:

1.20 She acted in breach of a condition attached to her Practising Certificate contrary to Section 12 of the Solicitors' Act 1974.

This list of allegations was reproduced from the Rule 5 Statement. Where indicated in the following Judgment, the Applicant did not pursue particular allegations against particular Respondents cited in the sub-headings to the allegations list.

Documents

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

Applicant:

- Rule 5 Statement Dated 10 January 2011 with exhibits;
- Extract from Barclays Bank statement for Keepers Legal LLP clients account with entries for 13 and 15 May 2009;

- Civil Evidence Act Notice dated 9 March 2011 in respect of Forensic Investigation Report dated 15 September 2009 and appendices;
- Civil Evidence Act Notice dated 17 October 2011 in respect of Forensic Investigation Report dated 31 August 2011;
- Copy of Notice of Substituted Service relating to the First Respondent printed in The Times newspaper, 12 October 2011 (original newspaper produced to the Tribunal);
- Email report from enquiry agents to Mr Havard in respect of the whereabouts of the First Respondent dated 24 June 2011;
- Email report of telephone conversation between staff member at Morgan Cole and the First Respondent's daughter dated 13 June 2011;
- Letter from Mr Havard to the First Respondent's daughter dated 12 October 2011;
- Email correspondence:
  - From the Third Respondent to Mr Havard dated 3 November 2011,
  - Mr Havard's response dated 7 November,
  - The Third Respondent's further email dated 13 November;
  - Mr Havard's response dated 14 November;
  - The Third Respondent further email of 14 November;
  - Mr Havard's response of 17 November 2011;
- Photocopy of The Law Society's "Green card" warning on property fraud - practice information from The Guide to the Professional Conduct of Solicitors 1999;
- Extract from the Judgment in the case of R v Jones [2001] EWCA Crim 168;
- Applicant's Schedule of Costs.

First Respondent:

- None submitted.

Second Respondent:

- Letter to the Applicant dated 12 September 2011;
- Letter to the Tribunal dated 21 November 2011 enclosing a list of assets and a list of liabilities;
- Estimated income and expenditure over one month.

Third Respondent:

- Statement of the Third Respondent dated 14 November 2011.

Preliminary Matters

3. Before commencing the hearing, the Chairman made a declaration to the following effect: The panel included lay member Mr Robert Slack. It had been noted that in the

appendix 6 to the Rule 5 Statement at page 141 of the Applicant's bundle, there was a reference to monies erroneously paid into the ledger for client W in respect of the purchase of a property in Bromley, Kent, from another client who bore the same surname as Mr Robert Slack. Mr Slack wished it to be known that he had a cousin with the same forename as this particular client. Those present were asked whether they had any objection to his continuing on the panel. Mr Slack had not had the opportunity to make enquiry of his cousin as to whether she was the individual referred to on the ledger. Mr Havard confirmed that the reference to Ms Slack formed no part of the case which he intended to present before the Tribunal and agreed with the Tribunal's interpretation, that the papers showed no indication that Ms Slack had suffered any loss. Mr Havard, for the Applicant, and the Second Respondent stated that they had no objections to the matter proceeding before this panel. It should be noted that during the course of the proceedings the Second Respondent gave evidence concerning another individual stated to be a sister of this Ms Slack and it became apparent to panel member Mr Slack that in the circumstances described, the Ms Slack referred to on the ledger could not possibly be his relative.

4. The Applicant sought the approval of the Tribunal to proceed with this substantive hearing in the absence of the First and Third Respondents. In respect of the First Respondent in accordance with directions given by the Tribunal on 5 July 2011, substituted service by means of an advertisement in The Times newspaper with a copy of the advertisement being forwarded to the First Respondent's daughter had been effected and the newspaper in question was produced to the Tribunal. The advertisement had been placed dated 12 October 2011. It complied with the requirements within the Solicitors (Disciplinary Proceedings) Rules 2007 at Rule 12 that unless the parties have agreed or the Tribunal has so ordered, the hearing of an application should take place no sooner than the expiry of a period of 42 days, beginning with the date of service of the notice appointing the date of the hearing. Mr Havard informed the Tribunal that in addition to placing the advertisement, he had as ordered written with a copy to the First Respondent's daughter on 12 October 2011. He had received no reply from her.

5. The Tribunal had carefully considered the position regarding the First Respondent and decided to exercise the power given to it by Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 and being satisfied that notice of the hearing was served on the Respondent in accordance with the Rules and in accordance with the Directions given on 5th July 2011, to hear and determine the application notwithstanding that the First Respondent had failed to attend in person or was not represented at the hearing.

6. In respect of the Third Respondent, Mr Havard drew to the Tribunal's attention email exchanges which he had had with the Third Respondent. These had included a message from the Third Respondent on 13 November 2011 including:

> "I attach my statement in reply to your statement dated 10 January 2011 [the Rule 5 Statement]. I am happy for this to be placed before the tribunal in my absence."

In response to an email of 14 November from Mr Havard the Third Respondent had stated:

> "I am aware of the hearing scheduled for 23 November 2011. I do not intend to attend, this should not be viewed as being disrespectful to the tribunal Chairman. I have recently started a new role and will not be able to secure time off. I therefore consent to you reading out my statement in my absence."

7. The Tribunal had read the Third Respondent's Statement. Mr Havard was aware that the Tribunal needed to exercise caution. The Third Respondent seemed to be denying some of the allegations. Mr Havard drew the attention of the Tribunal to an extract from the case of R v Haywood, R v Jones, R v Purvis [2001] EWCA Crim 168. He relied also on Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 which had been determined in reliance on the case cited. In the Jones case the Court said at paragraph 22:

> "22. In our judgment, in the light of the submissions which we have heard and the English and European authorities to which we have referred, the principles which should guide the English courts in relation to the trial of a defendant in his absence are these.
>
> (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
>
> (2) Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him...
>
> (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.
>
> (4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular: (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings; (iii) the likely length of such an adjournment; (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation..."

8. Mr Havard submitted that the Third Respondent had deliberately and voluntarily absented himself from the hearing and thereby waived his right to appear. He had made no request for an adjournment, nor was there any suggestion that if the hearing was adjourned, he would attend at a later date. He had shown no intention to be represented. There was little risk of the Tribunal reaching the wrong conclusions of fact if the Third Respondent were not present. He had provided a statement or his

position in response to the Rule 5 Statement. It was also submitted that the proceedings had been outstanding for a time already because of the difficulty in tracing and serving the First Respondent and it could only be imagined what stress this had occasioned to the Second Respondent who was present at this hearing.

9. The Tribunal indicated that it had been greatly assisted by Mr Havard's submissions and the judgment to which he had referred it. It was satisfied in the case of the Third Respondent that he had been properly served with notice of the proceedings and that it was evident from the email exchange between him and Mr Havard that he had quite intentionally decided not to attend or be represented. The Tribunal ordered that the case should be heard in his absence exercising its power under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 as set out above in respect of the First Respondent.

10. The Tribunal reminded Mr Havard that having regard to the absence of the First and Third Respondent particular care should be taken to go carefully through all the allegations in the Rule 5 Statement and also to take particular note of the contents of the Third Respondent's statement in response to it. The Tribunal would treat all the allegations as being denied by the First Respondent but it noted that Civil Evidence Act Notices had been duly served and that no response to them had been made. It also treated all the allegations against the Third Respondent as denied and the same considerations applied in respect of the Civil Evidence Act Notices. The Second Respondent who was present had indicated at an earlier stage of the proceedings that he admitted all the allegations against him. The Tribunal wished to be certain of the Second Respondent's stance regarding each allegation. There were particular allegations relating to breaches of the Solicitors Accounts Rules; conveyancing irregularities including breaches of the Money Laundering Regulations 2007 and including characteristics suggestive of property fraud; and a failure to renew the recognition status of the practice Keepers Legal LLP. As would become apparent during the hearing, and as had been particularised in the Rule 5 Statement, there were certain over-arching allegations 1.11 relating to compromising independence and integrity; 1.12 compromising or impairing duty to act in best interests of their clients; 1.13 compromising or impairing the good repute of the solicitors' profession and/or proper standard of work and 1.19 acting recklessly. These were pleaded in addition to certain of the particular allegations. In each case the Second Respondent was asked by the Tribunal what his approach to the particular allegation was and also in respect of any over-arching allegation relating to it. The Second Respondent's position in respect of each allegation is as set out in the Findings of Fact and Law within this Judgment. However, with stated exceptions he agreed the facts as set out in the Rule 5 Statement but at the commencement of the hearing denied any of the over-arching allegations in respect of breaches of Rule 1 of the Solicitors Code of Conduct 2007 which formed the basis of allegations 1.11, 1.12 and 1.13. He also denied allegation 1.19 that he had acted recklessly.

Factual Background

11. The First Respondent was born in 1955 and was admitted to the Roll in 2004. The Second Respondent was born in 1943 and was admitted to the Roll in 1971. The Third Respondent was born in 1965 and was admitted to the Roll in 1994.

12. At all material times, the First and Second Respondents practised together as members in Keepers Legal LLP of Gillingham, Kent ("the firm"). The Third Respondent worked at the firm either in the role of consultant or locum solicitor. The Applicant's records indicated that the firm closed on 6 January 2010.

13. Having received authorisation to do so, an Investigation Officer ("IO") from the Applicant, Mr Roberto Ferrari, commenced an investigation of the firm on 18 May 2009. On 23 July 2009, the IO and a Senior Investigator from the Applicant, Mr Praful Parmar, interviewed the First and Second Respondents. A transcript of that interview was before the Tribunal.

14. At the conclusion of the investigation, a Forensic Investigation Report ("FIR") dated 15 September 2009 was prepared.

15. In broad terms, the allegations fell into the following categories:

- As against the First and Second Respondents, a failure to maintain proper books of account and the existence of a cash shortage on client account;
- Conveyancing irregularities including breaches of the Money Laundering Regulations 2007;
- Conveyancing irregularities including characteristics suggestive of property fraud;
- As against the First and Second Respondents, a failure to renew the recognition status of their practice, Keepers Legal LLP;
- A failure on the part of the First Respondent to comply with conditions imposed on her Practising Certificate.

<u>Allegations 1.1, 1.2 and 1.11: Failure to maintain proper books of account, permitting monies to be withdrawn from client account leading to cash shortages - against the First and Second Respondents.</u>

16. The FIR showed that, as at the time of the preparation of the Report in September 2009, and despite requests, the First and Second Respondents had failed to produce up to date reconciliation statements. One was produced for 1 July 2009 but it was incomplete to the extent that it did not include a client matter listing. The First Respondent indicated at the recorded interview on 23 July 2009 that she had simply assumed that the firm's accountant, Mr A of Keepers Accountancy and Taxation Services, who also happened to be the firm's landlord, had provided the Applicant with the necessary information. The First Respondent also confirmed that she did not review or check any of the information provided by Mr A. The IO noted that the firm had previously used a bookkeeper, a Ms TM, selected by Mr A to maintain the books of account on a weekly basis. However, following a downturn in business the bookkeeper only attended to produce monthly reconciliations until February/March 2009 when she ceased to attend, due to the firm's inability to pay for her services.

17. It was also discovered that up until May 2009, whilst the firm traded under the style of Keepers Legal LLP, the firm's general client bank account was in the name of Keepers Legal Limited. The directors of Keepers Legal Limited included the firm's accountant, Mr A, and one other person as well as the First and Second Respondents.

Its address was also the former practice address of the firm. Consequently, there was no evidence to suggest that clients, including lender clients, paying funds to the practice would have known that their money was in fact paid into a separate company but the First Respondent did not consider this presented a risk.

18. In a client matter listing up to 22 July 2009, five client ledger accounts had a cumulative debit balance of £2,938.50.

19. Client ledgers were not completed in accordance with the Solicitors' Accounts Rules 1998 ("SAR"), in that insufficient narrative was supplied to identify client funds.

20. In the interview with the IO the First Respondent stated that she did not review any of the information submitted to the Applicant by her accountant and, even had she done so, she would not have understood the information that was being supplied.

Allegations 1.2, 1.3, 1.4, 1.11, 1.12, 1.13 and 1.15: Cash shortage/steps and time taken to remedy shortage etc, against the First and Second Respondents

21. The calculation undertaken by the IO, which was agreed by the First and Second Respondents, meant that as at 30 April 2009, there was a minimum cash shortage on client account of £42,324.04.

22. The cash shortage arose in the course of a property transaction in which the Second Respondent acted on behalf of the firm's client, Mr W, in the purchase of a property in Bromley, Kent, for a contract price of £249,000.00 plus £4,000.00 for fixtures and fittings. On the date completion was supposed to take place, namely 27 January 2009, the firm held insufficient funds to complete. On 30 January 2009, the vendor's solicitors served a Notice to Complete.

23. On 5 February 2009, the firm received a payment of £40,000.00 which the Second Respondent assumed was from a Mr L, a person related to the purchase, but in fact it came from another unconnected client. The Second Respondent utilised these monies to complete the purchase even though the client ledger account showed that a debit balance arose on 5 February 2009 which increased when various disbursements were paid out as well as a refund being shown on the ledger as made to the client, Mr W, of £7,371.23. In fact, this was a telegraphic transfer not to the client but to "G JL1" who in fact was Mr L. In the interview the Second Respondent explained that Mr L had telephoned him that day to say he had been informed by his associate that money was definitely on its way. The Second Respondent did not have online access to the bank which would have provided narrative. He agreed that in the words of the IO "it was literally, contact the bank, has £40,000 come in today". He made an assumption "Exactly they couldn't tell me the source of the funds you see. I mean £40,000 was expected and that's what arrived". The Second Respondent agreed that he had completed when holding insufficient funds which thereby created a cash shortage on the client account.

24. In the interview both the First and Second Respondents indicated that they had become aware of the cash shortage in mid- to late-February 2009 when Ms TM came for the month end reconciliation but it was not until correspondence dated 10 March

2009 from the Second Respondent to the client, Mr W, that the Second Respondent informed his client of the level of cash shortage, requesting repayment. The letter included: "The matter is further compounded since our accountant has had a close look at the account and found several discrepancies. The most alarming of these is that a sum of £40,000 was posted to the wrong account."

25. The Second Respondent confirmed to the IO that he had immediately attempted to contact Mr L, through whom the funding for the transaction had been provided, by telephone, post and email but without success.

26. On subsequently learning of Mr L's suicide, the Second Respondent had then contacted Mr W and requested repayment. This not being forthcoming, he attempted to register a restriction against Mr W's title to the property. This, however, was rejected by the Land Registry who required the consent of the registered proprietor.

27. Mr W instructed solicitors S and denied that he owed the firm any money in relation to this matter. Mr W's solicitors said in their letter of 13 March 2009:

> "Our client has no knowledge of any sums being "posted to the wrong account" as referred to in your undated letter (which we believe was to be dated 10th March) and clearly this is an internal matter for you to deal with accordingly and is not a concern of our client."

In a letter of 23 April 2009, S said:

> "There does appear to be some ambiguity in your dealings with this matter: whilst you were acting for our client, you appear to have dealt primarily with Mr [L] and indeed our client was refused information on occasion when he telephoned and advised that only Mr [L] could deal with matters..."

On 15 May 2009, the matter was referred to the firm's professional indemnity insurers.

28. At the start of the investigation, the First Respondent informed the IO that she had partially rectified the cash shortage on 15 May 2009 by means of a deposit of £40,000.00 into the client bank account, which were the proceeds of a personal loan to her. The IO asked whether the investigation was the reason for this deposit, some three months after the shortage had arisen. She denied that was the case. She explained that allied to the Second Respondent's attempts to correct the shortage she had contacted the firm's bank for a loan but without success.

29. The IO asked as to the source of the loan received and the First Respondent confirmed that the £40,000.00 was received from a client, Ms TS, who was also a personal friend. The First Respondent confirmed that there was no loan documentation covering this transaction. When asked by the IO whether the client Ms TS was advised to seek independent legal advice, the First Respondent replied "Well I asked for the loan so it was a personal loan to me". She did not regard it as taking a loan from a client. She said she took the loan from Ms TS "As a friend, not a client... she is a friend first... no I didn't advise [sic] it was just something we spoke to on a face to face basis and it was personal and the view [w]as that I would give her some sort of

security like my house or something to secure it. It is nothing to do with the business..." The Second Respondent also confirmed during the interview that there was no loan documentation.

30. The IO noted that, on 20 May 2009, shortly after the loan funds were deposited into client bank account they were withdrawn. When asked for an explanation, the First Respondent stated that Ms TS had requested details as to how the loan was to be repaid and on discovering the reason for the loan and that the First Respondent was not in a position to repay the loan, she requested the return of her funds.

31. Both the First and Second Respondents confirmed that the cash shortage that arose in February 2009 was still in existence as at 23 July 2009. They stated that they were unable to replace the shortage from their personal resources. As at the date of the FIR no confirmation that the shortage had been replaced, had been forthcoming.

32. It was recorded in the second FIR dated 31 August 2011 that an amount of £40,017.41 of the minimum cash shortage was made good by the firm's insurers, leaving the amount of £2,306.63 outstanding.

Allegations 1.6, 1.7, 1.11, 1.12, 1.13, 1.15 and 1.19: Conveyancing irregularities, Breach of Money Laundering Regulations 2007 etc, against the Second Respondent alone

33. It was in relation to this transaction that the cash shortage of £40,000.00 arose.

34. The Second Respondent stated that the instructions for this matter came from Mr L. Though a client care letter dated 4 December 2008 was sent to Mr W, the Second Respondent confirmed that virtually all contact in respect of this transaction was through Mr L, who also provided the client identification for Mr W. The photo page of Mr W's passport was on file, although the IO noted that this had not been certified as a true copy of the original. He asked the Second Respondent whether he had seen the original passport and he confirmed that he had not.

35. The IO noted that there was no client identification information on file for Mr L and the Second Respondent confirmed this was the position. He stated that Mr L had some years previously been a client of his but agreed that no up to date information had been obtained.

36. The person who was purchasing the property, Mr W, did not contribute any sum towards the purchase price nor was it funded by a mortgage advance.

37. The purchase money was primarily made up of a number of instalments of cash payments from a variety of individuals who, on the face of the file, had no connection with the purchase. For example £19,000.00, £63,658.09 and £5,000.00 were received from Mr L on 13 January 2009, 26 January 2009 and 3 February 2009 respectively. Further funds were received as follows: from SP, £10,000.00 on 30 January 2009, from Mr RWP, £4,000.00 on 3 February 2009, £2,500.00 from RWP & JP on 3 February 2009 and £48,413.25 from KS Solicitors under the reference of Mr P.

38. There was also no evidence on the file that the Second Respondent, who had conduct of this transaction, ever met the purchaser client, Mr W, all discussions being with, and instructions received from, Mr L who provided the bulk of the purchase monies.

39. The Second Respondent stated that the nature of the transaction was that Mr L and his business associates were purchasing properties without the need for mortgages and these would be registered in someone else's name. He stated that,

> "Mr [L] said he would send me the ID details of the person in whose name the property was going to taken [sic] as soon as his business associates had decided about that."

40. The IO noted that there was no trust deed or other protection for the interest of those providing the funds. He asked the Second Respondent whether he considered this to be an unusual transaction, he replied:

> "It is unusual I accept that. And I said so to him [Mr L] and he said well that's all we want. We just need you to buy the property."

41. The IO asked the Second Respondent whether he was aware of the requirement under the Money Laundering Regulations to confirm the source of funds. He stated he was aware. The IO asked whether he had complied with the Regulations to which he replied:

> "I have to accept I didn't comply completely but I was assured by Mr [L] that the money was coming from his business associates."

42. The IO noted that the balance of £40,000.00 to complete this matter was expected from Mr L. The Second Respondent confirmed that he was advised by Mr L that the funds were due to be transferred from a bank in the Channel Islands. The IO asked whether it was from an account in Mr L's name. The Second Respondent stated:

> "No, it wasn't, I did ask him and he was very vague about it and said it's one of his associates."

43. The IO noted that this was the second transaction where Mr L instructed the firm to act in a property purchase without a mortgage, which was then registered in Mr W's name. The first transaction took place in November 2008 and related to a property in Selly Oak, Birmingham. The Second Respondent confirmed that the facts were similar with the purchase monies coming from a variety of sources.

<u>Allegations 1.11, 1.12, 1.13, 1.14, 1.15, 1.16 and 1.18: Conveyancing irregularities, transactions bearing the hallmarks of property fraud etc, against all three Respondents</u>

<u>Allegation 1.5, Failure to supervise, against the First and Second Respondents (see also later background regarding allegation 1.5)</u>

44. The first category of transactions highlighted in the FIR related to the firm acting on behalf of a client, RH, in the purchase of seven properties from the same party, namely FPH Ltd.

RH - purchase of Plot 6, Taplow, Berkshire

45. The First and Third Respondents acted for RH in his purchase of the property from FPH Ltd at a stated purchase price of £495,000.00. The firm also acted on behalf of the lender, UCB, in a Buy to Let mortgage advance of £396,000.00 based on an 80% loan to purchase price ratio with specific instructions from the lender client that the purchase price of the property was £495,000.00 and that RH would provide at least 15% of the deposit from his own funds.

46. On the same day that the mortgage instructions were received, namely 11 July 2007, the First Respondent signed the Certificate of Title with completion arranged for 13 July 2007.

47. Despite the Certificate of Title, confirming compliance with Rule 6(3) of the Solicitors' Practice Rules 1990, it was noted that this was a sub-sale from FPH Ltd to RH and that there was a lease dated 13 July 2007, indicating a purchase price of £342,500.00.

48. Consequently, there was an uplift in the purchase price in the simultaneous sale to RH of £152,500.00 and there was no indication that the lender client was ever informed of this uplift.

49. The Completion Statement indicated that there had been a deposit paid directly by RH to FPH Ltd in the sum of £152,500.00 but again there was no indication that the lender client was made aware of this fact nor did the First and Third Respondents receive any evidence to verify that such a sum had in fact been paid. Despite the lender client's special conditions contained in the mortgage instructions, there was no evidence that RH had provided the 15% deposit from his own funds and the only funds which had passed through the firm had been the mortgage advance. In the interview the First Respondent confirmed that she was aware that this was a sub sale and back to back transaction. She said:

> "There was quite a number of them. They were all sub sales ... I introduced them ... I didn't look at the uplift but I knew they were back to backs ..."

She also agreed that there was an email on the file from a manager at FPH Ltd to her dated 9 July 2007 - prior to the Certificate of Title being signed - advising her that this transaction was a back to back and that she was fully aware of it when she signed the Certificate of Title. The interview then continued:

> "IO: The completion statement on the file indicated there had been a deposit paid direct between [RH] and [FPH Ltd] of £152,500, conveniently the uplift. Did you receive or seek any confirmation that this money was in fact paid?

First Respondent: No, I think what happened there should have been a schedule but I think a lot of these monies were paid to the developer in effect. I think they had bought on bulk and a lot of the deposits etc were initially paid to the developer as far as my understanding was.

IO: There is no evidence on the file to show that. I mean did you advise the lender that a deposit exactly equal to the uplifted price had been paid and that consequently you did no [sic] hold all the completion monies required for the purchase?

First Respondent: If there is nothing on the file then. I assume [the Third Respondent] would have done but if there is nothing on the file, there is nothing on the file."

50. The First and Third Respondents had acted for RH in two further purchases at the same development in Taplow, both of which had the same characteristics as Plot 6, namely that they were sub-sales with very substantial uplifts in price with deposits purportedly paid direct to the Seller equal to the uplift. Again, there was no evidence that the lender client had been informed of any of these facts.

51. The two further transactions related to Plots 2 and 5 of the development. The ledger accounts and bank statements showed that the balance of mortgage advances was paid to FPH Ltd on 20 July 2007 leaving insufficient funds to deal with post-completion matters thereby putting at risk the priority of the lender client's charge. Sufficient funds were returned by FPH Ltd on 7 August 2007 in order to enable the SDLT to be paid.

52. The bank transfer authorisation form for each of the transfers to FPH Ltd for the balance of the mortgage monies was signed by the First Respondent. During interview the First Respondent had agreed that she effectively assumed that the Third Respondent would have informed the lender client that the firm was not holding all the purchase monies and that there was a significant deposit paid direct. She said she was not aware of any connection between RH and FPH Ltd.

53. A Companies House search showed that RH was the Sole Director of FPH Ltd, which had the same address as that of RH but the First Respondent repeated that she was unaware of RH's connection with FPH Ltd.

Mr RH - Purchase Plot 56, Leatherhead

54. The Third Respondent acted for RH in the purchase of the property from FPH Ltd for £325,000.00. Whilst the client care letter was dated 28 May 2007, mortgage instructions were received from MT Ltd, the lender on 19 May 2007 with RH receiving an advance of £276,250.00.

55. On 8 June 2007, the First Respondent signed the Certificate of Title, sending it to the lender client with exchange of contracts and completion taking place on 13 June 2007.

56. Whilst the contract indicated there was no deposit, the Completion Statement indicated that RH had paid a deposit direct to FPH Ltd, of which he was Sole Director, of £61,632.76 and that a £7,000.00 reservation fee had been paid.

57. In effect, FPH Ltd was purchasing the property for £267,700.00 and selling on the same day with an uplift of £57,300.00 but there was no evidence that the deposit had actually been paid. Furthermore, there was no evidence to suggest that the lender client had been told that RH was not contributing towards the purchase price and that the mortgage advance would cover the purchase price, SDLT, registration and legal fees together with the £7,000.00 inter-ledger transfer to another client ledger account in RH's name.

58. On the same day that the First Respondent signed the Certificate of Title, the lender clients wrote to the firm requesting confirmation of any sales incentives and that the amount required at completion was £276,250.00. On the same day, the firm wrote to the lender clients "we confirm that there are no sales incentives from the developer". Taking account of what was contained in the client care letter which recited that the purchase price was "less deposit paid by developer £32,500.00" and "We also understand that the developer may be paying your stamp duty and legal fees", the First Respondent accepted that the letter of 8 June 2007 to the lender client (which bore the references of the First and Third Respondents), was misleading.

59. The Third Respondent had acted for RH in three other transactions on the Leatherhead development and the First Respondent agreed that the facts of these transactions were similar to Plot 56. All the transactions completed on or about 13 June 2007.

<u>Ms MP - Purchase of Flat 9, New Cross, London</u>

60. The First Respondent acted on behalf of the purchaser, Ms MP, and the lender, the Bank of Scotland. The mortgage instructions dated 17 October 2008, confirmed that the lender would advance Ms MP £187,500.00 in order to assist her purchase based on a purchase price of £250,000.00.

61. However, on 12 December 2008, the First Respondent was notified by email from the sellers' solicitors that the seller was prepared to accept the sum of £187,418.50. Despite that fact, on 20 January 2009, the First Respondent sent to her lender clients a Certificate of Title, in which she confirmed the price stated in the transfer was £250,000.00.

62. The client ledger showed that the only funds received in this transaction apart from £300.00 originally paid on account was the mortgage advance.

63. Whilst the First Respondent stated at interview that a deposit had been paid direct by Ms MP to the seller, the only evidence on file was a letter from the seller's solicitors dated 16 December 2008 in which they enclosed a copy of the Completion Statement, confirming an allowance of £67,966.88 being given by the sellers.

64. The firm held all completion monies, and the mortgage advance funded the purchase and SDLT, registration fees, and the firm's costs.

65. It also appeared that the advanced monies were used after the mortgage offer had expired.

Mr SM - Purchase of Plot 24, Ipswich, Suffolk

66. This was a transaction in which the Third Respondent acted for the purchaser and the lenders, GMAC RFC, in relation to the purchase of the property for £192,500.00 with a mortgage advance of £182,800.00.

67. Again, this was a back-to-back transaction as illustrated by the letter from the seller's solicitors dated 30 May 2007, and the Second Respondent confirmed in interview that there was no evidence the mortgagee had been informed.

68. The client ledger account showed that the firm received £2,500.00 on 7 June 2007 but this came from a third party, Mr S, and there was no evidence that any funds were received from the client nor was there any evidence that the lender clients had been informed.

69. The Certificate of Title was signed by the Second Respondent.

70. Despite exchange of contracts and completion taking place on the same day, namely 20 June 2007, correspondence and other documents were found on file, which suggested that completion had taken place without the Third Respondent having received from his purchaser client either contract documentation or the Mortgage Deed duly signed. Indeed, the signed Mortgage Deed did not appear to have been received until early December 2007, nearly six months post-completion.

71. A letter from the purchaser client Mr SM dated 16 December 2008 suggested that, prior to completion, he had had no contact with the Third Respondent and that he had obtained a residential mortgage when it was his belief that it was a Buy to Let mortgage. The letter included:

> "Initially, I agreed to invest. However, after further consideration, in April 2007, I decided against purchasing the property and obtained confirmation from Mr [Ma] that the purchase had been aborted.
>
> To my surprise, I was contacted by a representative of GMAC to inform me that my mortgage had completed!"

There was also inadequate evidence of identification.

72. The IO noted that in June 2007 the Third Respondent had acted for two other members of SM's family in their purchases of Plots 2 and 23 in the same development where the facts as set out in relation to Plot 24 were the same, namely funds being supplied by a third party with the balance necessary to complete the purchase either being provided by the seller, FPH Ltd, or by an inter-ledger transfer of funds held for

RH, the Director of FPH Ltd. Again, there was no evidence of the lender clients being informed of any of this information.

Allegations 1.5, 1.11, 1.13 and 1.19: Supervision of the Third Respondent etc, as against the First and Second Respondents

73. According to the Applicant's records the Third Respondent was employed as a consultant solicitor at the firm between 1 February 2007 and 21 March 2007.

74. The IO noted that the Third Respondent was the fee earner in a considerable number of the conveyancing transactions that were alleged to bear the hallmarks of property fraud. The majority of these transactions occurred (June-July 2007) outside the dates when according to the Applicant's records the Third Respondent was employed by the firm. However, the IO noted that he continued to be employed by the firm after this date for several months on a locum basis, billing for his services through a firm called D & C Legal Services Partnership. At the interview the First and Second Respondents both confirmed that they were aware that the Third Respondent held a conditional practising certificate which required his work to be supervised. The IO observed that it was not apparent that any additional procedures for supervision had been put in place as regards him. When Mr Parmar asked why proper arrangements for supervision had not been put in place, the First Respondent replied:

> "Apart from the fact that I was busy with my own work no there is no other...I just trusted that he would do the work because he knew what to do."

75. There was an Adjudicator's decision dated 22 February 2007 in respect of the Third Respondent's Practising Certificate for the 2006/2007 practice year. It included:

> "He may act as a solicitor only:
>
> 1.1 in employment or partnership; or
>
> 1.2 as a member, office holder or shareowner of an incorporated solicitor's practice.
>
> the arrangements for which have first been approved by the Solicitors Regulation Authority"

The decision also said:

> "I DECIDE to approve for the purposes of the conditions on Mr Corlis' Practising Certificate for the practice year 2006/2007, his employment with Keepers Legal LLP as a consultant, subject to the following conditions:

3.1 that Mr Corlis should be supervised by Mr *[SECOND RESPONDENT]*

;"

76. A letter was sent by the First Respondent to the Applicant on 7 February 2007, setting out the basis on which the Third Respondent was to be supervised.

Allegations 1.11, 1.13 and 1.18: Providing banking facilities for a client, as against the First and Second Respondents

BGH Limited - sale of 64 R Road, Maidstone, Kent

77. Having acted on behalf of the clients in the sale of a property which completed on 5 January 2009, the net proceeds of sale remained on the client ledger, to which £30,000.00 was added on 6 February 2009.

78. Whilst £17,800.00 was transferred to another client ledger, two payments of £35,300 and £31,750 respectively were made on 12 March 2009 and 29 April 2009 in respect of purchases of luxury cars on behalf of the client and it was accepted by the First Respondent that such payments had been made without any underlying legal transaction taking place nor was any professional advice proffered. She agreed in interview that she understood that it was the use of her client account for personal matters for a client. It was accepted by the First Respondent that she had not been aware of the guidance in relation to providing banking facilities for a client at the time.

Correspondence with the Applicant

79. By letter of 16 October 2009, the FIR was sent to the Respondents requesting them to respond.

80. By letter of 28 October 2009, the First and Second Respondents provided a joint response.

81. As a consequence of ill health, the Third Respondent was allowed an extension of time in which to respond. He did so by letter of 8 December 2009. Other correspondence followed.

Allegations 1.8, 1.11 and 1.13: Practising without recognition, against the First and Second Respondents

82. Keepers Legal LLP, of which the First and Second Respondents were members, was granted appropriate recognition by the Applicant on 29 June 2006 which, in accordance with Regulation 8 of the Recognised Bodies Regulations 2009, would last for three years, ie to 30 June 2009.

83. No application for renewal was received and Keepers Legal LLP closed on 6 January 2010 which meant that the firm was operating for a period of over seven months without the necessary recognition.

84. By letter of 17 December 2009, the Applicant wrote to both the First and Second Respondents asking for an explanation.

85. By letter of 22 December 2009, the First Respondent wrote to the Applicant providing an explanation based on lack of funds to lodge the application. However, by letter of 15 December 2009, the First Respondent had written to the Applicant on the firm's headed notepaper confirming that the office was still open even though there were no live files.

86. By letter of 8 January 2010, the Second Respondent wrote to the Applicant setting out his view that the firm did not operate beyond 30 June 2009, and that he had last attended the office on 3 July 2009 to deal with the winding-up of the practice.

87. On 11 January 2010, the First Respondent wrote to the Applicant stating that the Landlord had taken possession of the firm's premises on 6 January 2010, and that it had not been possible to lodge an application for recognition, or complete an application for a practising certificate, due to lack of funds.

Allegations 1.11 and 1.20: Breach of practice conditions attached to Practising Certificate, against the First Respondent only

88. On 4 March 2010, the Applicant wrote to the First Respondent regarding a breach of her practising certificate, and enclosed copies of the Authorised Officers' Decisions dated 16 January 2008, 21 February 2008 and 25 June 2009.

89. There had also been an Authorised Officer's decision dated 8 October 2007. Inter alia, for the practice years 2006/2007, 2007/2008 and 2008/2009, the First Respondent was only permitted to act as a solicitor in accordance with the conditions as stipulated.

90. In relation to the practice year 2008/2009, an Authorised Officer at the Applicant decided to continue to approve the First Respondent's position as a member of Keepers Legal LLP with the Second Respondent and Mrs FK subject to the condition that the First Respondent must be supervised by the Second Respondent or Mrs FK and that the Applicant was notified in the event of any changes in the composition of the firm of Keepers Legal LLP.

91. Mrs FK ceased to be a member of Keepers Legal LLP on 11 May 2009 but the First Respondent continued in practice at the firm and did not inform the Applicant of Mrs FK's resignation. Furthermore, the Second Respondent had resigned on 19 May. The letter from the First Respondent to the Applicant of 15 December 2009 indicated that the office was still open and informed the Applicant that the practice would finally close on 6 January 2010. The Respondent was asked for an explanation which she provided by way of letters of 10 March 2010.

92. By a decision of 16 November 2010, the issues relating to failing to register Keepers Legal LLP as a recognised body and the First Respondent's breach of her Practising Certificate condition were referred to this Tribunal.

Allegations 1.9 and 1.10: Failure to file Accountant's Report for 2008 and 2009 and Failure to arrange indemnity insurance for practice year 2009/2010 - against the First and Second Respondents

93. The records of the Applicant showed that the First and Second Respondents, as members of Keepers Legal LLP, filed the Accountant's Report for the accounting period ending 31 March 2008 on 27 January 2009 whereas it should have been filed on or before 30 November 2008.

94. The Accountant's Report for the accounting period ending 31 March 2009 which should have been filed at the latest by 30 November 2009, remained outstanding at the date of the Rule 5 Statement.

95. There was no evidence that the First and Second Respondents arranged for professional indemnity insurance cover for the year ending 30 September 2010, and particularly for the period from 1 October 2009 to the date on which it was understood that the firm closed, namely 6 January 2010.

96. The Applicant wrote to the First and Second Respondents dated 31 March 2010 requesting an explanation. The First Respondent replied on 12 April 2010 including that she had chased the accountants for the reports. She did not refer to the indemnity insurance. The Second Respondent wrote to the Applicant on 31 October 2010, saying that until 28 October 2009 when he was called to a meeting with the accountants on another matter he had understood that they would prepare the accounts. He had learned at the meeting that they refused to undertake any work because they had not been paid. The Second Respondent also wrote that he had understood from the First Respondent that "there were sufficient funds to pay the indemnity insurance premium up to and including that date" (the end of September 2009). The Second Respondent's letter continued:

> "Indemnity insurance with Quinn was in place up to and including 30 September 2009. Doreen told me that she would only carry out legal service work to that date. It would not have been possible to obtain indemnity insurance for the year commencing 1 October 2009 because there were no funds to pay the premiums."

Witnesses

97. The Second Respondent gave evidence on his own behalf. In the main that is incorporated under the Findings of Fact and Law below. His evidence included the following additional points. The witness summarised his professional career to date. On 1 November 1972 he had become a partner in the firm to which he was articled. This had happened because they wanted him to run a branch office, which only had a managing clerk at that time, and that was one of the reasons they wanted him to stay on. That office had been closed in 1989 and he had moved to Strood on the Medway, where he had worked until 2002. He had left that firm when it was decided to close the office in which he worked and he took up an appointment as an assistant solicitor with a different firm, where he stayed until February 2005. An issue had arisen regarding some work he had done, leading to a claim against the firm. He had then gone to act as a consultant to a firm run by an old friend, but had had to leave when the previous matter had led to an anticipated increase in his new firm's insurance

premium. He then set up his own practice in October 2005. It had done moderately well. He had then been approached by a client who had quite a large property investment portfolio who also knew the First Respondent. The client wanted to buy a property and establish a solicitor's practice in it that would do his work and that of other individuals he knew. He introduced the witness to his accountant Mr A, and then to the First Respondent. Premises had been purchased in Gillingham High Street in the name of a company and the witness continued his own sole practice until the premises had been refurbished. The First Respondent had told him that she had worked as a locum for the Third Respondent's firm. There had then been no room for her and with the agreement of Mr A, she had set up practice in a room in his office. The new firm was to consist of the First and Second Respondents and one Mr MF, who was a prospective third partner, to whom the First Respondent was introduced. The three had gone through a Partnership Deed together and in October 2006 the premises were ready. The new firm was Keepers Legal LLP where the First Respondent started work on 23 October 2006. The First Respondent and Mr MF had begun work in June 2006. Two days after the First Respondent arrived there had been an argument between the other two regarding Mr MF's role. Mr MF had then walked out. The Second Respondent had hoped that his job at the firm would be his last before he retired. The possibility of entering the partnership had seemed too good to miss.

Findings of Fact and Law

98. The Tribunal determined all the allegations to the higher standard of proof, that is beyond reasonable doubt.

99. **Allegation 1.1: They have failed to maintain proper books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998; against the First and Second Respondents alone.**

99.1 On behalf of the Applicant it was submitted that allegation 1.11 regarding conducting themselves in a manner likely to compromise independence and integrity also applied to the facts behind this allegation.

99.2 It was submitted in the Rule 5 Statement on behalf of the Applicant that the First and Second Respondents had abrogated their responsibility to ensure compliance with the SAR and their duty to maintain proper books of account. They had allowed their accountant, Mr A, who was their landlord and a director of the company which operated the firm's general client account, to operate with an inappropriate level of control and influence. The relevant guidance included allowing a third party access to confidential information concerning clients; a relationship with an outside body which was not at arm's length and/or which suggested that the firm is more akin to a part of or subsidiary of that body, rather than an independent law firm. It was submitted that Mr A had an unhealthy involvement in the firm's affairs beyond what would be expected of a firm's accountant. The Applicant relied on the first FIR and the transcript of the interview with the First and Second Respondents on 23 July 2009 and the admissions made by the First Respondent concerning her reliance on Mr A to inform the Applicant; the absence of completed bank reconciliations after 28 February 2009 and the maintenance of a client account under the style of Keepers Legal Ltd. It was submitted that the firm's client account was held within a different entity. From

the point of view of lender clients there was no indication to them that their money was being paid into that account. In a client matter listing up to 22 July 2009 five client ledger accounts had a cumulative debit balance of £2,938.50. Client ledgers were not submitted in accordance with the SAR in that insufficient narrative was supplied to identify client funds. The First Respondent had admitted that she did not review any of the information submitted to the Applicant by Mr A, and that even if she had done so she would not have understood the information that was being supplied.

99.3 The Second Respondent informed the Tribunal that he admitted the facts of this allegation but denied that they constituted a breach of Rule 1(a) of the SPR, and Rules 1.02 and 1.03 of the SCC. He submitted that the business of the firm was up and running before he joined and he made the assumption that the accounts had been set up properly. It was six months before he had joined the two original members of the practice. When asked in connection with another allegation what steps he had taken to acquaint himself with partnership business, the Second Respondent replied that the First Respondent's attitude had been very much that she was in charge and the senior partner. The First Respondent took 95% of the profit share with 5% to the Second Respondent. She made all the decisions including who to employ and the bringing of the Third Respondent into the firm. In respect of his experience prior to joining the firm, the Second Respondent had in his first firm been used to operating with a managing partner where he was solely a fee earner.

99.4 In cross-examination regarding all the SAR breaches the Second Respondent said that the First Respondent and Mr A were effectively in control of compliance. Mr A came into the firm every six weeks and saw himself as the practice manager. The Second Respondent had not understood himself why the general client account was operated via Keepers Legal Ltd. Mr A had promised to contact the Applicant regarding that, but apparently he never did. The Second Respondent admitted that he had not done anything to satisfy himself that Mr A had contacted the Applicant but had spoken to Mr A two or three times about it. He was aware of the risk to clients in this arrangement. He had not followed it through. He advised the Tribunal that Mr A was not in fact a qualified accountant and had to pass what he did to someone who was. Mr A had been the Second Respondent's accountant when he had run his sole practice DBM Solicitors, and that was how he came to be the accountant for the firm. He did not accept that Mr A's involvement had been unhealthy but accepted that it might possibly have been confusing. The Second Respondent did not know how the firm had originally been financed, save that the prospective third partner had brought the furniture from his previous practice. He said he agreed that he should have asked the question about how the practice was being run. In respect, however, of allegation 1.11, the Second Respondent denied in evidence that Mr A had any direct influence in the practice. He and the First Respondent had decided the firm would be a conveyancing practice. Mr A had asked why they couldn't broaden the scope because they were in danger of going under. At this point they had made two staff redundant and reduced the office space which they occupied. This had occurred at the end of 2008. As to the general clients account, an account in the name of Keepers Legal LLP had been opened on 21 November 2006 but lain dormant. It was noted that at least by 15 May 2009 client monies were now being kept in that hitherto dormant account as the Tribunal was presented with a copy bank statement which showed that

to be the case. The Second Respondent thought that his pressing the point with Mr A must finally have worked.

99.5 The Tribunal had carefully considered the Applicant's submissions, those of the Second Respondent, and the evidence including the witness evidence of the Second Respondent. It found that there were clear breaches of the Solicitors Accounts Rules. The maintenance of the general client account by Keepers Legal Ltd was no client account at all in terms of Rule 32 of the SAR. The involvement of Mr A in the accounting matters of the firm brought the breach of the SPR and the SCC into play. The First Respondent had admitted during interview with the IO that she had abrogated responsibility for the accounts. The Second Respondent had admitted when giving evidence that he should have done more to rectify the situation when he joined the firm. The Tribunal found allegation 1.1 to have been proved on the evidence. The Tribunal found as a fact that the involvement of Mr A in the firm's affairs was unhealthy and that involved the First and Second Respondents in conducting themselves in a manner that was likely to compromise their independence and integrity as set out in allegation 1.11, which they also found proven in respect of the circumstances which supported allegation 1.1.

100. **Allegation 1.2: They have permitted monies to be withdrawn from client account contrary to Rule 22 of the Solicitors' Accounts Rules 1998, leading to a cash shortage;**

Allegation 1.3: On discovery, they failed to remedy promptly the breach of Rule 22 contrary to Rule 7 of the Solicitors' Accounts Rules 1998 by failing to replace the money improperly withdrawn from client account.

100.1 These allegations were brought against the First and Second Respondents alone.

100.2 In respect of allegations 1.2 and 1.3, the following overarching allegations were also alleged: allegation 1.11, 1.12, 1.13 and 1.15. Allegations 1.2 and 1.3 related to the minimum cash shortage established by the IO at £42,324.04 as at 30 April 2009.

100.3 It was submitted on behalf of the Applicant that this cash shortage arose because a sum of £40,000 used to complete a purchase for Mr W of a property in Bromley belonged to another unconnected client Ms RS. The purchaser client, Mr W, denied that he owed the firm any money in relation to the matter. In the Rule 5 Statement it was highlighted that while the First and Second Respondents had become aware of the cash shortage in mid to late 2009, it was not until 10 March that the Second Respondent wrote to Mr W requesting repayment. In evidence the Second Respondent said that he did not have online access to the bank. The First Respondent (who presumably could have given it to him) was not available in the office and Mr L was anxious that a transaction should complete. He had therefore called the bank. Mr L had telephoned him to assure him that the money would be there on that particular day. The bank had said £40,000 was there. The Second Respondent had not conferred with the First Respondent but proceeded to complete. After that, he had been advised by the audit clerk, Ms TM, when she next came into the office and went through the accounts, that while there should have been two amounts of £40,000 to its credit, there was only one. The Second Respondent gave evidence that he had panicked and tried to see if his bank, which was the same as that for the firm, would

give him a loan, but they would not assist. He thought that the First Respondent had asked Ms TS, a sister of the client Ms RS referred to earlier, whom he understood were both investors, for a loan. He had not discussed the matter with the First Respondent at the time. The steps which the Second Respondent took before completion to ensure monies were available was just to go through his own file and check the sheets on that file. It had been an utter nightmare which they had not been able to resolve. The Second Respondent was unable to remortgage his house as his wife owned it, and the First Respondent's efforts to deal with the problem, which were unbeknown to him at the time, had failed.

100.4 The Second Respondent clarified for the Tribunal that an amount shown on the ledger of £40,000 being returned to Ms RS from Mr W's ledger was a back-dated entry, although it appeared to have taken place on the same day, 5 February 2009, as completion. In cross-examination the Second Respondent accepted that he was aware of the cash shortage at the end of February 2009 and that it was not dealt with until the summer of that year when the firm's professional indemnity insurers paid out the bulk of it. The Second Respondent admitted that he had slipped up. When asked whether apart from the breach of the Accounts Rules the cash shortage would not do the reputation of the profession any good whatever, he agreed "absolutely not". He also agreed that clients' money had been at risk, and said that it was down to him.

100.5 The Tribunal had carefully considered the submissions, and the evidence including that of the Second Respondent, and it found that monies had been taken from one client to be used in a completion on behalf of another. Even if the original shortage had been caused by a mistake, that had not been corrected. The bulk of the cash shortage had only been corrected when the firm's negligence insurers reimbursed the client in question and as to the balance of the money, something over £2,000, no evidence had been produced that this had ever been remedied. Accordingly the Tribunal found on the basis of the papers and the evidence that both allegations 1.2 and 1.3 had been proved against both the First and Second Respondents.

100.6 Having regard to the overarching allegations, the Tribunal found in respect of allegation 1.2 that the approach to the cash shortage had been slipshod and constituted a breach of allegation 1.13 in that the First and Second Respondents' conduct was likely to compromise or impair the good repute of the solicitors' profession and/or a proper standard of work. Allegation 1.13 was found proven against both the First and Second Respondents in respect of allegation 1.2.

100.7 In respect of allegation 1.3, the cash shortage had not been discovered for some weeks and only when the audit clerk came to check the accounts. Both Respondents had behaved in a haphazard way in trying to sort it out, and the Tribunal was not convinced that the shortfall would ever had been made good were it not for the claim on the firm's insurers. However, the Tribunal had no doubt that if the Respondents had had the money they would have put it into the firm. The First Respondent's attempts to secure a personal loan had shown this. The Tribunal had found the Second Respondent a convincing witness in terms of his approach to the problem. Therefore, although they were guilty of failing to remedy the shortfall promptly or at all, the Tribunal did not consider that their failure had been wilful, and accordingly it did not find that there had been any breach of the overarching allegation, that is no breach of Rule 1 of the SPR or SCC had occurred. Thus allegations 1.12 and 1.13

were not found proved in respect of allegation 1.3 against either the First or Second Respondent.

101. **Allegation 1.4: They obtained a loan from a client without: insisting that the client take independent legal advice; providing any security, preparing any legal documentation to confirm the loan contrary to Rule 3.01 of the Solicitors' Code of Conduct 2007; against the First and Second Respondents alone.**

101.1 Allegations 1.2, 1.3 and 1.4 were linked in the Rule 5 Statement to allegations 1.11, 1.12, 1.13 and 1.15

101.2 On behalf of the Applicant, having heard the evidence of the Second Respondent in respect of this loan, Mr Havard asked the Tribunal to agree that this allegation should be withdrawn in respect of the Second Respondent as he had given sworn evidence that he had no knowledge of the loan in question at the time, and there was no evidence to indicate otherwise. The Tribunal approved the withdrawal of allegation 1.4 against the Second Respondent.

101.3 In respect of the First Respondent, it was submitted on behalf of the Applicant that the First Respondent had indicated that she had obtained a loan of £40,000 from a client who also happened to be a personal friend, but there was no loan documentation nor had the First Respondent insisted on the client taking independent legal advice. Furthermore, no security was provided in respect of the loan. Once the client discovered the reason for the loan she insisted on it being repaid. Evidence was provided to the Tribunal in the form of a bank statement for Keepers Legal LLP which showed an amount of £40,000 being credited to the client's account on 15 May 2009. The bank statement bore a handwritten note "Loan introduced by Doreen Powell having personally borrowed this to cover [W] until resolved." Firm evidence could not be presented as to the author of the note, although the Second Respondent had said that the handwriting was not his. The IO believed it to have been that of Mr A. The IO's view was not given on oath but by way of instructions to Mr Havard during the course of the hearing.

101.4 Having considered the evidence and heard Mr Havard's submissions, the Tribunal found as a fact that a loan had been obtained by the First Respondent from a client in such a way as to breach Rule 3.01 of the SCC. Having regard to the fact that no independent legal advice had been taken, that there was no security given, nor was there any evidence of any legal documentation to confirm the loan, the Tribunal also considered that allegation 1.12 was substantiated in respect of the loan, in that the First Respondent had conducted herself in a manner likely to compromise or impair her duty to act in the best interests of her client. Allegation 1.4 and 1.12 were found proved against the First Respondent in respect of the loan.

102. **Allegation 1.5: They have failed to provide any, or any adequate, supervision of the Third Respondent contrary to Rule 13 of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rule 5 of the Solicitors' Code of Conduct 2007; against the First and Second Respondents alone.**

102.1 It was submitted in the Rule 5 Statement on behalf of the Applicant that both the First and Second Respondents were personally involved in acting on behalf of clients in one or more of the property transactions which were investigated by the IO.

102.2 The Third Respondent had conduct of a number of the transactions. There was an obligation on the part of the First and Second Respondents to ensure that the Third Respondent was adequately supervised. This was particularly so of the Second Respondent as the Third Respondent was only granted a Practising Certificate on the basis that his work would be supervised by the Second Respondent.

102.3 It was alleged that the irregularities in respect of the conveyancing transactions which were the subject of other allegations in the case were of such a number and nature that not only were the First and Second Respondents responsible for those irregularities but also they failed to supervise the Third Respondent adequately or at all.

102.4 Mr Havard agreed that it was possible that the Applicant's procedure did not provide for an individual named as a supervisor as part of the conditions on an individual's practising certificate to be notified that they were so named. However, Mr Havard maintained that the Second Respondent had an overall obligation to supervise in the context of such a small firm. Mr Havard did however recognise that the letter from the firm setting out the proposed supervision arrangements dated 7 February 2007 bore only the name of the First Respondent. Mr Havard drew the attention of the Tribunal to the Third Respondent's statement. Notwithstanding his own level of responsibility for the conveyancing irregularities, it was submitted on behalf of the Applicant that there was no evidence in the transactions of a system of supervision or indeed any real supervision at all. The Third Respondent's statement supported this allegation. He had said "I state at this early stage that I was not properly supervised at all whilst working for the firm, this is the sole reason why I believe I have become embroiled in these proceedings ...." He also made other statements regarding his lack of experience of conveyancing. These latter statements were rejected by the Applicant.

102.5 In evidence, the Second Respondent said that the Third Respondent had been called into the firm by the First Respondent shortly after he had arrived, to help regarding some issues which the Second Respondent had had with staff at his former firm DBM Solicitors regarding adequate notice. The Third Respondent had dealt with these in two or three months. He was not even doing two or three days a week on them. The Third Respondent left when the issues were finished. The Second Respondent testified that the Third Respondent had then just appeared in the office later in 2007. He, the Second Respondent had been advised by the First or Third Respondent that the First Respondent had asked him to deal with a particular client's conveyancing transactions. She had told the Second Respondent that she would look after the Third Respondent. He worked on Mr RH/s matters and disappeared when they were concluded but left some matters such as registration of title and payment of SDLT undone and the First Respondent had arranged for these post completion matters to be dealt with. It was the Second Respondent's private thought that the Third Respondent had been brought in because he was au fait with computers, which the Second Respondent was not. He, the Second Respondent, had had minimal involvement with the Third Respondent. If the Third Respondent had a query he would go to the First Respondent's room. They were of the same ethnicity and worked closely together.

They had known each other a long time. He had offered to help but had been told that he would not understand what the clients said and that he should deal with his own clients. The Second Respondent testified that he did not know that the First Respondent had written to the Applicant. He was not aware of the conditions on the Third Respondent's Practising Certificate and had been told only that the Third Respondent's previous practice had ceased to trade. The Second Respondent had not known until he saw the Forensic Investigation Report that the First Respondent had put his name down as the supervisor. The Third Respondent regarded himself as the First Respondent's pupil. The Second Respondent testified that his only involvement with the Third Respondent had been that just once he had foolishly signed a Certificate of Title which the First Respondent had prepared, concerning the property in Ipswich bought by Mr SM.

102.6 The Tribunal had carefully considered the submissions and the evidence including the Second Respondent's testimony. The Tribunal found as a fact that there was not an adequate, or indeed any, proper system of supervising the work of the Third Respondent within the firm. Accordingly, allegation 1.5 was found proved against both the First and Second Respondents but with differing levels of culpability. Having regard particularly to the Second Respondent he had a general obligation as a partner to supervise the work of the Third Respondent. However, there was no evidence that he had been shown the letter from the Applicant setting out the conditions on the Third Respondent's Practising Certificate which named him as a supervisor. The Tribunal found that the Second Respondent, a truthful witness, had not known that he was named in those conditions and that his responsibility in the matter did not go beyond his general responsibility to exercise supervision over individuals in the firm. However, in respect of the First Respondent the Tribunal found that she and the Third Respondent had worked very closely together. She had brought him into the firm and knew that he needed to be supervised. She was the author of the letter which misled the Applicant regarding supervision arrangements (even though the issue of misleading was not the subject of any allegation). The Tribunal found that in her failure to supervise the Third Respondent the First Respondent had conducted herself in a manner which was likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work, and that allegation 1.13 had accordingly been proved against her. The Tribunal found that the First Respondent had also acted recklessly in her failure to supervise the work of the Third Respondent.

103. **Allegation 1.6: They have failed to apply appropriate due diligence measures in relation to conveyancing transactions contrary to Regulation 7 of the Money Laundering Regulations 2007;**

Allegation 1.7: They have failed to make any, or any sufficient enquiries, with regard to the source of funding in respect of conveyancing transactions;

103.1 Although allegations 1.6 and 1.7 were set out in the Rule 5 Statement against both the First and Second Respondents at the hearing they were only pursued in respect of the Second Respondent.

103.2 These allegations were linked to allegations 1.11, 1.12, 1.13, 1.15 and 1.19.

103.3 On behalf of the Applicants, Mr Havard relied on the transaction involving the purchase by Mr W of a property in Bromley. It was submitted in the Rule 5 Statement that there were clear signs of potential breaches of the Money Laundering Regulations 2007 and hallmarks of property fraud which should have been detected by the Second Respondent and which, if appropriate enquiries had been made, should or could have led to the Second Respondent declining to act. The Tribunal was referred to Regulation 7 of the Money Laundering Regulations, which covered the application of customer due diligence measures. A solicitor as a relevant person "must apply customer due diligence measures when he:

(a) Establishes a business relationship;
(b) Carries out an occasional transaction;
(c) Suspects money-laundering or terrorist financing;
(d) Doubts of veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification. "

103.4 The Tribunal was also referred to The Law Society's blue card warning about money laundering. It was submitted that the transaction on behalf of Mr W involved receipts of quite substantial sums in cash from third parties unrelated to the transaction, exactly as described in the warning card. This tied in with the comments of Mr W's own solicitors which might be thought to have been convenient but did have the ring of truth when they referred to "some ambiguity in your dealings with this matter". It was submitted that the circumstances were almost like an examination question on compliance with the money laundering regulations. Money had come from the Channel Islands and the Second Respondent had no idea of the source or integrity of the funds. In his interview with the Investigation Officers, including in respect of the bank account in the Channel Islands, when he was asked whether it was from an account in Mr L's name, he had stated: "no, it wasn't, I did ask him and he was very vague about it and said it's one of his associates". It was submitted that at this point he should not have continued to act and that he had been reckless in his conduct. Generally his conduct in respect of the W purchase constituted breaches as set out in allegations 1.11 - conduct likely to compromise his independence and integrity, 1.12 - likely to compromise or impair his duty to act in the best interests of clients, 1.13 - likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work, 1.15 - allowing himself to become involved in transactions which bore the hallmarks of property fraud and 1.19 - acting recklessly.

103.5 The Second Respondent admitted the facts underlying allegations 1.6 and 1.7 but at the outset of the hearing he denied those facts constituted breaches of the overarching allegations to which allegations 1.6 and 1.7 were linked. He admitted that the handwriting on the payment slips in respect of the transactions in regard to monies coming from other parties, was his. The Second Respondent agreed that the monies on one of the slips amounted to £62,413.25 in the W transaction but £48,413 of that had come from solicitors. In evidence the Second Respondent said that he had known Mr L from his first firm. He was a man of some means. Mr L had tracked him down to his new office in Gillingham, explaining that he was involved with others in property and wanted the Second Respondent to act in a purchase. The Second Respondent had said that he needed an updated passport from Mr L but that did not materialize. He should have asked for more detail of the purchasers. He understood that Mr W was a friend of Mr L's father. There had been a previous purchase for Mr

W and the Second Respondent had asked Mr L why this was being done, and had been told it was because they wanted to help Mr W. The first transaction had gone without a hitch and only involved receipt of two sums of money neither from Mr W. The Second Respondent accepted in respect of the monies which had come from a firm of solicitors that they were not linked to the second transaction but just following instructions from L to send the money to the firm. He knew this because of either a telephone call or conversation regarding it with L and from the solicitors KS. In cross-examination the Second Respondent accepted that the transaction for Mr W amounted to a breach of Rule 1 of the Solicitors Code of Conduct in so far as he should have checked the money laundering position better. The checks he had carried out with Mr L were verbal. He had obtained a copy of W's passport but of no-one else's. He denied that the monies were coming from various differing places as they all came to a bank branch in Sutton. He had not checked the integrity of the funds but knew Mr L. The Second Respondent confirmed that he understood the purpose of the money laundering regulations and The Law Society's warning card, including that monies provided in circumstances set out on the card might be the proceeds of crime. He accepted that some of the monies which had come in from third parties were substantial amounts. The Second Respondent admitted that he was confused as to who was his client in the transaction, and that this sounded terrible. He had some idea that it was either Mr L or Mr W, and thought that it had to be Mr W as it was his purchase. He did not recall the conversation which was referred to in the letter dated 23 April 2009 from Mr W's solicitors where it was stated that Mr W was refused information when he telephoned the firm, and was advised that only Mr L could deal with matters. The only time the Second Respondent recalled speaking to Mr W was when he told the Second Respondent that Mr L had committed suicide, but there might have been one occasion when he was waiting for the money to come in from Mr L and his associates. At the time that Mr L had made contact with him, with a view to his undertaking in the transactions, his workload had been fairly light. Previously he had purchased two properties for Mr L, and Mr L was the source of the funds. The purchases had been for considerable amounts such that his then firm had had to extend its indemnity insurance to cover them. It was put to the Second Respondent that whilst the Applicant was not alleging dishonesty, Mr L had contacted him at a time when he was fairly light in work, and Mr L knew that he would not ask too many questions. It was submitted this was supported by the Second Respondent's own statement in interview when he said "it is unusual, I accept that. And I said so to him, and he said well that's all we want. We just need you to buy the property." The Second Respondent's explanation for this was that Mr L thought his suggestion as to trust deeds was over complicated and he did not want to discuss them. The Second Respondent said that Mr L would not have known his workload. He thought he had been approached because he did the job. When asked whether he thought that his conduct enhanced or diminished the reputation of the profession, he responded that obviously it didn't enhance it.

103.6 The Tribunal had carefully considered the submissions on behalf of the Applicant and the Second Respondent's evidence as well as the documents. The Second Respondent had admitted the facts and in evidence had admitted that he had breached Rule 1. The Tribunal considered that both allegations 1.6 and 1.7 had been proved against the Second Respondent and that all three limbs of Rule 1 had been engaged. He had compromised his independence and integrity in his dealings with Mr L, and thus allegation 1.11 was proved against him. He had admitted that he did not know who

his client was and in that case it was not possible for him to act in the client's best interests. He had therefore breached Rule 1.04 of the Solicitors' Code of Conduct and allegation 1.12 was proved against him. He had admitted that his behaviour was likely to compromise or impair the good repute of the solicitors' profession and the Tribunal agreed. He had also not met a proper standard of work and thus allegation 1.13 was proved against him. The Tribunal also considered that in respect of this transaction he had acted recklessly so that allegation 1.19 was proved.

104. **Allegation 1.8: They have continued to act as a firm having failed to renew its recognition as a Limited Liability Partnership in accordance with Regulation 2 of the Solicitors' Recognised Bodies Regulations 2009; against the First and Second Respondents.**

104.1 Allegations 1.11 and 1.13 were also linked to this allegation.

104.2 It was submitted on behalf of the Applicant that while the firm was rapidly running down at the relevant time, and closed on 6 January 2010, it had been open from 30 June 2009 when its recognition expired. The First Respondent had written to the Applicant on 15 December 2009 explaining that while the office was open, there were no live files. The Second Respondent had left the practice. He had inexplicably written a resignation letter dated 19 May 2009 to Ms FK who had left the practice some time previously. He had also resigned in a letter dated 19 May 2009 to the First Respondent.

104.3 The Second Respondent said that he had gone into the office for three days in July to cover as the First Respondent was away and he had some things to tidy up. The First Respondent had told him that she had no fee earning work. She had a lot of files that she had not closed off. The Second Respondent admitted that he had failed to tell the Applicant that he had resigned. He had asked the First Respondent to do that. He agreed that the Applicant would have carried on in the belief that he was there until 2009 and stated that it was not the First Respondent's fault.

104.4 The Tribunal had considered the documents and the submissions and the evidence of the Second Respondent. It found that the First Respondent had continued with the firm after its recognition as an LLP had expired and therefore allegation 1.8 was proved against her. However, it found as a fact that the Second Respondent had resigned from the firm in May 2009 although he had attended for a few days after that. It was satisfied that he was not therefore a party to the First Respondent's having continued to act as a firm having failed to renew its recognition. Allegation 1.8 was therefore not proven against the Second Respondent. Allegation 1.11 - conducting themselves in a manner that was likely to compromise their independence and integrity and allegation 1.13 - conducting themselves in a manner likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work, had also been brought against the Respondents in respect of this allegation. The Tribunal had carefully considered those allegations but did not consider the nature of the allegation 1.8 to be such as to damage the profession in the eyes of the public, it being a more technical, albeit important, point as between the Applicant and Respondents and accordingly it did not find those allegations proved against the First Respondent and they were not relevant against the Second Respondent in view of the fact that allegation 1.8 had not been proved against him.

105. **Allegation 1.9: They filed the Accountant's report for Keepers Legal LLP late for the year ending 31 May 2008 and have failed to file the Accountant's Report for Keepers Legal LLP for the year ending 31 May 2009 contrary to Rule 35 of the Solicitors' Accounts Rules 1998.**

105.1 It was submitted on behalf of the Applicant that it was a matter of fact that the first set of accounts involved had not been filed until late and the second set was still outstanding from 30 November 2009. In the Rule 5 Statement it was said on behalf of the Applicant that whilst the First and Second Respondents would say that the practice had conducted very little business in the periods alleged, it was still important for the accountant's reports to be submitted to ensure that that there were no financial irregularities of which the Applicant should be aware. The Second Respondent had stated that he was not aware of the problems regarding the accounts until the accountants themselves had told him. He also took the view that once he had left the firm the accounts were not his responsibility.

105.2 The Tribunal found as a fact that there had been delay in submitting the first set of accounts the subject of the allegation and that the second set of accounts had not been submitted at all. Whilst it had noted that this was almost certainly for financial reasons, this was a strict liability offence and the Tribunal found it to have been proved against both the First and Second Respondents.

106. **Allegation 1.10: They have failed to arrange indemnity insurance in respect of Keepers Legal LLP for the 2009/2010 practice year.**

106.1 It was submitted on behalf of the Applicant in the Rule 5 Statement that again while the practice had conducted very little business in the periods alleged, it was important to maintain professional indemnity insurance to afford protection to clients of the firm for work undertaken on their behalf. Mr Havard submitted that there was no evidence of any professional indemnity insurance in force for the period 1 October 2009 to 6 January 2010 when the practice had actually closed, and there was also an issue regarding insurance for the post closure period. No insurance was in fact in place. He therefore submitted that breaches had been made out on the facts.

106.2 It was the Second Respondent's case that he had left the firm in May 2009 and had not visited the offices after early July of that year and so was not responsible for the insurance in question. He admitted the facts but submitted that he had been misled by the First Respondent that she was not working beyond the end of September 2009.

106.3 Having carefully considered the evidence, including the evidence of the Second Respondent the Tribunal found as a fact that the First Respondent was still in practice and therefore should have had professional indemnity insurance in place, but the Second Respondent had left the firm before the relevant period was commenced. Accordingly the Tribunal found the allegation to have been proved against the First Respondent but not proved against the Second Respondent.

107. **Allegation 1.11: They have conducted themselves in a manner that was likely to compromise their independence and integrity contrary to Rule 1(a) of the**

Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rules 1.02 and 1.03 of the Solicitors' Code of Conduct 2007.

107.1 This allegation was not freestanding but pleaded in conjunction with other specific allegations and is therefore dealt with under the particular headings of those allegations.

108. **Allegation 1.12: They conducted themselves in a manner which was likely to compromise or impair their duty to act in the best interests of their clients contrary to Rule 1(c) of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rule 1.04 of the Solicitors' Code of Conduct 2007;**

108.1 This allegation was not freestanding but pleaded in conjunction with other specific allegations and is therefore dealt with under the particular headings of those allegations.

109. **Allegation 1.13: They have conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work contrary to Rules 1(d) and/or (e) of the Solicitors' Practice Rules 1990 and, where such conduct relates to a period after 1 July 2007, Rules 1.05 and/or 1.06 of the Solicitors' Code of Conduct 2007;**

109.1 This allegation was not freestanding but pleaded in conjunction with other specific allegations and is therefore dealt with under the particular headings of those allegations.

110. **Allegation 1.14: They failed to disclose all relevant information to a client, namely the lender, in certain conveyancing transactions which was material;**

Allegation 1.15: They have allowed themselves to become involved in transactions which bore the hallmarks of property fraud;

Allegation 1.16: They have acted generally and/or in property transactions where there existed a conflict of interest or a significant risk of a conflict of interest;

110.1 These allegations were against all three Respondents.

110.2 These allegations were also linked to allegations 1.11 and 1.12 as set out in the background to the allegations. Recklessness was alleged against all three Respondents.

110.3 The Applicant's introductory submissions in respect of conveyancing transactions which formed the basis of these three allegations are set out at the beginning of the Findings of Fact and Law in respect of allegation 1.5. The first category of transactions related to the firm acting on behalf of RH in the purchase of seven properties from the same party, FPH Ltd, in which the First and Third Respondents acted. The second category related to transactions in which the First Respondent acted in the purchase for Mr P of Flat 9, New Cross, London, and the Third

Respondent acted in the purchase for Mr SM of Plot 24, Ipswich, Suffolk where the Second Respondent signed the certificate of title.

110.4 Mr Havard referred the Tribunal to The Law Society's green card warning on property fraud, including listed under the signs to watch for:

> "A deposit or any part of the purchase price paid direct - a deposit or the difference between the mortgage advance and the price, paid direct, or said to be paid direct, to the seller...
>
> Unusual transactions ... (c) client buying several properties from the same person or two or more persons using same solicitor...".

He also drew the attention of the Tribunal to the heading:

> "What steps can I take to minimise the risk of fraud?",

and the advice:

> "Question unusual instructions...
>
> Discuss with your client any aspects of the transaction which worry you...
>
> Make a company search - where a private company is the seller or the seller has purchased from a private company in the recent past, and you suspect that the sale may not be on proper arm's length terms, you should make a search in the Companies Register to ascertain the names and addresses of the officers and shareholders which can then be compared with the names of those connected with the transaction and the seller and buyer."

110.5 It was submitted that the transactions for Mr RH bore the classic hallmarks of property fraud. Mr Havard referred the Tribunal to the facts of the various transactions, including Plot 6, Taplow, Berkshire, which was bought with a mortgage but there was no indication that the lender was informed that this was a sub-sale from FPH Ltd to RH with an uplift in the purchase price of £152,500 or that there had supposedly been a deposit paid by RH to FPH Ltd in that same sum and the First and Third Respondents did not receive any evidence to verify that that sum had been paid. This all occurred in spite of the lender's clients' special conditions in the mortgage instructions. It was submitted that the uplift was suspicious and indicated that it was designed to obtain the mortgage advance. The Tribunal was also referred to the ledgers in respect of the purchase of Plots 2 and 5 at the same development. In respect of Plot 2, the balance of the mortgage advance was paid to FPH Ltd on 20 July 2007 which left insufficient funds to carry out post-completion matters. It was submitted that the lender's charge was at risk and funds were subsequently returned by FPH Ltd so that post-completion stages could be undertaken. In respect of the payment to FPH Ltd it was the First Respondent who had signed the transaction slip. It was submitted generally in respect of the transactions for Mr RH that if the simple process of a company search had been carried out, it would have been discovered that Mr RH was the only director of FPH Ltd. The Tribunal's attention was also drawn to correspondence bearing the references of the First and Third Respondents and sent

over their names to RH at FPH Ltd. There were two letters dated 16 July 2007: one relating to Plot 5, and the other to Plots 1, 2, 5 and 6. It was submitted that this established that the First and Third Respondents were aware of the connection between RH and FPH Ltd.

110.6 In particular regard to the Third Respondent, in his statement he had said that he was appointed in a consultancy capacity with a view to dealing with all of the firm's litigation matters, and had never held himself out to be a specialist in conveyancing transactions. The Tribunal was referred to a client care letter sent on 28 May 2007 in respect of Plot 56, Leatherhead. It said:

> "Desmond Corlis will carry out most of the work in this matter. He is a solicitor specialising in property law and residential conveyancing... Desmond Corlis will explain to you the issues raised in your matter and keep you informed of progress."

In this matter the First Respondent had signed the Certificate of Title. It was a back-to-back transaction and it was submitted that it was in breach of Rule 6 of the Solicitors' Practice Rules 1990 and/or Rule 3 of the SCC (allegation 1.17 referred). The letter stated that the deposit was to be paid by the developer, who might also be paying Stamp Duty and legal fees. It was in respect of this transaction that a letter dated 8 June 2007 was sent by the firm bearing the references of the First and Third Respondents confirming to the lender that there were no sales incentives from the developer. At interview the First Respondent had admitted that this letter was misleading. The Tribunal was reminded that it had also been accepted by her in interview that the Third Respondent had acted in three other transactions regarding the same development where the facts were similar. Mr Havard also referred the Tribunal to transactions involving the First and Third Respondents the purchase for Ms MP of Flat 9, New Cross, involving a mortgage where the purchase price was expressed to be £250,000 but the First Respondent received an email from the vendor's solicitors that they would accept £187,418.50. She signed a Certificate of Title stating the purchase price to be £250,000. It was also clear from the client ledger that the only money to pass through the account was the mortgage advance, and some money on account at the outset. The mortgage advance was more ,than was ultimately paid by the purchaser. At the outset the First Respondent had said that the deposit was paid direct by the client to the seller but the evidence illustrated that this was not right. There was no evidence of the deposit being paid direct to the vendor and the mortgage advance funded the purchase price and Stamp Duty and other costs. The Tribunal was reminded that there were some different features in each transaction but overall there were similarities. It was directed also to the purchase by Mr SM of Plot 24, Ipswich, again involving a mortgage. In respect of the purchase of Plot 4, exchange and completion had taken place on the same day without either contract documentation or the signed mortgage deed having been received by the Third Respondent from the purchaser. The signed mortgage deed did not appear to have been received until early December 2007, nearly six months after completion. There was no evidence that the client had any contact with the Third Respondent prior to completion, no evidence in the file that his identity had been confirmed and a letter from the client to The Law Society dated 16 December 2008 indicating that Mr SM had actually aborted the transaction. It was submitted that all the purchases at this development exhibited the same sort of features. Mr Havard accepted that the First

and Third Respondents' signatures did not appear on the correspondence but their references did.

110.7 In the First and Second Respondents' reply to the Applicant dated 28 October 2009 they had said in respect of two of the transactions they had said "we were aware that this was a sub-sale" and "we were not aware that Mr H was connected to FPH". It was for the Tribunal to decide whether it accepted that they were not aware of the connection between Mr H and FPH. Its attention was drawn to their simple acceptance of what had been said to them about the conveyancing transactions and the movement of money without any written evidence to confirm it.

110.8 Regarding the Third Respondent and his statement, the Tribunal was asked to bear in mind in overall terms that they were dealing with a solicitor qualified in 1994 with considerable experience who laid almost the entire responsibility on the heads of the First and Second Respondents who said in his statement that he had never held himself out to be a specialist, but the correspondence was diametrically opposite to that. Although the client care letter of 30 May 2007 was signed with the firm's name, it bore his reference and the Tribunal was invited to conclude that he knew perfectly well what was contained in it. In any event, even if he was right in his assertion, on no account should he have allowed himself to be involved in such transactions. He could not do that and when things went wrong abrogate his responsibility to other people. The Tribunal was invited also not to accept from the Third Respondent his assertions in his statement that he had no access to client account ledgers [In his statement he said:

> "As a consultant I was not privy to the operation or (sic) the firm's accounts. I did not have any authority to look at, open, nor enquire as to the operation of the firm's accounts. I relied on the information presented to me from the 1st & 2nd Respondents ..."]

It was for the Third Respondent to conduct the transactions although on the majority of occasions this was with the First Respondent and on one occasion with the Second Respondent but it was submitted that it would not be possible to complete transactions without reference to the movement of monies in and out of the client account. There should have been a higher level of supervision by both the First and Second Respondents but with 13 or 14 years' experience the Third Respondent should have ensured that he acted properly.

110.9 In the Rule 5 Statement it was submitted that in conclusion:

> "The following factors should have put the Respondents on notice of the potential for property fraud:
>
> - Sub-sales (or back-to-back) transactions;
> - The same purchaser client buying several properties from the same person;
> - The existence of a substantial link between the purchaser and seller which could easily have been identified on carrying out a company

search which was also recommended in the Green Card Warning on property fraud;

- The balance of the purchase price not being in control of the firm, and there was no evidence that, whether described as a deposit or balance of purchase monies, any amount was paid by the purchaser to the seller on completion;

- Substantial uplifts in purchase rice in back-to-back transactions. With regard to the RH/FPH Ltd transactions, it was in effect Mr RH, as Sole Director of the seller, re-selling to himself at a substantial profit;

- The purchases by Mr RH were made with the assistance of a mortgage advance which either matched or exceeded the price being paid by FPH Ltd.

There was a substantial amount of material information which should, and could, have been provided to the firm's lender clients much of which may well have led the lender clients to conclude that it would be inappropriate to continue to make the advance and which would have had a direct impact on the loan-to-value ratio on which the mortgage offers would have been based.

It was submitted on behalf of the Applicant that the Respondents failed to act in the best interests of their lender clients and taking account of the number of irregularities, and the number of transactions, they acted recklessly."

110.10 The Second Respondent had admitted that he had signed the Certificate of Title in the transaction for Mr SM relating to the purchase of Plot 24, Ipswich. He denied that he had been reckless in respect of his actions or in breach of any aspect of Rule 1 of the SCC or before that of the Solicitors' Practice Rules 1990. He had known that the First Respondent was supervising the transaction and now thought that he should have left the Certificate of Title for her to sign. He had signed it because there was some urgency for the Third Respondent who had brought it to him. He understood the obligations to a lender client and he had not met them in that case.

110.11 The Second Respondent said that there was no system of supervision as such. He confirmed that he was aware of his duty to supervise the First Respondent. He went through some of the First Respondent's files on occasion and found no fault, but he should have paid more attention in some instances. He had realised that she was fairly newly qualified although she had not told him when she qualified. He considered that she was under a duty to supervise him as well. She had not done so. Mr Havard reminded the Tribunal that the First Respondent had a condition on her Practising Certificate for the practise year 2008/09 that she might act as a solicitor only in employment or partnership, or as a manager or owner of a recognised body where the arrangements had first been approved by the Applicant and there was a condition that she was to be supervised by the Second Respondent or Mrs FK, or in their absence by another solicitor who had held an unconditional practising certificate for at least 36 months. The Second Respondent had not asked the First Respondent about any conditions on her Practising Certificate when he joined, and accepted that he should have asked some more questions but he did not see what further action he

could have taken generally regarding the firm. He had been invited to join because he was needed in order for the firm to be able to receive mortgage instructions.

110.12 Having carefully considered the submissions and the evidence, the Tribunal found the facts concerning these various conveyancing transactions as set out in the Rule 5 statement and the evidence to have been proved. It also found that all three allegations had been proved against the First and Third Respondents and that they had in all cases been reckless as alleged in allegation 1.19 and had breached, as alleged, Rule 1 of the Solicitors' Practice Rules and the Solicitors' Code of Conduct, and that in respect of these transactions that they had acted in a manner likely to compromise their independence and integrity, allegation 1.11, that they had also acted in a way likely to compromise or impair their duty to act in the best interests of their lender clients, allegation 1.12, that they had conducted themselves in a manner likely to compromise or impair the good repute of the solicitors' profession and/or proper standard of work, allegation 1.13. The Tribunal found that allegations 1.11, 1.12, 1.13 and 1.19 were proved against the First and Third Respondents.

110.13 In respect of the Second Respondent and allegation 1.14, the Second Respondent had signed one Certificate of Title for the property purchase of Mr SM. On his own admission he had been foolish to do it and it was an isolated incident, otherwise he had not been an active participant in the matters involving the First and Third Respondents and accordingly this allegation was not found proved against him. Nor were allegations 1.15 and 1.16 found proved against him as the First and Third Respondents worked in the main on these transactions and acted for the lender clients.

111. **Allegation 1.17: They failed to comply with the requirements of Rule 6 of the Solicitors' Practice Rules 1990 and/or where such conduct relates to a period after 1 July 2007, Rule 3 of the Solicitors' Code of Conduct 2007;**

111.1 The Tribunal had heard no specific evidence concerning this allegation of technical breaches relating to Rule 6 of the Solicitors' Practice Rules and Rule 3 of the Solicitors' Code of Conduct. The focus of the evidence had been on the more central core breaches relating to the hallmarks of property fraud and failure to make disclosure to lenders. Having regard to the far more serious allegations found proved in respect of the same facts, the Tribunal considered that it would add nothing to make a finding on this allegation and accordingly it determined to make no findings. The more serious allegations had been found against the First and Third Respondents (allegations 1.14, 1.15 and 1.16) and in respect of the Second Respondent (allegations 1.6 and 1.7).

112. **Allegation 1.18: They have failed to account promptly to their clients with clients' money on completion of a conveyancing transaction contrary to Rule 15 of the Solicitors' Accounts Rules 1998;**

112.1 This allegation was also linked to allegations 1.11 and 1.13.

112.2 The Applicant submitted that in respect of the sale of 64 R Road, Maidstone, following completion and without any proper reason for continuing to hold clients'

money, amounts of £35,300 and £31,750 were dispensed in respect of the purchase of luxury cars on behalf of the client, where it was accepted by the First Respondent that such payments had been made without any underlying legal transactions taking place, nor had any professional advice been offered. The First Respondent had accepted that she was not aware of the guidance in relation to providing banking facilities for a client at the time. An amount of £30,000 had actually been paid into client account on 6 February 2009 a month after completion had taken place. The monies had been paid out for the cars in March and April of that year. It was submitted that this was an obvious misuse of client account. The conduct alleged was that of the First Respondent but the allegation was brought against both the First and Second Respondents as a breach of the Solicitors' Accounts Rules and it was for the Tribunal to apportion responsibility between them. The Second Respondent accepted in respect of this allegation that there had been a breach by the firm but not that he had been personally involved. In his statement the Third Respondent said that he had no knowledge of these matters.

112.3 Having carefully considered the submissions and the evidence, the Tribunal found this allegation to have been proved against the First Respondent. She had failed to account promptly to clients on completion of a conveyancing transaction. It did not consider that it had been presented with evidence that in so acting the First Respondent had compromised her independence or integrity and therefore did not find allegation 1.11 proved in respect of these facts. It had not been presented with any evidence against the Second Respondent in respect of the allegation and found the matter not to have been proved against him.

113. **Allegation 1.19: They have acted recklessly.**

113.1 This allegation was not free standing but pleaded in conjunction with other specific allegations and is therefore dealt with under the particular headings of those allegations.

114. **Allegation 1.20: She acted in breach of a condition attached to her Practising Certificate contrary to Section 12 of the Solicitors' Act 1974; against the First Respondent alone.**

114.1 It was submitted on behalf of the Applicant that both the Second Respondent and Ms FK who were specifically named as being required to supervise the First Respondent had left the firm in May 2009, but the First Respondent had continued in practice and did not inform the Applicant of their departure. Thus two events had taken place which should have been notified to the Applicant. The First Respondent had continued almost operating as a sole practitioner totally in breach of the basis on which she was allowed to continue until the firm closed in January 2010. The Tribunal found the facts alleged to have been proved and that the First Respondent had acted in breach of a condition attached to her practising certificate contrary to Section 12 of the Solicitors Act 1974 and accordingly that allegation 1.20 was proved.

Previous Disciplinary Matters

<u>Against the First Respondent</u>

115. Case No. 9725/2007: the First Respondent was fined £2,000 and ordered to pay costs of £3,000 on 14 November 2008.

In respect of the Second Respondent

116. None.

In respect of the Third Respondent

117. Case No. 9241/2005: the Third Respondent was fined £5,000 with costs of £9,865.91.

118. Case No. 9660/2007: the Third Respondent was suspended from practice for a period of nine months with costs of £2,800.00.

119. Case No. 10402/2009: the Respondent was suspended from practice for an indefinite period from 29 November 2010 with costs of £7,696.06. The suspension commenced on 29 November 2010.

Mitigation

120. The First Respondent had submitted no mitigation.

121. The Second Respondent relied on his evidence. Generally he had stated in evidence in respect of the firm that he hoped he had not compromised himself with his clients. He had always acted in their interests as far as he saw it and he was not aware of having been involved in any conflict of interest. He had known the practice was struggling financially but it was not until he had been told by Mr A at the end of March 2009 that there was no money to pay accountants' fees or drawings that he had realised the situation. He was ashamed and disappointed in himself and he had not done things which he should have done. The Second Respondent said that he was desperately sorry to have wasted people's time and effort in bringing about these proceedings. He should have been stronger with the First Respondent; she was a very strong-headed lady and he regarded himself as a minnow at the firm. He repeated that he was only needed in order to enable the firm to receive mortgage instructions. It was very much her firm and she had the larger clientele. His appearance was something he was really ashamed about. It was a complete nightmare for him to end his career this way and he expressed deep regret. He did not intend to practice again.

122. The Third Respondent had submitted no mitigation and generally had stated that he acted under the instruction of the First and Second Respondents.

Sanction

123. Regarding First Respondent and the Third Respondent; they had engaged in activities which bore hallmarks of property fraud and across a whole range of proven allegations. They had shown themselves to fall far short, in respect of their lender clients, of the maxim in the case of Bolton that a client should be able to trust their solicitor to the ends of the earth.

124. In respect of the First Respondent the Tribunal considered that she was central to the way the practice was run. She had been the prime mover amongst the solicitors in the firm and the senior partner. The Tribunal had noted that she had 95% of the equity. She had been before the Tribunal previously. Having regard to the seriousness of the range of allegations which had been found proved against the First Respondent the Tribunal considered that it was appropriate for her to be struck off the Roll of Solicitors.

125. The Second Respondent had been found guilty of a range of allegations, one of which was serious in that it involved potential money laundering. He did not appear to have applied his mind in any way whatsoever to the warning indicators and he had been reckless. The Tribunal considered that he had been used by others because he had an unconditional practising certificate following an unblemished record of 40 years in the profession. He had never appeared before the Tribunal before. It had found him to be a reliable and truthful witness. The Tribunal accepted his evidence that he was excluded from a significant amount of the firm's activity. All these factors inclined the Tribunal to take a lenient view and accordingly it had decided to suspend him from practice for a period of two years. The Tribunal anticipated that should the Second Respondent seek to return to practice upon the expiry of his period of suspension that the Applicant would only renew his practising certificate with appropriate conditions, but it made no order itself in this regard.

126. This was the fourth time that the Third Respondent had been brought before the Tribunal for not dissimilar matters. He had been found guilty of serious allegations involving transactions with the hallmarks of property fraud in all its facets and conveyancing irregularities. Bearing in mind the facts of this case, the allegations which he had been found guilty of and his history of appearances before the Tribunal, it was considered appropriate that he should be struck off the Roll of Solicitors.

Costs

127. The Applicant sought costs in the sum of £29,137.85. The First Respondent had not engaged with the Applicant. The Third Respondent had been provided with the Schedule of Costs and invited to make representations but had not responded. He was currently suspended indefinitely from practice but he indicated that he could not attend the Tribunal because he had started a new role. It was not known what that involved. On behalf of the Applicant Mr Havard asked the Tribunal to proceed on the basis that a costs order against both the First and Third Respondents would be appropriate. The Second Respondent had provided information concerning his assets and liabilities and income and outgoings. He said that he had come to the Tribunal prepared to produce bank statements to support those documents. He informed the Tribunal that he had taken out a loan for office equipment when he was a sole practitioner of which £7,000 was outstanding. The firm had said it would take the loan on and complete the payments but this had not happened. He was presently estranged from his wife although they could not afford to move to separate properties. He had a private pension and the State pension. He asked the Tribunal to take his financial circumstances into account.

128. The Tribunal had carefully considered the circumstances and the information which it had available. It assessed costs at £29,000, having found the Schedule to be reasonable. It apportioned the costs between the parties according to their culpability on the basis of 60% as to the First Respondent and 20% each to the Second and Third Respondents. In the case of the Second Respondent the Tribunal had carefully considered the financial information which he had submitted and had determined that the costs order should not be enforced without leave of the Tribunal.

Statement of Full Order

129. The Tribunal Ordered that the Respondent, Doreen Elizabeth Powell, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,400.00.

130. The Tribunal Ordered that the Respondent, *[SECOND RESPONDENT]*, solicitor, be suspended from practice as a solicitor for the period of 2 Years to commence on the 23rd day of November 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,800.00. Costs not to be enforced without leave of the Tribunal.

131. The Tribunal Ordered that the Respondent, Desmond James Corlis, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,800.00.

Dated this 5th day of January 2012
On behalf of the Tribunal

J C Chesterton
Chairman