

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10712-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

[RESPONDENT 1]

First Respondent

and

NGOZI PIPI

Second Respondent

Before:

Mr E Richards (in the chair)

Mr K W Duncan

Mr R Slack

Date of Hearing: 22nd September 2011

Appearances

Jayne Willetts, Solicitor Advocate of Jayne Willetts & Co Solicitors, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP for the Applicant.

The First Respondent appeared in person.

Mr Nonyelu Okoye, solicitor, for the Second Respondent.

JUDGMENT

Allegations

First Respondent

1. The allegations against the First Respondent were that:
 - 1.1 Accounting records for the practice were not properly written up in breach of Rule 32(1) of the Solicitors Accounts Rules 1998 (“SAR”);
 - 1.2 Entries regarding the nature and owner of mortgage advances were not clearly recorded on client ledgers in breach of Rule 32 (6) of the SAR;
 - 1.3 He failed to disclose material facts to lender clients in conveyancing transactions that bore the hallmarks of fraud contrary to Rules 1(a), 1(c) and 1(d) of the Solicitors Practice Rules 1990 (“SPR”) and Rules 1.02; 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”);
 - 1.4 He witnessed a signature on a Mortgage Deed when he was not in the presence of the signatory in breach of Rules 1(a), 1(c) and 1(d) of the SPR;
 - 1.5 He failed to make adequate and effective arrangements for the proper supervision and direction of clients’ matters in breach of Rule 13 of the SPR and Rule 5.01(1) of the SCC;
 - 1.6 He provided inaccurate information on a proposal form for Professional Indemnity Insurance for the practice year 2008/2009 in breach of Rule 1.02 and 1.06 of the SCC;
 - 1.7 He failed to make appropriate arrangements for the closure of his firm in breach of Rules 1.04, 1.05 and 1.06 of the SCC;
 - 1.8 He failed to deal with the Solicitors Regulation Authority (“SRA”) in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC;.
 - 1.9 He failed to discharge the premium for Professional Indemnity Insurance Run Off cover in breach of Rule 3 of the Solicitors Indemnity Insurance Rules 2008 (“SIIR”).
 - 1.10 [Withdrawn]

Second Respondent

2. The allegations against the Second Respondent were that she had, in the opinion of the Law Society, occasioned or been a party to an act or default in relation to a legal practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be involved in a legal practice in one or more of the ways mentioned in Section 43(1)(A) of the Solicitors Act 1974 as amended by the Legal Services Act 2007 in that:
 - 2.1 She failed to disclose material facts to lender clients in conveyancing transactions that bore the hallmarks of fraud;

- 2.2 She purported to act for a client (Mr K-O) in a conveyancing transaction where she failed to communicate with him at any time during that transaction in order to verify his instructions.

Documents

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

Applicant:

- Application dated 3 March 2011;
- Rule 5 Statement dated 17 February 2011 and exhibit JBW1;
- Schedule of Costs dated 13 September 2011;
- Judgment in the case of Ojelade v The Law Society [2006] EWHC 2210 (Admin);
- Judgment in the case of Gregory v The Law Society [2007] GWHC (Admin)

First Respondent:

- Witness Statement of the First Respondent dated 22 September 2011.

Second Respondent:

- Witness Statement of Second Respondent dated 15 September 2011.

Preliminary Matter (1)

4. Ms Willetts informed the Tribunal that there had been no contact from the First Respondent until the evening before the hearing. The First Respondent telephoned Ms Willetts' office after close of business on the evening of 21 September 2011 and had presented his statement to Ms Willetts that morning. The First Respondent had told Ms Willetts that the only document that he had received was the Forensic Investigation Report ("FIR").
5. Ms Willetts told the Tribunal that she had proof of delivery documents which showed that the Rule 5 Statement and the Notice of the hearing date had been sent to the First Respondent's address and had been signed for.
6. The First Respondent explained to the Tribunal that he had been away since last year and had not returned until about ten days ago. He had not received the documents sent to his home address. He did not dispute that the documents had been signed for but explained that tenants had been living at his home address. The First Respondent had called at the property yesterday to collect his mail and had received notification of the hearing date at that time.
7. The Tribunal gave the First Respondent the opportunity to read the Rule 5 Statement. The First Respondent was reminded that the allegations set out in the Rule 5 Statement were serious and, whilst not wishing to pre-judge the issues, the Tribunal

explained to the First Respondent that if the findings were made out and subject to mitigation, any sanction that the Tribunal may impose could affect the First Respondent's ability to practice. The Tribunal wished to be assured that the First Respondent was happy to proceed with the hearing notwithstanding that he had only now had the opportunity to consider the allegations against him.

8. The First Respondent was given a period of time to consider his position and he then confirmed that he would like to proceed with the hearing today. Mr Okoye also confirmed that the Second Respondent was content to proceed.
9. Having given the First Respondent time to consider matters and on the basis that the First Respondent wanted to proceed, the Tribunal determined that the hearing should go ahead.

Preliminary Matter (2)

10. Ms Willetts made an application under the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") Rule 11(6) to withdraw allegation 1.10 against the First Respondent. Ms Willetts explained that there had been a mistake on the part of the Applicant in relation to the required date for the filing of the Accounts Report which necessitated the withdrawal of allegation 1.10. The Tribunal consented to the withdrawal of allegation 1.10 against the First Respondent.

Factual Background

11. The First Respondent was born on 11 November 1958 and was admitted as a solicitor on 15 July 2003. His name remained on the Roll of Solicitors. From 24 July 2008 until 30 September 2009 the First Respondent practised on his own account at Edward Leonards Solicitors ("the firm") of PO Box 51221, 245 Walworth Road, London SE17 1WT. An intervention into the practice took place on 15 September 2010.
12. The Second Respondent was a non practising barrister who was called to the Bar in November 1990. During the period March/April 2006 until 2008, the Second Respondent was employed as a conveyancing fee earner at the firm.
13. The allegations in the main arose from an inspection by the Applicant which commenced at the firm on 29 July 2009 and which resulted in the preparation of a FIR dated 4 August 2010.
14. In relation to allegation 1.1 and 1.2 against the First Respondent, Mrs Clare Guile, the Forensic Investigation Officer ("FIO"), identified that although the books of account balanced, the accounting records were not properly written up in that bills of costs were posted as credits and disbursements paid out of client account were posted as debits on the office side of the ledger. In addition, where the firm was acting for both lender and borrower on a mortgage advance, the funds belonging to each client were not clearly identifiable.
15. In relation to allegation 1.3 against the First Respondent and 2.1 against the Second Respondent, the FIO considered 14 conveyancing transactions which had been conducted by the Second Respondent under the supervision of the First Respondent.

The First Respondent signed the Certificates of Title for those conveyancing transactions where the firm was instructed to act for lenders and where the Second Respondent was acting as the fee earner.

16. From an examination of the files relating to the 14 conveyancing transactions, the FIO established that both Respondents had failed to report to their lender clients the following material facts:
 - The balance of the purchase price was not being provided by the borrowers' own funds in eleven transactions.
 - The transactions were proceeding by way of sub-sales or assignable contracts in eight transactions.
 - There was an uplift in the purchase price of the property in the sub-sale transactions on three files.
 - The Transferors of properties had been the registered proprietor for less than six months in eight transactions.
 - The consideration recorded in the transfer documents as being paid for each property and upon which the mortgage advance was based was not the consideration actually paid by the borrowers in three transactions.
17. Allegation 1.4 against the First Respondent and allegations 2.1 and 2.2 against the Second Respondent arose from a complaint made by Mr K-O to the Legal Complaints Service ("LCS") that the firm had purported to act on his behalf in connection with the purchase of a property and where the firm were also instructed to act for the mortgage lender.
18. Mr K-O stated that he had never instructed the firm to act on his behalf. The Second Respondent was the fee earner responsible for the file. There was no record on the file of any meeting or telephone attendance between the Second Respondent and Mr K-O. There was no record of any communication on the file from the Second Respondent to Mr K-O in order to verify his instructions. The only correspondence was the client care letter which Mr K-O denied receiving or signing.
19. In addition, Mr KO alleged that his signature on the client care letter, mortgage deed and the land transaction form was not his signature. An expert's report obtained by the FIO identified that there was evidence to suggest that the signatures were not those of Mr K-O. The signature on the mortgage deed dated 29 September 2006 purported to be witnessed in the presence of the First Respondent. The First Respondent confirmed that it was his signature on the mortgage deed and that he could not recall meeting Mr K-O. Mr K-O stated that he had never met the First Respondent and that he did not sign the mortgage deed in his presence.
20. It was alleged that the First Respondent had failed to make adequate and effective arrangements for the proper supervision and direction of clients' matters. The 14 conveyancing transactions set out in the FIR were all conducted by the Second Respondent. The First Respondent admitted that he did not supervise the Second

Respondent and had delegated full responsibility to her. In particular he did not conduct file reviews of the matters that she was handling.

21. The First Respondent signed a proposal form on 19 August 2008 for Professional Indemnity Insurance for 2008/2009. In that form, he confirmed the amount of gross fees for the last accounting period as £120,000.
22. According to an Income Tax Return which had been incorrectly referred to as a VAT return in the FIR, the turnover and fees from the business were £259,739 to 5 April 2008 which was over double the amount stated by the First Respondent in the proposal form. The First Respondent stated that he had made a mistake which he had later corrected.
23. The First Respondent wrote to the Applicant on 23 September 2009, notifying them that he intended to close the practice after 30 September 2009.
24. Following receipt of this letter, the Applicant sent emails to the First Respondent dated 5 October 2009 and 27 March 2010 respectively seeking information regarding the closure of the practice. This included a request for confirmation of the date upon which the First Respondent had ceased to hold client money. The First Respondent did not reply to these emails.
25. The Applicant wrote to the First Respondent on 12 May, 29 June and 15 July 2010 and repeated their requests for information about the closure of the firm. The First Respondent did not reply to these letters.
26. The solicitors for the landlord of the office premises occupied by the firm wrote to the Applicant on 16 August 2010 advising that rent arrears had accrued and a possession order had been obtained. The landlord's solicitors had attended at the premises and changed the locks. On inspection, the landlord's solicitors had noted that there were a considerable amount of client files remaining in the office as well as unopened post.
27. Whilst at the premises the landlord's solicitors had met with a young man who explained that he was the First Respondent's trainee and was attending at the premises in order to check the post. The landlord's solicitor sought guidance from the Applicant regarding the client files that had been left at the premises.
28. The Applicant wrote to the First Respondent on 20 August 2010 requesting an explanation. The First Respondent did not reply to this letter.
29. The landlord's solicitors contacted the Applicant again on 31 August 2010 in relation to their continuing concerns regarding the office premises. The landlord's solicitors confirmed that the signage at the premises had not been taken down and client files remained in the office. An intervention into the practice took place on 15 September 2010.
30. On 27 January 2009, the brokers for the firm who were PYV Legal complained to the Applicant that the First Respondent was in policy default as he had failed to discharge the premium of £18,500 for Professional Indemnity Insurance Run Off Cover. The Run Off Cover had become necessary as a result of the closure of the firm and was to

be in place from 1 October 2009 until 30 September 2015. The First Respondent made one payment of £1,000 and indicated that he would make payments of £1,000 per month by letter dated 30 October 2009. This was not acceptable to the brokers and no further payments were paid.

31. On 28 October 2010, a caseworker forwarded to the First Respondent a copy of the FIR and invited his explanation. The letter was signed for but there was no response. A reminder letter was sent to the First Respondent on 15 November 2010 and was returned to the Applicant marked “not called for”.
32. The conduct of the First Respondent was referred to the Tribunal on 7 January 2011.
33. The caseworker sent the Second Respondent a redacted copy of the FIR on 28 October 2010 and invited her explanation. No response was received. A reminder letter was sent on 15 November 2010 and the Second Respondent replied on 23 November 2010. She stated that the First Respondent supervised her work, checked files prior to completion and requested funds from the lenders.
34. The conduct of the Second Respondent was referred to the Tribunal on 7 January 2011.

Witnesses

35. Mrs Clare Guile, Forensic Investigation Officer with the Applicant gave evidence on behalf of the Applicant. She confirmed the truth of the FI Report dated 4 August 2010. The statement of Mr K-O and the report of the Forensic Handwriting and Document Examiner, Robert Radley, were put before the Tribunal by the Applicant.

Findings of Fact and Law

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

The First Respondent

37. **Allegation 1.1: Accounting records for the practice were not properly written up in breach of Rule 32 (1) of the Solicitors Accounts Rules 1998 (“SAR”).**
 - 37.1 It was submitted on behalf of the Applicant that the First Respondent as principal of the practice was responsible for ensuring compliance with the SAR by himself and by everyone working in the practice. The FIO identified that the books of account were not properly written up in that bills of costs were posted as credits and disbursements that had been paid out of client account were posted as debits on the office side of the ledger.
 - 37.2 By way of example, the FIO referred to the client ledger account in the name of BB. The ledger showed that bills of costs dated 31 January 2008 and 30 March 2009 respectively had been posted to the credit side of the office ledger. The ledger also showed that management fees paid on 31 January 2008 had been posted to the debit side of both the client and office ledgers.

- 37.3 The First Respondent informed the Tribunal that these issues had been raised during a visit from the Law Society prior to the start of the inspection. The First Respondent explained that he had employed a book-keeper to deal with accounts at the firm. Following the Law Society visit, he had taken corrective action in relation to the writing up of the books of account and the book-keeper had changed his practices. The First Respondent explained that the transactions referred to in the FIO's report pre-dated the Law Society visit.
- 37.4 The Tribunal noted that the First Respondent, as principal of the practice, was responsible for ensuring compliance with the SAR. The First Respondent could not delegate this responsibility to a bookkeeper. The Tribunal found the allegation substantiated on the facts and documents before it.
38. **Allegation 1.2: Entries regarding the nature and owner of mortgage advances were not clearly recorded on client ledgers in breach of Rule 32(6) of the SAR.**
- 38.1 This allegation related to transactions where the firm was acting for both lender and borrower on a mortgage advance. It was the Applicant's case that funds belonging to each client were not clearly identifiable. In evidence, the FIO had exemplified an entry on the client ledger of BB in which the mortgage advance had been identified as "F/Flow-E/535-4". This did not clearly identify the mortgage lender and the amount of the advance.
- 38.2 There were further examples of transactions where funds belonging to lender and borrower clients were not clearly identifiable on the client ledgers of GS-T, AT, AD and ML and RS.
- 38.3 The First Respondent told the Tribunal that he had been made aware of this issue following the Law Society visit which he had referred to earlier. He had taken corrective action following that visit but again stated that the transactions identified by the FIO took place before the Law Society visit.
- 38.4 As responsibility for ensuring compliance with the SAR rested with the First Respondent as principal of the practice, the Tribunal found the allegation substantiated on the facts and the documents before it.
39. **Allegation 1.3: He failed to disclose material facts to lender clients in conveyancing transactions that bore the hallmarks of fraud contrary to Rules 1(a), 1(c) and 1(d) of the Solicitors Practice Rules 1990 ("SPR") and Rules 1.02; 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC").**
- 39.1 The Applicant relied on the findings of the FIO and submitted that the 14 conveyancing transactions identified by the FIO bore the characteristics of mortgage fraud as exemplified in the Law Society Green Warning Card on property fraud dated July 2002. In eleven of the cases, none of the clients' files contained any information regarding the involvement of a third party. Of the 14 transactions, the FIO identified six separate conveyancing transactions where the firm had acted for both the buyer and mortgagee.

- 39.2 The FIO had noted that in five of the six matters the majority of the balance of purchase monies did not appear to have been provided by the client. In three of the matters the client did not appear to have provided any money and a third party funded the balance to complete the purchase and also the firm's fees and disbursements. In five of the matters the firm had failed to register their mortgagee client's interest.
- 39.3 The FIO had identified a further eight separate conveyancing transactions, seven of which involved sub-sales and one involved an assignment of contract. In each of the transactions the firm had acted for both the end buyer and mortgagee and the firm had failed to notify their mortgagee clients in writing that the transactions were proceeding by way of a sub-sale or assignable contract and that the seller had not owned the property for more than six months.
- 39.4 In three of the sub-sale matters, the firm had failed to notify their mortgagee clients in writing that there was an uplift in the purchase price of the property in the sub-sale transaction.
- 39.5 In six of the matters, the balance of the purchase monies did not appear to have been provided by the client. In each matter the client did not appear to have provided any funds and a third party funded the balance to complete and also the firm's fees and disbursements. In four of the matters the firm had failed to register their mortgagee clients' interests.
- 39.6 The First Respondent stated that he had taken notice of what had been said by the FIO both in evidence and in the FIR. The First Respondent admitted that he had failed to notice that these matters had not been reported to the lender clients. He stated that a lack of awareness was not an excuse and that mistakes on the part of a fee earner "still refers" to the principal of the firm.
- 39.7 The Tribunal noted that ultimate responsibility for failure to notify lender clients of material facts rested with the First Respondent as the principal of the firm. The Tribunal found the allegation substantiated on the facts and documents before it.
40. **Allegation 1.4: He witnessed a signature on a Mortgage Deed when he was not in the presence of the signatory in breach of Rules 1(a), 1(c) and 1(d) of the SPR.**
- 40.1 This allegation related to the complaint made to the LCS by Mr K-O. It was submitted on behalf of the Applicant that the First Respondent witnessed the signature of Mr KO on the mortgage deed when Mr KO was not in his presence. The Second Respondent was the fee earner responsible for the file. Mr K-O had complained that the firm purported to act on his behalf in connection with the purchase of a property and where the firm were also instructed to act for the mortgage lender.
- 40.2 The FIO explained that she had been provided with a copy of the complaint from the LCS and had requested the file during the investigation. In addition she had made an appointment in order to speak to Mr K-O directly.
- 40.3 Mr K-O alleged that his signature on the client care letter, mortgage deed and land transaction form was not his. The FIO explained Mr K-O was being pursued by his mortgage lender and had been advised to get an expert report in relation to those

proceedings. The FIO had obtained a copy from the Forensic Handwriting and Document Examiner, Robert Radley, which was included in the FIR at appendix 55. It was the opinion of Mr Radley that the signature on the client care letter had not been written by Mr K-O and that there was strong evidence to support the proposition that Mr K-O had not written the signatures on the mortgage deed and land transaction form.

- 40.4 During the course of the investigation, the First Respondent had been shown a copy of the mortgage deed that was held on the file and asked to confirm whether the witness signature on the document was his. The First Respondent had confirmed that it was.
- 40.5 The FIO confirmed that she had reviewed the file and was unable to locate any attendance notes or correspondence other than a copy of the client care letter which was the subject of the disputed signature. The client care letter did not contain the full postal address for Mr K-O. The FIO confirmed that she had been looking for evidence to show that Mr K-O had attended the firm and no evidence had been found on the file.
- 40.6 In evidence, the First Respondent confirmed that Mr K-O had completed the transaction and had then rented the property to a third party. It was the First Respondent's case that following the collapse of the housing market, Mr K-O had second thoughts about purchasing the property and had then decided to make a complaint.
- 40.7 The First Respondent could recall Mr K-O attending at the firm in order to complain following completion of the transaction. The First Respondent said that he had encouraged Mr K-O to go back to his lender and was unaware that Mr K-O had reported the matter to the Applicant.
- 40.8 When asked if he could recall Mr K-O attending at the office in order to sign the mortgage deed, he confirmed that Mr K-O must have attended and signed the document in his presence or he would not have added his stamp to the deed. However, the First Respondent stated that he would not be able to identify Mr K-O in person as he dealt with many clients and could not be expected to remember everyone. The First Respondent would not admit to having witnessed Mr K-O's signature in his absence.
- 40.9 The First Respondent stated that he was not able to accept the conclusion of the expert report from Mr Radley. The First Respondent's view was that an individual's signature can differ.
- 40.10 The Tribunal carefully considered the documentation and the evidence given by the First Respondent in relation to this matter. It was noted that there had been a clear denial from the First Respondent that he witnessed the mortgage deed when Mr K-O was not present. The Tribunal had not had the opportunity to hear from Mr K-O or the handwriting expert and was of the view that there was insufficient evidence for the allegation to be substantiated against the First Respondent to the high standard that was required.

41. **Allegation 1.5: He failed to make adequate and effective arrangements for the proper supervision and direction of clients' matters in breach of Rule 13 of the SPR and Rule 5.01(1) of the SCC.**

41.1 The Applicant relied on the evidence of the Forensic Investigation Officer and the contents of the FI Report and submitted that the First Respondent did not have a system in place for the proper supervision and direction of clients' matters. The 14 conveyancing transactions set out in the FIR were all conducted by the Second Respondent who was an unadmitted fee earner.

41.2 The First Respondent had told the FIR that he had employed the Second Respondent to set up a conveyancing department within the firm as his particular area of expertise was in immigration and he believed that the Second Respondent had previous experience in conveyancing.

41.3 The First Respondent had admitted to the FIO that he had not conducted file reviews of the matters handled by the Second Respondent. The First Respondent had said that he had confidence in the abilities of the Second Respondent and had delegated full responsibility to her in the setting up of the conveyancing department.

41.4 The First Respondent stated in evidence that he would rely on the information given in his statement and the answers that he had supplied during interview with the FIO. The First Respondent accepted that the principal of a firm must take overall responsibility.

41.5 The Tribunal noted that the First Respondent had not conducted any file reviews. The First Respondent had accepted to some degree that his supervision over the Second Respondent could have been better. The Tribunal found the allegation substantiated on the facts and documents before it and on the evidence that it had heard.

42. **Allegation 1.6: He provided inaccurate information on a proposal form for Professional Indemnity Insurance for the practice year 2008/2009 in breach of Rule 1.02 and 1.06 of the SCC.**

42.1 The applicant alleged that the First Respondent had signed a proposal form on 19 August 2008 for Professional Indemnity Insurance for 2008/2009 and had confirmed in that form that the amount of gross fees for the last accounting period was £120,000, while according to an Income Tax Return, the turnover and fees for the business were £259,739 to 5 April 2008, over double the amount stated by the First Respondent in the proposal form.

42.2 The First Respondent explained that he had made a genuine mistake and had not attempted to deliberately mislead anyone. He had contacted his insurers to correct the mistake but had not thought to make a note of the conversation as he had not anticipated that the matter would come before this Tribunal.

42.3 The First Respondent had admitted to giving incorrect information to his insurers in error. This information was material and important. The Tribunal noted that they had not seen any contemporaneous evidence to show that the mistake had been corrected

and they found the allegation substantiated on the facts and documents and on the evidence it had heard.

43. Allegation 1.7: He failed to make appropriate arrangements for the closure of his firm in breach of Rules 1.04, 1.05 and 1.06 of the SCC.

43.1 The Applicant relied on the absence of any response or information from the First Respondent following his letter of 23 September 2009 notifying his intention to close his practice after 30 September. The Tribunal was also referred to the reports to the Applicant from the solicitors for the landlord of the office premises occupied by the firm.

43.2 The First Respondent confirmed that he had started closing the firm in September 2009 and had gone abroad in 2010. He stated that he had dealt with all live files and there had been no complaints from any clients. All of the firm's clients had been contacted and arrangements had been made for clients to collect their files. The First Respondent stated that any remaining files that had been left on the premises were either closed matters or related to abortive transactions.

43.3 The First Respondent denied abandoning the practice and stated that he had put arrangements in place to deal with client matters. He did not feel that an intervention into the firm was necessary.

43.4 The Tribunal noted that client files had been left in the office to which the First Respondent did not have access as the landlord had taken possession. The files contained confidential information relating to the firm's clients. This was the case even where the files in question related to closed matters or matters which had not been proceeded with. The Tribunal considered that the First Respondent had failed to make appropriate arrangements for the closure of his firm and found the allegation to have been substantiated on the facts and documents before it and on the evidence it had heard.

44. Allegation 1.8: He failed to deal with the Solicitors Regulation Authority ("SRA") in an open, prompt and co-operative way in breach of Rule 20.05 of the SCC.

44.1 The Applicant relied on the evidence of its repeated attempts to obtain information from the First Respondent by email and letter from 5 October 2009 onwards, none of which had been replied to.

44.2 The Tribunal found the allegation substantiated on the facts and documents before it and indeed the allegation was admitted by the First Respondent.

45. Allegation 1.9: He failed to discharge the premium for Professional Indemnity Insurance Run Off cover in breach of Rule 3 of the Solicitors Indemnity Insurance Rules 2008 ("SIIR").

45.1 On 27 January 2009, the brokers for the firm PYV Legal had complained to the SRA that the First Respondent was in policy default as he had failed to discharge the premium of £18,500 for Professional Indemnity Insurance Run Off cover for the

period 1 October 2009 until 30 September 2015. The First Respondent had made one payment of £1,000 but no further payments had been made.

- 45.2 The Tribunal had considered all of the documentation before it and found the allegation substantiated on the facts and the documents. Indeed the allegation had been admitted by the First Respondent.

The Second Respondent

46. **Allegation 2: She failed to disclose material facts to lender clients in conveyancing transactions that bore the hallmarks of fraud;**

Allegation 2.2: She purported to act for a client (Mr K-O) in a conveyancing transaction where she failed to communicate with him at any time during that transaction in order to verify his instructions.

- 46.1 The Tribunal had to consider whether the Second Respondent had “occasioned or been a party to an act or default in relation to a legal practice which involved conduct on her part of such a nature that in the opinion of the Law Society, it would be undesirable for her to be involved in a legal practice” pursuant to Section 43 of the Solicitors Act 1974 (as amended). The Tribunal therefore had to determine whether the Second Respondent had been engaged in the conduct alleged before determining if it was appropriate to make the order requested by the Applicant.
- 46.2 The Tribunal had carefully considered the documentary evidence presented including the FIR and its annexes as well as the statement of the Second Respondent dated 15 September 2011. It had also heard the Second Respondent give evidence.
- 46.3 The FIO had considered 14 conveyancing transactions which had been conducted by the Second Respondent under the supervision of the First Respondent. Those transactions had been identified by the FIO as bearing the characteristics of mortgage fraud as exemplified in the Law Society Green Warning Card on property fraud dated July 2002 and as set out in relation to allegation 1.3 against the First Respondent.
- 46.4 The Second Respondent was employed on the basis that she would receive 40% of the fees from any clients brought into the firm by the First Respondent and 50% of any fees from clients that the Second Respondent brought into the firm herself. It was Ms Willetts’ position on behalf of the Applicant that this fee arrangement showed that the Second Respondent had taken a significant role in the conveyancing work of the firm.
- 46.5 Ms Willetts submitted that the Second Respondent’s lack of attention in relation to the K-O matter had enabled the fraud to take place. There was no record on the file of any meeting or telephone attendance between the Second Respondent and Mr K-O. There was nothing to indicate that any attempt had been made to verify the client’s instructions and this was a significant failing.
- 46.6 Ms Willetts drew the Tribunal’s attention to the case of Ojelade v The Law Society (2006) EWHC 2210 (Admin) and submitted that the case demonstrated that a Section 43 Order was not a punishment but rather a safeguard. In that case, an error of judgment had been considered sufficient to justify the imposition of a Section 43

Order. Ms Willetts submitted that there had been no adverse consequences for clients in the Ojelade case which contrasted with the current case in which there had been adverse consequences for the firm's lender clients and where the Second Respondent's conduct had shown a number of errors.

- 46.7 Ms Willetts also referred the Tribunal to the case of Gregory v The Law Society (2207) EWHC 1724 (Admin) which suggested that proper training and good work experience might overcome flawed behaviour. The making of the Section 43 Order did not prohibit employment but ensured that any employment must be approved.
- 46.8 Ms Willetts also submitted that the Second Respondent was holding herself out as having a professional qualification but had attempted to abrogate all responsibility for her actions. The Second Respondent was unadmitted but clearly described herself as a barrister in communications with clients. It was further submitted that the Second Respondent's conduct showed some serious omissions either through incompetence, negligence or ignorance but which had consequences for lender clients and so it was appropriate in the public interest for a Section 43 Order to be made.
- 46.9 In evidence, the Second Respondent confirmed that she had conducted a number of cases over a two year period which had been based on the remuneration structure referred to in the documentation before the Tribunal. It was the Second Respondent's case that the First Respondent had seen the conveyancing files and completed the Certificates on Title.
- 46.10 The Second Respondent admitted that she had not been aware of the Law Society Green Warning Card on property fraud at the time that she was conducting conveyancing transactions at the firm. She explained that her previous conveyancing experience had been limited and admitted that she had not undertaken any further work or study in relation to conveyancing at the time. In hindsight, she accepted that it would have been prudent to become familiar with conveyancing requirements.
- 46.11 It was the Second Respondent's case that she had taken direction from the First Respondent as her supervisor and had been let down. She referred the Tribunal to the wording of the client care letters which she said indicated that conveyancing work had been carried out jointly with the First Respondent. She said that she had no involvement with lender clients and had not dealt with completions which had all been carried out by the First Respondent. The Second Respondent submitted that she had carried out her work to the best of her ability at that time and she had looked at the First Respondent to provide her with appropriate guidance and training. It was her case that she was the victim in these proceedings as well.
- 46.12 Mr Okoye submitted on behalf of the Second Respondent that she relied on the fact that the First Respondent had admitted in evidence that as principal of the firm he had ultimate responsibility. He submitted that as the First Respondent was a solicitor, the Second Respondent had assumed that he would know how conveyancing transactions should be conducted and she had hoped to learn from him. It was submitted that she was entitled to rely on him to send her on any necessary training. It was also for him to alert her to any issues. She had a conviction that things had been done properly because matters had been allowed to proceed to completion. Mr Okoye also submitted that the ambit of Section 43 did not extend to omissions to act.

- 46.13 In relation to the K-O file, the Second Respondent submitted that she did keep attendance notes on all files and did not know why there were no attendance notes on the K-O matter.
- 46.14 It was the Second Respondent's case that she had always behaved in an acceptable manner and within the ambit of her employment. She felt that the imposition of a Section 43 Order was not justifiable in the circumstances. She had acted jointly with the First Respondent on the files and had no involvement with lenders or access to the accounts.
- 46.15 The Tribunal was concerned at the Second Respondent's lack of knowledge of conveyancing requirements generally and in particular in relation to the Warning Card on property fraud. The Second Respondent should have taken steps to ensure that she had knowledge of conveyancing. The Second Respondent was a barrister and had held herself out as a qualified fee earner. The Tribunal found that the wording of the client care letters and the fee sharing arrangements gave a clear indication that the Second Respondent was actively involved as a fee earner on the files in question. The Tribunal rejected Mr Okoye's contention that the ambit of Section 43 did not extend to omissions. It was satisfied that "default" included such failures.
- 46.16 The Tribunal was not satisfied to the high standard of proof required that allegation 2.2 against the Second Respondent in relation to the KO matter had been made out. The Tribunal found allegation 2.1 proved and considered that there was sufficient evidence to justify the imposition of a Section 43 Order in order to safeguard the public interest.

Previous Disciplinary Matters

47. None recorded against either Respondent.

Mitigation

The First Respondent

48. The First Respondent submitted that he had not set out to do anything wrong and had shown no dishonest intentions towards his clients. The First Respondent said that his mistakes had been due to human error and asked the Tribunal to consider his case with leniency.
49. The First Respondent stated that he had not been in practice long before the start of the investigation. He had studied conveyancing but realised that the theory was very different to the practice. The First Respondent submitted that he could not separate himself from the things that had happened but still wanted to be a solicitor and hoped that he could learn from his mistakes.
50. At the moment, the First Respondent was not working. He had been unable to obtain insurance in order to practise on his own account. He had managed to secure employment with another firm but once his employers had discovered that he was involved in disciplinary proceedings, he had been asked to leave and so he had not applied to renew his practising certificate.

The Second Respondent

51. The Second Respondent's representative had already made comments in mitigation during the submissions made to the Tribunal. She stated that she had been guided by the First Respondent and had not conducted herself in a way that was unbecoming to her remaining in practice.

Sanction

First Respondent

52. The First Respondent had admitted two of the allegations against him. The Tribunal considered that the First Respondent had shown a cavalier approach in relation to the setting up of his practice. The Tribunal had been concerned at the First Respondent's lack of attention to the important responsibility of signing Certificates of Title and dealing with the compliance requirements of lender clients. The First Respondent had shown a wholesale failure to supervise the Second Respondent and had failed to properly close his firm which had resulted in a failure to act in the best interests of his clients.
53. The Tribunal considered the range of sanctions available. The Tribunal determined that a reprimand or fine were not appropriate in the circumstances. The Tribunal had a duty to protect the public and the reputation of the profession. The First Respondent had not been dishonest but his misconduct was serious. In the circumstances, the Tribunal considered it appropriate that the First Respondent should be suspended from practice as a solicitor for a period of 30 months. In order to minimise the risk of repeating the same mistakes, the Tribunal considered it appropriate to impose conditions upon the way in which the First Respondent practised as a solicitor in the future. It ordered that upon the expiry of the fixed term of suspension, the First Respondent should not practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) and for the avoidance of doubt should only work in employment approved by the Applicant.

Second Respondent

54. The Tribunal noted that its powers to make orders under Section 43 of the Solicitors Act 1974 (as amended) were regulatory rather than disciplinary powers. It was not necessary for there to be any finding of dishonesty. Indeed, the Authorities, in particular, Ojelade v The Law Society (2006) EWHC 2210 (Admin) and Gregory v The Law Society (2207) EWHC 1724 (Admin) suggested that foolishness, recklessness or errors of judgment could be sufficient to justify the making of a Section 43 Order. Such an order would not prevent an individual from working within the legal profession but would require that individual to have permission.
55. The Tribunal found that a number of serious conduct matters had been proved against the Second Respondent. Accordingly, it was appropriate and proportionate that a Section 43 Order should be made in order to safeguard the public.

Costs

56. The Applicant's claim for costs totalled £37,836.95. The claim was not agreed. The Tribunal heard submissions on behalf of all parties.
57. Ms Willetts confirmed that she had served both Respondents with a copy of the case of Solicitors Regulation Authority v Davis & McGlinchey (2011) EWHC 232 (Admin). The Tribunal noted the relevance of this case where allegations were admitted by the Respondent. Ms Willetts drew the Tribunal's attention to the fact that the First Respondent had admitted some allegations today.
58. In particular, Ms Willetts asked the Tribunal to make an order for fixed costs. She stated that it would be inappropriate to make an order for costs that was not to be enforced without leave of the Tribunal as these types of orders were almost impossible to enforce. She submitted that the Applicant was used to dealing with financial information from Respondents. If an order for costs was deferred, then she stated that it would be impossible for the Applicant to obtain financial information from the Respondents.
59. The First Respondent submitted that the overall costs were excessive and he was unable to pay as he was not working. He did not own a property and his current address was a council home that had been purchased by his wife.
60. The Second Respondent submitted that she had written to the Applicant in advance of the hearing date to state that she was not employed and was intending to apply for welfare benefits. Due to her family commitments, the Second Respondent had not accrued enough National Insurance contributions previously to obtain Job Seekers Allowance. She explained that her property was owned by her husband in his sole name. She urged the Tribunal not to make a costs order on the grounds of impecuniosity.
61. Having heard the submissions, the Tribunal did not consider it was appropriate to order a detailed assessment and considered that costs should be fixed at £30,000. The costs should be apportioned between the Respondents as follows:-
- The First Respondent £25,000.
 - The Second Respondent £5,000.
62. In view of the fact that the Tribunal had affected the First Respondent's ability to practise, they considered it appropriate that the order for costs against the First Respondent should not be enforced without leave of the Tribunal.

Statement of Full Order

63. 1. The Tribunal Ordered that the Respondent, *[RESPONDENT 1]* of London, SE1, solicitor, be suspended from practice as a solicitor for the period of thirty months to commence on the 22nd day of September 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00, such costs not to be enforced without leave of the Tribunal.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS);
 - 2.1.2 For the avoidance of doubt the Respondent may only work as a solicitor in employment approved by the Solicitors Regulation Authority;
 3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above;

64. The Tribunal Ordered that as from 22nd day of September 2011 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Ngozi Pipi of London, N18;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Ngozi Pipi;
 - (iii) no recognised body shall employ or remunerate the said Ngozi Pipi;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Ngozi Pipi in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Ngozi Pipi to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Ngozi Pipi to have an interest in the body;

And the Tribunal further Ordered that the said Ngozi Pipi do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 1st day of November 2011
On behalf of the Tribunal

E Richards
Chairman