

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10772-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
RESPONDENT 1 [NAME REDACTED]	First Respondent
and	
THOMAS EDMUND MICHAEL MCMANUS	Second Respondent

Before:

Mr D Potts (in the chair)
Mr R Hegarty
Mr S Howe

Date of Hearing: 16th January 2012

Appearances

Mr Mohammad Afzal, solicitor of HMA Law of HMA Law 5 Tenby Street, Birmingham, B1 3EL for the Applicant.

Mr Richard Nelson of Richard Nelson LLP, Priory Court, 1 Derby Road, Nottingham, NG9 2TA for the First Respondent.

The Second Respondent appeared in person and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent were that:
 - 1.1 In breach of Rule 3.01 of the Solicitors Code of Conduct 2007 ("SCC"), the First Respondent acted in a transaction where there was a conflict of interest or a significant risk of a conflict between the interests of two or more clients;
 - 1.2 In breach of Rule 1.04 of the SCC, the First Respondent failed to act in the best interests of their client;
 - 1.3 [Withdrawn]
 - 1.4 [Withdrawn]
 - 1.5 In breach of Rule 22 of the Solicitors Accounts Rules ("SAR"), the First Respondent withdrew money from client account other than as permitted;
 - 1.6 In breach of Rule 32 of the SAR, the First Respondent failed to keep properly drawn up accounting records;
 - 1.7 In breach of Rule 7 of the SAR, the First Respondent failed to remedy the breaches promptly.
2. The allegations against the Second Respondent were that:
 - 2.1 In breach of Rule 3.01 of the Solicitors Code of Conduct 2007 ("SCC"), the Second Respondent acted in a transaction where there was a conflict of interest or a significant risk of a conflict between the interests of two or more clients;
 - 2.2 In breach of Rule 1.04 of the SCC, the Second Respondent failed to act in the best interests of his client;
 - 2.3 In breach of Rule 20.09 (2) (a) of the SCC, the Second Respondent failed to advise his client to take independent legal advice once he discovered an act or omission which could give rise to a claim;
 - 2.4 [Withdrawn]

Documents

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

Applicant:

- Application dated 28 June 2011
- Rules 5 and 8 Statements and exhibit bundle "MA1" dated 28 June 2011
- Bundle of correspondence – various dates

- Costs schedule

First Respondent:

- Testimonials

Second Respondent:

- None

Preliminary Matter

4. Mr Afzal sought the Tribunal's consent to withdraw certain of the allegations contained in the Rule 5 Statement.
5. He informed the Tribunal that following discussion with the First Respondent's representative, it had been agreed by the Applicant to withdraw allegation 1.3 against the First Respondent only and allegations 1.4 and 2.4 against both the First and Second Respondents and that paragraphs 25 to 26 and 37 of the Rule 5 Statement required redaction.
6. The Tribunal consented to the withdrawal of allegation 1.3 against the First Respondent only and allegations 1.4 and 2.4 against both the First and Second Respondents.

Factual Background

7. The First Respondent was a firm of solicitors and Recognised Body called [RESPONDENT 1: NAME REDACTED] ("the firm") of 8 Church Lane, Oldham OL1 3AP.
8. The transaction which was the subject of the proceedings before the Tribunal had been handled by the Second Respondent, a former solicitor employed by the firm as a paralegal. The Second Respondent had dealt with the matter in question at the firm's branch office at Rochdale Road, Royton, Oldham.
9. On 26 October 2009, the Respondents had received instructions from the Halifax Building Society ("HBS") to act for them and their borrower, Mr AN in the purchase of a property ("the property"). The purchase price had been £75,000 with a mortgage advance of £50,000.
10. On 2 November 2009, Mr AN had had an initial meeting with the Second Respondent. The Second Respondent's file note dated 2 November 2009 had recorded that Mr AN had lived at the property for 15 years with the owner, Mrs BB and that they had been together for 22 years. The property had been free of mortgage. Mr AN's instructions had been that the property's value was in the region of £105,000 and that he had carried out works worth in excess of £20,000. On the following day, the Second Respondent had seen both Mr AN and Mrs BB to take instructions.

11. On 12 November 2009 the Second Respondent had written to Mr AN to confirm that the firm would act for Mr AN in his purchase of the property, for the HBS and for Mrs BB. In the same letter, the Second Respondent had discussed the sale price of £75,000 which upon Mr AN's instructions had taken into account the improvements and renovations carried out by Mr AN to the property. The letter had stated that as Mr AN had valued the property in the region of £105,000, the proposed sale price of £75,000 with a mortgage of £50,000 represented a discount of £30,000 to Mr AN and reflected the improvements he had carried out. No letter had been sent to Mrs BB by the Second Respondent.
12. On 25 November 2009, both Mrs BB and Mr AN had attended the Respondents' office to sign the relevant documentation. The manuscript attendance note had recorded that the Second Respondent "saw client + B". The note had further recorded that the £25,000 balance was effectively a gift "from B" and reflected the improvements carried out by Mr AN. In a statement filed in civil proceedings in the Manchester County Court, Mrs BB said that it had only been at that meeting that she had understood that the transfer would be for the entire legal interest in the property and that she had gone ahead with the transaction because she had felt under pressure to do so.
13. The date of completion had been set for 30 November 2009. Two statements of account had been prepared by the Second Respondent. The first had indicated that Mr AN needed to provide £25,339.50 in order to complete. The second, addressed to Mrs BB, had stated that taking into account the gifted deposit, Mrs BB had been entitled to £49,660.50. This had not been consistent with the Respondents' instructions, which had been that the purchase price of £75,000 had already taken into account the improvements. As a result, Mr AN had received the benefit of two discounts for his improvements. Mr AN had not paid anything on the purchase save for his legal costs.
14. There had then been a slight delay as the Respondents had been waiting for confirmation from the HBS that the sale could go ahead taking into account the gifted deposit.
15. On 18 December 2009, the Second Respondent had written to Mr AN and confirmed that authority had been received from the HBS to complete the transaction. The letter had only been addressed to Mr AN whilst the salutation had been addressed to both clients. The letter had also enclosed a client account cheque for £49,660.50 made payable to Mr AN. This represented the sale proceeds to which Mrs BB alone had been entitled as sole owner of the property.
16. The Respondents' file had recorded that on 6 January 2010, Mrs BB had complained to the Respondents that the cheque had been cashed by Mr AN. The Respondents had proceeded to make attempts through a third-party to persuade Mr AN to return the cheque or to account for the proceeds but without success. Mrs BB had then written to the Respondents and complained about their actions and demanded her cheque for £49,660.50.
17. In March 2010, Mrs BB had instructed another firm of solicitors and the Respondents had then reported Mr AN's actions to the police. Mrs BB brought a claim for

professional negligence against the Respondents, which had arisen from the misappropriation of £49,660.50 and which had been handled by the Respondents' insurers and their solicitors.

Witnesses

18. The Second Respondent gave evidence.
19. The Second Respondent affirmed and confirmed the truth of his Witness Statement dated 13 April 2010 which had been filed in the civil proceedings. He confirmed that he had not filed any evidence in the proceedings before the Tribunal.
20. The Second Respondent said that he had been a conveyancing specialist for the vast majority of his legal career and had not been a "novice". He said that he had worked for a variety of clients over his twenty-five year career up until the case of Mr AN and Mrs BB.
21. The Second Respondent said that when he had initially received instructions they had referred to Mr AN only and not Mrs BB. He had seen Mr AN at his office on 2 November 2009 and had discussed the transaction with him. This had included that Mrs BB had been estranged from her former husband and that he might possibly make a claim on her property and for that reason she had wanted to transfer the property to Mr AN. The Second Respondent said that had been a matter which he had needed to discuss with Mrs BB.
22. The Second Respondent said that Mr AN and Mrs BB had been in a longstanding relationship of approximately twenty-two years and had lived in the property together for over fifteen years. He said that he had made it clear to Mrs BB that she did not have to transfer the property or her interest in the property due to the length of time she and her estranged husband had been separated.
23. The Second Respondent said that at the point of the second meeting with Mr AN and Mrs BB he had concluded the meeting by giving Mrs BB the option of him acting for both of them or she could instruct alternative solicitors. He said that Mrs BB had unequivocally said that she wanted the Second Respondent to act for both of them to which he had agreed.
24. The Second Respondent said that at no time had he considered that there was a conflict of interest or risk of one. Mr AN and Mrs BB had not been strangers but effectively "married" due to the longevity of their relationship and he had viewed this as highly relevant.
25. The Second Respondent did not accept that Mrs BB had been pressurised by Mr AN and said that it was nonsense to have suggested that Mrs BB had been vulnerable. The Applicant had referred to her at various times as having been "elderly" but the Second Respondent said that could not have been further from the truth. She had been a very active lady of sixty-plus, had held down two jobs and had understood the legal situation far better than Mr AN. The Second Respondent said that had Mrs BB clearly been "vulnerable" he would have referred her to another firm as he had done countless times before in the course of his career.

26. In response to a question from the Tribunal, the Second Respondent said that he had discussed with Mrs BB the risks of transferring the property into the sole name of Mr AN but that it had been treated in a jocular manner by both of them. She had been adamant that she wanted to take that course of action and for the property to have no longer been in her name. The Second Respondent referred to his letter dated 12 November 2009 which stated:
- “We also note for the record that B has concerns that her former husband may seek to make a claim against her/the property given that he has apparently fallen on hard times. On the basis however that B had not lived with her husband for over twenty years and has never supported and maintained him during that time and that her husband has not contributed towards either purchase or subsequent renovation work of the property, then we are confident that he would have virtually no claim whatsoever against either B nor the property”.
27. The Second Respondent accepted that the letter should have been addressed to both Mr AN and Mrs BB but had only been addressed to Mr AN.
28. The Second Respondent said that he had not seen it as his duty to ascertain if the figures provided to him by Mr AN had been correct or not. He said that it had been the decision of Mr AN and Mrs BB to affect the transfer of the property and they had been two mature adults who had decided on that course of action. Mrs BB was to receive the majority of the sale proceeds and it had also been evident that they wanted to raise funds.
29. Mr AN and Mrs BB had attended on 25 November 2009 to sign documentation and the Second Respondent said that there had been no evidence that she had been confused or that she had not known what she was signing. She had been aware that she was transferring the whole interest in the property and she had done so of her own free will. The Second Respondent said that he had not been aware until the meeting on 25 November that there had been a gift element. The HBS had agreed to that.
30. The Second Respondent said that once the matter had completed in December 2009, the sale proceeds had been sent but he said that due to an administrative error the cheque had been made payable to Mr AN and not Mrs BB as it should have been. The Second Respondent said that the error had not been due to anything he had done; he had not signed the cheque. He said that all cheques had to be dealt with by head office. His secretary Ms TW had completed the cheque requisition slip which had been signed by her and it would then have been passed to head office for the cheque to be written. The Second Respondent referred the Tribunal to the cheque requisition slip but said that he did not know why it had been made out to Mr AN and that it had been a mistake.
31. The Second Respondent said that he thought the transaction had been dealt with satisfactorily. The HBS’s interest had been secured and the sale proceeds had been sent out. It had not become apparent that the sale proceeds had been misappropriated until the beginning of January 2010 when he had been on holiday. He said that he had been mortified that the monies had been paid to Mr AN but that there had been little

he could do as he had not been in the office. He recalled that he had spoken to the senior partner and he had presumed that the matter would be dealt with by the partners from then on.

32. The Second Respondent said that Mr S had agreed to speak to Mr AN in an effort to retrieve the sale proceeds. Mr S had known Mr AN and had referred him to the firm to deal with the transfer of the property. The Second Respondent said that he had heard from Mr S that Mr AN and Mrs BB's relationship had been volatile but that they had invariably reunited after any "relationship problems". He said that he had suspected at one stage that Mr AN and Mrs BB had effected a "scam" but although the firm's indemnity insurers had made enquiries, he had been unaware if it had been proved.
33. In response to cross-examination by Mr Afzal, the Second Respondent acknowledged that Mrs BB would have had no protection with regard to remaining living in the property but she would have received nearly £50,000 had the error with the cheque not occurred. He had not seen it as his duty to query what had been agreed by the parties and he had not viewed it as an "at arm's length" transaction. Mrs BB had been happy with the figures as agreed between the parties including the gifted element. He had not believed that Mr AN had commenced the transaction with a view to misappropriating the funds; it had been the firm's mistake and Mrs BB had been fully recompensed.
34. In response to a question from the Tribunal the Second Respondent said that he had not been aware of the bar to acting for seller, purchaser and lender as per the Council for Mortgage Lenders Handbook ("CMLH"). He said that there had not appeared to have been a conflict regarding the HBS and once there had been an issue regarding the gifted element he had held up the transaction to inform the HBS and to seek authority from them; he said that their interests had been protected at all times.
35. The Second Respondent confirmed that the branch office where he had worked had been regularly supervised by the firm. Partners had attended almost daily and he had regularly had files sampled which had been discussed with a partner.

Findings as to Fact and Law

36. The Tribunal applied its usual standard of proof namely the higher standard, beyond reasonable doubt.
37. **Allegation 1.1: In breach of Rule 3.01 of the Solicitors Code of Conduct 2007 ("SCC"), the First Respondent acted in a transaction where there was a conflict of interest or a significant risk of a conflict between the interests of two or more clients.**

Allegation 1.2: In breach of Rule 1.04 of the SCC, the First Respondent failed to act in the best interests of their client.

Allegation 2.1: In breach of Rule 3.01 of the Solicitors Code of Conduct 2007 ("SCC"), the Second Respondent acted in a transaction where there was a conflict of interest or a significant risk of a conflict between the interests of two or more clients.

Allegation 2.2: In breach of Rule 1.04 of the SCC, the Second Respondent failed to act in the best interests of his client.

- 37.1 Mr Afzal referred the Tribunal to the Rule 5 Statement in relation to the background to the proceedings. On 26 October 2009 the Respondents had received instructions from the HBS to act for them and for their borrower, Mr AN, in the purchase of a property. The purchase price had been £75,000 with a mortgage advance of £50,000.
- 37.2 Mr Afzal said that the seller of the property had been Mrs BB with whom Mr AN had lived for fifteen years; the couple had been together for 22 years in total. On 2 November 2009, the Second Respondent had met with Mr AN and had recorded details of the relationship in a file attendance note dated 2 November 2009. The note had also recorded that the property was free of mortgage. It had been Mr AN's instructions that the property was worth £105,000 and that he had carried out works on the property to the value of £20,000.
- 37.3 On 3 November 2009, the Second Respondent had met with Mr AN and Mrs BB. On 12 November 2009, the Second Respondent had written to Mr AN and had confirmed that he would act for him in the purchase of the property, for Mrs BB and for the HBS. The letter had stated:
- “Given your longstanding relationship with B, we take the view that it is not necessary for her to be separately represented and we will therefore act for both yourself and B with regard to the transaction. We note that both of you have no objection to this”.
- 37.4 Mr Afzal said that the same letter had also discussed the sale price and the improvements and renovations Mr AN had carried out to the property. Mr AN had valued the property at £105,000, the proposed sale price had been £75,000 and the mortgage £50,000; this had represented a discount of £30,000 to Mr AN. The letter had also stated:
- “On the basis however that B has not lived with her husband.....then we are confident that he would have virtually no claim whatsoever against either B nor the property”.
- 37.5 Mr Afzal said that on 25 November 2009, Mr AN and Mrs BB had attended at the Respondents' office to sign documentation and the file attendance note had recorded that the Second Respondent “saw client + B”. Mr Afzal said that in civil proceedings in the Manchester County Court, Mrs BB had filed a Statement in which she had said that it had only been at that meeting on 25 November that she had understood she would be transferring her entire legal interest in the property; she had gone ahead because she had felt under pressure to do so.
- 37.6 Mr Afzal said that the date of completion had been set for 30 November 2009. Two statements of account had been prepared; one which indicated that Mr AN had to provide £25,339.50 to complete and the other, addressed to Mrs BB which stated that allowing for the gifted deposit, Mrs BB would have been entitled to £49,660.50. Mr Afzal said that this had not been consistent with the Respondents' instructions which

had been that the £75,000 had already taken into account the improvements. As a result, Mr Afzal said that this meant that Mr AN had benefitted twice for his improvements.

- 37.7 Mr Afzal said that there had been a slight delay to completion as the Second Respondent had had to wait to hear from the HBS to proceed, allowing for the gifted deposit. On 18 December the Second Respondent had written to Mr AN and confirmed that the HBS had given authority to complete the transaction. Mr Afzal said that the letter had only been addressed to Mr AN whilst the salutation had been to both Mr AN and Mrs BB.
- 37.8 Mr Afzal said that the Respondents had enclosed a cheque in the sum of £49,660.50 which had been made payable to Mr AN only. This had represented the sale proceeds to which Mrs BB alone had been entitled as the sole owner of the property.
- 37.9 Mr Afzal said that on 6 January 2010 Mrs BB had complained to the Respondents that the cheque had been cashed by Mr AN and despite attempts by the Respondents via a third party to persuade Mr AN to return the cheque or account for the proceeds, this had proved unsuccessful.
- 37.10 Mr Afzal said that in March 2010 Mrs BB had instructed a new firm of solicitors and had brought a claim for professional negligence against the Respondents and the Respondents had reported Mr AN's actions to the police.
- 37.11 In relation to allegations 1.1 and 2.1, Mr Afzal submitted that there had been a clear conflict of interest or significant risk of such a conflict with the Respondents having acted for both Mr AN and Mrs BB. Mr Afzal said that this had affected the firm's advice on a number of issues which had included:
- 37.11.1 Whether Mrs BB had needed to sell the property when the Respondents had advised her that her estranged husband would have been unable to make a financial claim;
 - 37.11.2 Whether Mr AN's improvements could or had given him any legal beneficial interest in the property;
 - 37.11.3 Whether Mr AN had been entitled to a further gifted deposit of £25,000 when he had already agreed to purchase the property at the reduced price of £75,000; and
 - 37.11.4 Whether a transfer into the sole name of Mr AN had been in Mrs BB's interests or advisable.
- 37.12 Mr Afzal submitted that there had been a significant risk that the duties owed by the Respondents to act in the best interests of Mrs BB and Mr AN had conflicted. Mrs BB had not been advised that she should have received separate advice given that she intended to give up all of her interest in the property for half of its value.
- 37.13 In relation to allegations 1.2 and 2.2, Mr Afzal said that the Respondents had failed to act in the best interests of Mrs BB in breach of their core duties. The Respondents

only communication with Mrs BB had been at two meetings, both of which had been held in the presence of Mr AN. Their correspondence had only been addressed to Mr AN and they had assumed that it would be seen by Mrs BB.

- 37.14 Mr Afzal said that the aggravating features had been the fact that the Respondents had not considered what interest if any Mrs BB would have had in the property once it had been sold and that they had sent the cheque for the sale proceeds to Mr AN who had allegedly then misappropriated it. Mr Afzal submitted that the Respondents had adopted a casual attitude to Mrs BB's interests which had allowed Mr AN to act in the way he had.
- 37.15 Mr Afzal said that the confusion with regard to the gifted deposit had been consistent with the Respondents' approach as they had failed to heed that Mr AN had received the benefit of the improvements twice. No account had been taken of the inconsistency in Mr AN's instructions to the detriment of their other client Mrs BB. Mr Afzal submitted that by their shortcomings, the Respondents had diminished the trust that Mrs BB, an elderly client was entitled to place in her solicitors.
- 37.16 Mr Nelson said that the First Respondent admitted allegations 1.1 and 1.2. He confirmed that there had been no allegations of personal misconduct by any of the partners of the firm but that the firm itself as the recognised body had acknowledged its professional obligations and admitted those allegations against it.
- 37.17 The Second Respondent denied allegations 2.1 and 2.2. He said that he had not viewed Mrs BB as having been "vulnerable" at any time during the course of the transaction and had the transaction proceeded as it should have done, she would have been very satisfied with the outcome and receipt of approximately £50,000. It had been her choice to proceed with the transfer and she had not at any time been pressurised.
- 37.18 The Second Respondent said that he had not considered whether there was a conflict of interest at any time; Mr AN and Mrs BB had been in a long standing relationship and any discussion about potential risk to Mrs BB if the transfer went ahead had been treated as a joke by both of them. The Second Respondent believed that the matter had been dealt with satisfactorily and that he had acted in the best interests of all parties concerned.
- 37.19 The Tribunal found that there had been a significant risk of a conflict of interest with the Respondents having acted for both Mr AN and Mrs BB. The Tribunal accepted that this had affected the firm's advice to Mrs BB including whether she needed to sell the property at all, whether Mr AN's improvements had entitled him to any legal or beneficial interest in the property and whether he had been entitled to a further gifted deposit of £25,000 when he had already agreed to purchase the property at less than his estimated value of £105,000.
- 37.20 The Tribunal further noted that there had been no consideration given as to whether the transfer into the sole name of Mr AN had been in the best interests of Mrs BB or had been advisable. It had been evident that Mrs BB had not been advised at any time to seek alternative, separate advice from that of Mr AN. It had also been evident that none of the correspondence from the Respondents had been addressed to Mrs BB but

to Mr AN only. The Second Respondent had accepted in his evidence that all correspondence should have been addressed to both of them.

- 37.21 The Tribunal found that these factors had been aggravated by the fact that the Respondents had not considered what interest if any Mrs BB would have had in the property once it had been sold and by the cheque for the sale proceeds having been sent to Mr AN who had then misappropriated the funds. It followed that there had been a significant risk of conflict, and therefore the Respondents could not have been acting in the client's (Mrs BB's) best interests.
- 37.22 The Tribunal found allegations 1.1 and 1.2 proved against the First Respondent on the facts and on the documents. The First Respondent had admitted allegations 1.1 and 1.2.
- 37.23 The Tribunal found allegations 2.1 and 2.2 proved against the Second Respondent on the facts and on the documents.
38. **Allegation 2.3: In breach of Rule 20.09 (2) (a) of the SCC, the Second Respondent failed to advise his client to take independent legal advice once he discovered an act or omission which could give rise to a claim.**
- 38.1 Mr Afzal said that the Second Respondent had failed to advise Mrs BB to take independent legal advice once he had discovered the error in relation to the cheque. On 6 January 2010 Mrs BB had complained to the firm that the cheque for the sale proceeds had been sent to Mr AN by mistake. Mr Afzal submitted that when the Second Respondent had become aware of the mistake, he knew or should have known that the error could lead to a claim being made against the firm.
- 38.2 Mr Afzal said that the Second Respondent had at that stage been under a professional duty to have informed Mrs BB that independent legal advice should be sought. The Second Respondent had failed to do that and had continued to act in unsuccessful attempts to persuade Mr AN to return the cheque. It had not been until March 2010 that Mrs BB had received independent legal advice when she had consulted another firm.
- 38.3 The Second Respondent said that he had been mortified when he had discovered that the cheque for the sale proceeds had been sent to Mr AN in error and not Mrs BB. He said that he had been away on holiday when it had come to light and he had discussed it with the partners at the head office. He believed that Mrs BB had also spoken to the partners and he had presumed that the partners had dealt with resolving the complaint.
- 38.4 The Second Respondent said that he had then seen Mrs BB on 22 January 2010 and that there had been no mention at that stage or any other conversations with her where she had indicated that she had not been properly advised. He said that the issue of independent legal advice had arisen substantially later when she had seen another firm regarding possible professional negligence.
- 38.5 The Second Respondent said that he had genuinely believed that the complaint would be resolved and that Mr AN would return the monies. He said that he had not intended to withhold anything from Mrs BB or to have misled her. He had been on holiday

when the complaint had been made and his first working week had been the second week of January 2010. Once it had become apparent that the issue could not be resolved, Mrs BB had been advised to seek independent legal advice and had gone elsewhere but that had been dealt with by a partner.

38.6 The Tribunal had noted that as at 6 January 2010 when Mrs BB had complained, the Second Respondent had been away on holiday and not in the office. The partners had become involved and dealt with the complaint. It had been their responsibility as partners in the firm to deal with Mrs BB's complaint and to advise Mrs BB to seek independent legal advice.

38.7 The Tribunal was not satisfied on the facts and on the documents and therefore found allegation 2.3 not proved against the Second Respondent.

39. **Allegation 1.5: In breach of Rule 22 of the Solicitors Accounts Rules ("SAR"), the First Respondent withdrew money from client account other than as permitted.**

Allegation 1.6: In breach of Rule 32 of the SAR, the First Respondent failed to keep properly drawn up accounting records.

Allegation 1.7: In breach of Rule 7 of the SAR, the First Respondent failed to remedy the breaches promptly.

39.1 Mr Afzal said that these allegations related to breaches of the SAR by the First Respondent only.

39.2 Mr Afzal said that as a consequence of the First Respondent's failure to hold the sale proceeds within Mrs BB's client account, as the seller, the sale proceeds had been incorrectly withdrawn and paid out to the purchaser, Mr AN in breach of Rule 22 of the SAR.

39.3 In breach of Rule 32 of the SAR, the Respondents had failed to keep accounting records properly written up to show dealings with client money received, held or paid by the solicitor. Mr Afzal said that the First Respondent had had a ledger entry for Mr AN for his purchase of the property but there had been two distinct clients; Mr AN on the purchase and Mrs BB on the sale. When the sale had completed, the First Respondent had been required to record the sale proceeds in a ledger card for Mrs BB as the seller and had failed to do that.

39.4 Mr Afzal said that once the First Respondent had become aware that the sale proceeds had been sent to Mr AN in error, Rule 7 of the SAR placed them under a duty to remedy the breach promptly. Mr Afzal submitted that a separate ledger should have been opened for Mrs BB and the sale proceeds of £49,660.50 should have been credited to that ledger. The First Respondent had failed to do that. Rule 7 (2) extended to having to replace missing money from the principal's own resources, whether or not a claim had subsequently been made on the firm's insurance.

39.5 Mr Nelson said that allegations 1.5, 1.6 and 1.7 had been admitted by the First Respondent.

- 39.6 The Tribunal was satisfied on the facts and on the documents that the First Respondent had breached Rules 22, 32 and 7 of the SAR and found those allegations proved.
- 39.7 Mr Afzal referred the Tribunal to the Section 43 Order sought in relation to the Second Respondent. He submitted that such an order was required to prevent the Second Respondent working in another firm of solicitors in any capacity without the Applicant's prior approval. The persistent shortcomings on the part of the Second Respondent in dealing with the transaction overall and in particular with regards Mrs BB had been so grave as to necessitate the imposition of such conditions in the interests of the public.

Previous Disciplinary Matters

40. The Second Respondent had appeared before the Tribunal on three previous occasions; in 1994, 1996 and 1998.

Mitigation

First Respondent

41. Mr Nelson said that the firm had admitted the allegations against it having accepted its absolute responsibility for compliance with the SCC and the SAR. Two of the partners had attended the hearing albeit the proceedings had been brought against the recognised body alone; this had been a measure of their concern regarding the proceedings and the seriousness with which they regarded the same.
42. Mr Nelson said that these events had occurred despite the checks and balances which had been put in place at the firm. The Second Respondent had taken on both Mr AN and Mrs BB as clients and he had had a duty to both; there had been a risk of conflict and the First Respondent accepted that Mrs BB should have been separately represented.
43. Mr Nelson submitted that Mr Afzal might have misinterpreted the reduction in the purchase price and the gifted element as these had been two separate elements; in the course of the civil litigation, the property had been valued at between £70,000 and £75,000 and Mrs BB had therefore received approximately two-thirds of the value. She had given clear instructions regarding the gifted element.
44. Mr Nelson said that also in the course of the civil litigation, the firm's former insurers Quinn had photographed Mrs BB at the property with Mr AN and neighbours had confirmed that she had been there. This had been after the complaint by Mrs BB. The civil proceedings had been settled with a Tomlin Order and the property had subsequently been sold.
45. Mr Nelson said that it had been to the Second Respondent's and the firm's credit that the HBS had been properly told of the gifted element. Mr AN's actions with regard to the sale proceeds had been dishonest and he had been imprisoned as a result.

46. Mr Nelson said that the Second Respondent had acknowledged in his evidence that there had been regular supervision of him, attendance by partners at the branch office and file reviews and the Second Respondent had been a very experienced conveyancer.
47. In relation to the SAR breaches, Mr Nelson said that the ledger had been opened in the name of Mr AN only and therefore the accounts checks could not have identified that there had been two parties involved in the transaction. The SAR breaches had flowed from the fact that the transaction had gone wrong; the secretary had written the wrong name on the cheque requisition slip, the file had been in the name of Mr AN only and the cashiers had not identified the error when the cheque had been drawn.
48. Mr Nelson said that the firm had accepted that the cheque request procedure had led to the error in the cheque having been requested in the name of Mr AN rather than Mrs BB but he said that this had not been the firm's official procedure. It had been the Second Respondent's own procedure to have requested the secretary to complete the requisition slip and obtain the cheque.
49. At the time the transaction had taken place, Mr Nelson said that the firm had been undertaking a high number of property transactions; between 2009 and 2010 there had been 1600 transactions and over a five year period the firm had had £83 million pass through the client account. He said that the firm had had a good record in relation to complaints and indemnity insurance claims.
50. Mr Nelson submitted that the firm had acted quite properly once the partners had become aware of the matter and had been guided by their insurers Quinn. They had been unable to afford immediately to replace the monies but they had subsequently extinguished the debt.
51. Mr Nelson said that the firm was well regarded and he referred the Tribunal to the various testimonials which had been provided. The firm had admitted the allegations without delay and had sought to rectify matters. The firm apologised to the Tribunal for the breaches which had occurred. Mr Nelson said that although they thought that they had done their best, the partners had since sought to strengthen and revise their procedures. The firm had applied for the Conveyancing Quality Mark which had been stood over for three months pending the outcome of these proceedings and they intended to apply for LEXCEL in the future.

Second Respondent

52. The Second Respondent said that he had been very disappointed to hear that the property had ultimately been valued at £75,000 and that Mr AN and Mrs BB had been seen together after the event. He said that Mr AN had been responsible for misappropriation of the sale proceeds. The Second Respondent asked the Tribunal to bear in mind when they considered the Section 43 Order sought by the Applicant that he had not been dishonest or brought the profession into disrepute.
53. The Second Respondent said that in spite of his past disciplinary history before the Tribunal, of which he had been fully aware, he had previously been a good solicitor when on the Roll and he had still been consulted by friends and acquaintances for

legal help and advice although he could no longer provide the same. He said that he had been popular with his fellow professionals and that he could have provided references although he had not done so.

54. The Second Respondent informed the Tribunal that he did not intend to return to a legal career presently although he would have liked to do so in due course. He said that he had been on a break and had been working as a mental health nursing assistant for which his take home pay amounted to £1000 per month. He had no other income or pension and his outgoings exceeded the household income. His house, which was in joint names, had a total equity of approximately £40,000.
55. The Second Respondent informed the Tribunal that he had also been greatly affected by various personal circumstances during the course of the previous year and which were ongoing.
56. The Second Respondent told the Tribunal that he greatly regretted the difficulties which the case had caused the firm and it had been a great disappointment to him when he had parted company with the firm in August 2011.

Sanction

First Respondent

57. The Tribunal had found five allegations proved against the First Respondent, a further two having been withdrawn. The First Respondent had admitted the five allegations, three of which had been breaches of the SAR which were the bedrock of a solicitor's firm and had to be complied with to afford necessary protection to the public. The allegations had also included breach of Rule 1.04 of the core duties and the First Respondent had accepted that it had not acted in the best interests of the client in these particular circumstances.
58. The Tribunal acknowledged that the First Respondent had made admissions and that two of the partners had attended the substantive hearing which was suggestive of the seriousness with which they took the proceedings.
59. The Tribunal had a duty to protect members of the public and to maintain confidence in the profession. In the circumstances, the Tribunal in balancing these duties decided that it was reasonable and proportionate to impose a fine of £10,000 on the First Respondent.

Second Respondent

60. The Tribunal had found two allegations proved against the Second Respondent and one allegation not proved.
61. The Tribunal considered that the Second Respondent must have been aware of the significant risk of conflict in this case and subsequently that by having continued to act for seller, purchaser and lender, he had not acted in the client's best interests namely those of Mrs BB.

62. The Tribunal had also taken into account that the Second Respondent had previously appeared before the Tribunal on no less than three previous occasions.
63. In the circumstances, the Tribunal decided that it was reasonable and proportionate to make a Section 43 Order against the Second Respondent. The Second Respondent could still apply to work in a solicitor's firm in the future subject to the approval of the Applicant and the Tribunal decided that this safeguard was required in his case in the public interest given in particular his previous appearances before the Tribunal.

Costs

64. Mr Afzal referred the Tribunal to the costs schedule. He confirmed that he had estimated the costs of the substantive hearing which could be reduced since the hearing had not lasted the eight hours stated and he corrected the travel rate which should have read £98 and not £140.
65. Mr Nelson confirmed that costs had been agreed between the First Respondent and the Applicant in the sum of £8000 inclusive of VAT and disbursements.
66. The second Respondent confirmed that he had been served with the costs schedule. He said that he had been disappointed by the way in which the Applicant's case had been presented, with the emphasis having been placed on Mrs BB as "vulnerable" and "elderly" which he had disputed. He said that he felt that Mr Afzal had been over-zealous in the allegations made against him, one of which had been withdrawn and one of which had been found not proved by the Tribunal.
67. The Tribunal accepted that the proceedings had been properly brought by the Applicant. It noted that costs had been agreed with the First Respondent. The Tribunal had made allowances for the reduction in the length of the substantive hearing, the travel rate and the reference in the schedule to dealing with the final order. The Tribunal had also borne in mind that one of the allegations had been withdrawn and another partially withdrawn and it had found one allegation not proved against the Second Respondent. In the circumstances, the Tribunal reduced the total costs to £10,500 inclusive of VAT; £8000 to be paid by the First Respondent and the balance of £2500 to be paid by the Second Respondent.

Statement of Full Order

68. The Tribunal Ordered that the Respondent, [RESPONDENT 1], Recognised Body, do pay a fine of £10,000, such penalty to be forfeit to Her Majesty the Queen, and they further Ordered that it do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £8,000 inclusive of VAT and disbursements.
69. The Tribunal Ordered that as from 16th day of January 2012 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Thomas Edmund Michael McManus;

- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Thomas Edmund Michael McManus;
- (iii) no Recognised Body shall employ or remunerate the said Thomas Edmund Michael McManus;
- (iv) no manager or employee of a Recognised Body shall employ or remunerate the said Thomas Edmund Michael McManus in connection with the business of that body;
- (v) no Recognised Body or manager or employee of such a body shall permit the said Thomas Edmund Michael McManus to be a manager of the body;
- (vi) no Recognised Body or manager or employee of such a body shall permit the said Thomas Edmund Michael McManus to have an interest in the body;

And the Tribunal further Ordered that the said Thomas Edmund Michael McManus do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00, inclusive of VAT and disbursements.

Dated this 24th day of January 2012
On behalf of the Tribunal

D Potts
Chairman