AMENDED JUDGMENT

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10796-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NAME REDACTED, solicitor First Respondent

and

JACKIE ELIZABETH FILTNESS, solicitor's clerk
Second Respondent

Before:

Mr E. Nally (in the chair)
Miss T. Cullen
Mr M. G. Taylor CBE DL

Date of Hearing: 5th June 2013

Appearances

Andrew Bullock, counsel, of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

Ms Susanna Heley, solicitor, of Radcliffes LeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ for the First Respondent, who was present.

The Second Respondent, Mrs Filtness, was not present or represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent, were:

1.1 Withdrawn

1.2 Withdrawn

1.3 That he acted in a way that was likely to diminish the trust the public placed in him as a solicitor and in the legal profession, in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 ("the Code");

1.4 That he failed to properly supervise the Second Respondent in breach of Rule 5.01 of the Code;

1.5 Withdrawn

1.6 That he permitted withdrawals of money from client account other than in accordance with Rule 23(1) of the Solicitors Accounts Rules 1998 ("SAR").

2. The allegation against the Second Respondent, Jackie Elizabeth Filtness, on behalf of the Applicant was 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 ("the Act") as amended by the Legal Services Act 2007 in that:

2.1 She acted contrary to Rules 1.02, 1.03 and 1.06 of the Code by virtue of her acting in transactions that were suspicious, bearing the hallmarks of money laundering and potential mortgage fraud;

2.2 She failed to act in clients' best interests or to provide a good standard of service to clients, contrary to Rules 1.04 and 1.05 of the Code;

2.3 She acted in a conflict or potential conflict of interest situation, contrary to Rule 3.01 of the Code.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties which included:

Applicant:

- Application dated 4 August 2011
- Rule 5/Rule 8 Statement, with exhibit "JCM1" comprising 702 pages, dated 4 August 2011
- Witness statement of David Shaw, with exhibit comprising 11 pages, dated 22 September 2011
- Copy email Applicant to Second Respondent 28 May 2013

- Statement of costs dated 28 May 2013

First Respondent:

- Witness statement of First Respondent – undated, filed January 2013
- Skeleton argument of First Respondent dated 10 January 2013
- Terms of settlement document 11 May 2011
- Financial summary with supporting documents – undated, filed 5 June 2013
- Bundle of four testimonials

Second Respondent:

- Copy email Second Respondent to Applicant 5 September 2011
- Email/letter Second Respondent to Tribunal – undated, received 15 January 2013
- Email Second Respondent to Tribunal 8 May 2013
- Copy email Second Respondent to Applicant 3 June 2013

Preliminary Matter (1) – Proceeding in the absence of the Second Respondent

4. The Tribunal noted that the Second Respondent was not present or represented and considered whether the hearing could and should proceed in her absence.

5. The Tribunal noted that in the Second Respondent's email to the Tribunal in January 2013 she said, amongst other things,

> "...I cannot come to the Tribunal as I could not afford representative (sic) as I do not have the benefit of insurance or funds or property or savings. Also, I could not afford the fare to get to London".

In an email of 8 May 2013, the Second Respondent had again indicated that she would not be attending the hearing. This was confirmed in the email to the Applicant dated 3 June 2013 the heading to which noted the case name, number and hearing date and which stated, amongst other matters,

> "I also said that I was financially unable to come to the hearing. I would also like you to note that I would not be able to make this journey as I do not feel well enough. I have [medical condition] and [other medical condition] related problems and do not think I would be able to do this".

6. Mr Bullock submitted that the Second Respondent was clearly aware of the proceedings and the hearing date. The Second Respondent's email of 3 June was in reply to that of the Applicant dated 28 May 2013 in which the date of the hearing – and the fact that the time estimate had been reduced to one day – had been drawn to the Second Respondent's attention. Whilst the Second Respondent had not specifically consented to the hearing proceeding in her absence, she had not sought an adjournment of the hearing. The Second Respondent had not produced any medical evidence in connection with the medical conditions she mentioned.

7. The Tribunal determined that the Second Respondent was aware of the proceedings; indeed, she had engaged with the proceedings to the extent that she had commented on the First Respondent's witness statement in January 2013. Further, the Tribunal determined that the Second Respondent was aware of the time, date and place of the hearing and that this was evidenced in particular by the emails dated 28 May and 3 June 2013 between the Applicant and Second Respondent. The Tribunal was satisfied that the Second Respondent had been served with notice of the hearing date in good time by post and the emails mentioned served to demonstrate her knowledge. Whilst the Second Respondent had not explicitly consented to the Tribunal proceeding in her absence, such consent was implicit in the wording of her email of 3 June 2013. The Second Respondent had indicated that she would not attend the Tribunal hearing. In all of the circumstances, it was just and proportionate to proceed with the hearing in the Second Respondent's absence.

Preliminary Matter (2) – Withdrawal of allegations

8. Mr Bullock told the Tribunal that he had recently taken over conduct of this matter. He had been able to engage in a constructive dialogue with Ms Heley for the First Respondent as a result of which he sought permission to withdraw allegations 1.1, 1.2 and 1.5. The First Respondent admitted the other allegations, albeit in relation to allegation 1.3 both the admission and allegation were restricted to the First Respondent's role in one particular transaction.

9. The Tribunal noted that allegation 1.1 related to Rules 1.04 and 1.05 of the Code, allegation 1.2 to Rule 3.01 of the Code and 1.5 to allegation 10.05 of the Code and allegation 1.5 to Rule 10.05 of the Code. The Tribunal further noted the skeleton argument dated 10 January 2013 which succinctly put the First Respondent's response to those allegations. In short, given that the First Respondent had no personal involvement in any of the transactions in issue, of which the Second Respondent had day to day conduct, save for one matter dealt with under allegation 1.3, it was submitted that allegations 1.1 and 1.2 were simply duplications of the allegation of a failure to supervise the Second Respondent; that allegation had been admitted already. Breaches of Rule 1 of the Code were not strict liability matters, so an element of personal culpable behaviour was required. In this case, there was no evidence of personal culpable behaviour on the part of the First Respondent. So far as the alleged breach of undertakings was concerned, given that the transactions in question appeared to have been fraudulent and possibly a nullity, it was questionable if a solicitor could be liable for not complying with an undertaking which was procured as a result of fraud or which was a nullity. Further, the First Respondent had taken the steps which he had believed, in good faith, were required to perform the undertaking. It was submitted that the undertakings could be vitiated by the fraud which appeared to have taken place. It was noted that there was no suggestion by the Applicant that either Respondent had been a party to or complicit in the fraud.

10. The Tribunal determined that it was just and proportionate to permit the withdrawals as requested by the Applicant. The First Respondent's admission under allegation 1.4 was sufficient to deal with the mischief which had been alleged under allegations 1.1 and 1.2. The Tribunal further permitted the Applicant to proceed under allegation 1.3 solely in relation to one transaction, detailed below, and noted that so far as the First Respondent was concerned the other factual matters under that allegation should be

withdrawn. The Tribunal was further satisfied that it was proper to permit the allegation of breach of undertakings to be withdrawn, given the suspicious nature of the transactions in question.

11. The Tribunal noted that the allegations to be considered in respect of the First Respondent were allegations 1.3, 1.4 and 1.6, all of which were admitted. The Second Respondent had not admitted any allegations and no reasons had been presented why those allegations should be withdrawn, so all of the allegations against the Second Respondent would be heard.

Preliminary Matter (3) – Burden and standard of proof

12. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In accordance with R v Jones [2001] EWCA Crim 168, the Tribunal would exercise particular care in scrutinising the Applicant's case in the absence of the Second Respondent. Mr Bullock drew to the Tribunal's attention in particular the need to consider only the allegations as set out in the Rule 5 Statement and not any other possible allegations which might have arisen from the facts set out.

Preliminary Matter (4) – Order of proceedings

13. Mr Bullock told the Tribunal that the appropriate notices under Rule 13(6) and Rule 14(2) of the Tribunal's procedural rules had been served on the Respondents and no counter-notices served. Although the author of the Forensic Investigation Report was present, it was not proposed to call him to give evidence although he would be available in the event that the Tribunal had any questions for him or there were any matters in the Report which required clarification. It was confirmed that Ms Heley had no questions to put in cross examination. The Tribunal was content to proceed by reference to the documents and noted that Mr Shaw could be called to give evidence if required. Mr Shaw was permitted to remain in the court room during the opening of the case.

14. The testimonials presented for the First Respondent, his financial statement and any matters which went to mitigation rather than the substance of the allegations were not considered by the Tribunal until findings had been made in respect of the allegations. The Tribunal had noted a request by the First Respondent's solicitor for certain adjustments to the normal seating plan for the hearing due to the First Respondent's health needs and that request was accommodated.

Factual Background

15. The First Respondent was born in 1951 and was admitted to the Roll of Solicitors in 1977. His name remained on the Roll of Solicitors. At all material times the First Respondent carried on practice on his own account under the style of [*NAME REDACTED]* at 10 Electric Parade, George Lane, South Woodford, London E18 2LY ("the Firm").

16. The Second Respondent was born in 1961 and was not an admitted person. At all material times she was employed by the Firm as a conveyancing legal assistant. At the material time, the Second Respondent had worked for the Firm for approximately 12 years. She was dismissed by the Firm on 13 April 2010.

17. At the material times, the First Respondent employed a former partner, Mr K who carried out locum duties and the like. The Firm also employed the Second Respondent, a book-keeper (Mrs B) and a secretary.

18. An inspection of the books of account and other documents of the Firm was conducted, without notice, by David Shaw, a Senior Investigation Officer ("SIO") of the Forensic Investigation Unit of the SRA. The inspections commenced on 24 February 2010. A Forensic Investigation Report ("FIR") dated 3 November 2010 was produced following the inspection. The Applicant relied on the FIR, in particular with regard to the SAR breach alleged and a number of matters arising from conveyancing transactions conducted by the Second Respondent.

<u>Solicitors Accounts Rules 1998</u>

19. During a meeting on 24 February 2010 the First Respondent told the SIO that both he and Mr K were mandated to operate the Firm's bank accounts but that Mr K had not operated the accounts for more than a year. On 31 March 2010 the First Respondent informed the SIO that the Firm's bank account with Lloyds TSB was operable via LloydsLink as an online facility by the use of electronic security devices. The First Respondent stated that he was aware of payments made from the client bank account by the Second Respondent and/or by Mrs B.

20. During the course of the investigation, the SIO noted a number of TT request forms, none of which were signed. The First Respondent informed the SIO that he had not signed specific authorities in respect of payments made by the LloydsLink banking facility. The First Respondent admitted that in not signing the authorities to permit the transfers he was in breach of Rule 23(1) of the SAR.

<u>Sale of properties</u>

21. The firm acted for Mr SM and Mr WM, Mr GR and Mr JSR, or individuals purporting to be those persons and in any event purporting to be the vendors of a number of properties which had been sold at auction in or about December 2009. In each of the matters set out below, the sale was completed on the basis of redemption documents which now appeared to be fraudulent, such that the mortgage was not redeemed. In each matter the instruction had been referred to the Firm by Lucas & Co. Further, in each matter the vendors, after completion, denied instructing the Firm. After completion, the balance of the sale proceeds was disbursed to third parties who on the face of the file of papers were not connected to the vendors.

<u>*Sale of 10 flats at Cutmore Ropeworks*</u>

22. Mr SM and Mr WM each sold 5 flats at Cutmore Ropeworks, the total paid for the 10 flats being £1,040,000. The Firm was instructed on or before 5 January 2010, as shown by the client care letters of that date to Mr SM and to Mr WM. On 14 January

2010 the Firm received purported mortgage redemption statements by fax from Mortgage Express; the one concerning Mr SM showed a balance to redeem the mortgage of £25,766.73 as at 15 January 2010 and that concerning Mr WM showed a balance required of £23,850.96 as at 15 January 2010.

23. On 15 January 2010 Mr SM in a letter instructed the Second Respondent to remit the net sale proceeds to an account at Barclays in the name "The Silk Emporium UK Ltd".

24. On 22 January 2010 the First Respondent met Mr SM at length, as recorded in an attendance note and also met Mr WM, again as recorded in an attendance note. In the course of the meetings, the First Respondent queried why Mr SM was selling the flats at a loss and the instruction to remit the balance of the proceeds of sale to a company. On 25 January 2010 Mr WM instructed the Firm by letter to remit the balance of the sale proceeds to an account with Barclays in the name of a company, NVS Suppliers Ltd.

25. On 26 January 2010 the Firm received sale proceeds then disbursed sums to the accounts mentioned on the faxes of 14 January 2010 (see paragraph 22) and disbursed the sum of £433,405.22 to The Silk Emporium UK Ltd, as instructed by Mr SM. On the same date, the Firm sent £435,320.25 to NVS Suppliers, as instructed by Mr WM.

26. On 27 January 2010 the purchaser's solicitors, Lucas McMullan Jacobs, emailed the Firm to state that the keys provided were not the keys to the properties and appeared to be all copies of one key. By a letter dated 9 February 2010, Bowling & Co Solicitors informed the Firm that they acted from Mr SM and Mr WM, both of whom denied instructing the Firm or executing any transfer. On 10 February 2010 the First Respondent reported this matter to his professional indemnity insurers. It was subsequently learned that the amount required to redeem the mortgages with Mortgage Express at the time of the purported transaction was approximately £1.6 million.

Sale of 100 H Road

27. The Firm was instructed by Mr GR in connection with the sale of 100 H Road at a price of £375,000 on or about 17 December 2009, as shown by a client care letter. On 12 January 2010 the Second Respondent sent requests for redemption statements addressed to the mortgagees, Bank of Ireland and Future Mortgages by fax to numbers shown on documents provided by Mr GR. On 14 January 2010 purported redemption statements were received by the Firm showing that the sums required to redeem the mortgage as at 15 January 2010 were £8,565.65 and £26,422.35 respectively. It appeared from a letter from the Firm's file that completion took place on 15 January 2010. The total sum of £35,023.84 was disbursed in order to redeem the Bank of Ireland and Future Mortgages charges.

28. By letter dated 18 January 2010 Mr GR instructed the Firm to "kindly send my funds to the following account..." and gave details of an account at the Royal Bank of Scotland in the name of "The Interchange Organisation Limited" and on 19 January 2010 the Firm despatched £323,025.41 as instructed.

29. By 28 January 2010 the Second Respondent was aware of a potential problem with the above transaction as on that date he received a claim notification form from his professional indemnity insurers.

82 C Road

30. The Firm was instructed by Mr JSR on or about 17 December 2009 in connection with the sale of 82 C Road at a price of £255,000. On 11 January 2010 the Firm sent a fax addressed to CHL Mortgages requesting a redemption figure; the fax number was derived from a document produced by the client which pre-dated the instruction to the Firm. On 14 January 2009 the Firm received what appeared to be a redemption statement from CHL Mortgages which indicated that the amount required to redeem the mortgage as at 15 January 2010 was £22,277.65. On 18 January 2010 the client gave instructions to send "my funds" to an account with HSBC in the name "Mondeo Trading (UK) Ltd". On 19 January 2010 the sale completed. The sum of £22,293.84 was sent to the account number given for CHL Mortgages and £220,809.91 was sent in accordance with the client's instructions.

31. On 27 January 2010 the Firm received a letter by fax from BM Solicitors, who acted for the purchaser, marked "very very urgent" and stating that they had been contacted by other solicitors who stated that they were acting for Mr JSR and that he had not instructed the Firm.

"Back to back" transactions

32. The SIO identified in the course of the investigation four transactions which appeared to be "back to back" transactions and two were exemplified in the FIR. In both of those transactions, the Firm had acted for the ultimate purchaser. A firm of licensed conveyancers, S&D, acted for the intermediate purchaser/vendor which in both cases was a company, "Number Six Fashions Ltd" ("Number Six"). The lender in both cases was National Westminster Home Loans ("Nat West") and the Firm was instructed by the lender under the terms of the Council of Mortgage Lenders Handbook ("CML Handbook"). The CML Handbook requires solicitors acting for the lender to carry out certain steps, including reporting to the lender certain matters which might be relevant to the decision to lend.

Mr KN – Purchase of 185A H Road

33. On 2 November 2009 Nat West made an offer of loan to Mr KN in the sum of £500,000 plus fees. The Firm was instructed to act for Mr KN in purchasing the property for £850,000 on or about 9 November 2009. On 9 November 2009 the Firm wrote to Nat West to inform them that this was a sub-sale and that the Firm would not hold the entire purchase price as, it was said, the vendor's solicitors had previously acted for Mr KN and held a sum sufficient to complete the purchase. No response was received to that letter. On 13 November 2009 Nat West advanced the mortgage monies and the sum of £464,352.75 was forwarded to S&D. On 13 November 2009 Number Six had purchased the property for £130,000 and on the same day sold it to Mr KN for a stated price of £850,000 i.e. there was an uplift of £720,000.

Mr SJ – Purchase of Flat 2, 315 B Road

34. On 16 November 2009 Mr SJ instructed the Firm in connection with the purchase of the property at a stated price of £830,000. On the same date S&D wrote to the Firm to state their involvement and that there was a "built in deposit" of £335,030 and S&D's clients would pay Mr SJ's legal costs of £34,807.25. On 21 November 2009 Nat West made a mortgage offer in the sum of £495,000 plus fees. The mortgage advance of £494,970 was received by the Firm on 28 November 2009 and £460,162.75 was sent to S&D on 29 November 2009. Number Six had purchased the property for £120,000 and on the same day sold it to Mr SJ for a stated price of £830,000 i.e. there was an uplift of £710,000. There was no evidence on the file that the Firm had informed Nat West that the vendor (Number Six) had owned the property for less than six months or that the Firm would not have control of all of the purchase monies.

Payments to third parties on completion

35. The FIR recorded that the SIO had discovered payments amounting to £459,393.15 to third parties from the proceeds of sale in three transactions in addition to those detailed above. Two transactions were exemplified in the FIR.

Mr BJ – sale of 19 N Road

36. The Firm acted for Mr BJ in the sale of a property at N Road for £230,000 to Mr L W. On 12 December 2009 Mr BJ instructed the Firm by letter to send the sum of £57,296.75 to G7 Property Ltd and on the same date instructed the Firm to send £19,600 to "LW", both at accounts with Barclays. The sale proceeds were received into the Firm's client account on 22 January 2010. On 25 January 2010 the Firm remitted those sums as requested. There was no evidence on the Firm's file that any enquiries had been made of the client concerning those payments but the Second Respondent told the SIO that the payment to Mr W was a "cashback" and the payment to G7 Property Ltd was in respect of bridging finance.

Ms CGS, Mr GC and Mrs RC – sale of 79 I Road

37. The Firm acted for Ms CGS, Mr GC and Mrs RC in the sale of the property for £375,000. By undated letters, the vendors instructed the Firm to remit £257,767 to an account with Bank of Ireland in the name "d and B aviation [sic]" and £116,500 to an account with NatWest Bank in the name "Pointcash UK Ltd". Both were described as the vendors' business accounts. There was no documentary evidence on the Firm's file that any enquiries had been made of the clients concerning these payments. The Second Respondent informed the SIO that she believed the payment to Pointcash UK Ltd was in respect of money owed but was not able to provide any information concerning the payment to D&B Aviation.

Response to SRA investigation

38. Both Respondents provided information to the SIO during the course of the investigation. On 3 November 2010 the SRA wrote to both the First and Second Respondents enclosing a copy of the FIR. The Second Respondent replied by email

dated 18 November 2010 and on 9 December 2010 Radcliffes LeBrasseur responded on behalf of the First Respondent. On 24 February 2011 an authorised officer of the SRA decided to refer the conduct of both Respondents to the Tribunal.

Witnesses

39. No witnesses were called and the matter proceeded on the papers.

Findings of Fact and Law

First Respondent

40. **Allegation 1.3: That he acted in a way that was likely to diminish the trust the public placed in him as a solicitor and in the legal profession, in breach of Rule 1.06 of the Solicitors' Code of Conduct 2007 ("the Code")**

40.1 This allegation was admitted by the First Respondent in respect of the transaction set out at paragraphs 22 to 26 above, part of the background to which is set out at paragraph 21. The Applicant confined this allegation against the First Respondent to the facts and matters in that transaction and did not pursue it in respect of any other facts or matters on the basis that the First Respondent had had no personal involvement in any other transactions.

40.2 The Applicant did not suggest that the First Respondent had been in any way complicit in the fraud which appeared to have taken place; the case was put on the basis that the First Respondent was culpable in conduct terms through negligence but nothing more. Whilst the Tribunal noted during the presentation of the case that there were some matters which could have formed part of the allegations, it was careful to ensure that no such matters were considered in its deliberations.

40.3 The Tribunal considered carefully the facts of this matter. It found that the First Respondent's involvement in the transaction in issue arose from his meeting with Mr SM and Mr WM, or persons purporting to be those individuals, on 22 January 2010 i.e. four days prior to completion of the purported sale of 10 flats. The transaction was handled by the Second Respondent; issues of supervision are dealt with under allegation 1.2 below. As was now apparent, the purported transaction had been a fraud; the Mr SM and Mr WM who owned the flats denied instructing the Firm in the sale of the flats. This raised an issue concerning the Firm's identification procedures. From the purchase monies of over £1 million which had been received by the Firm, sums of over £430,000 were sent to two companies which on the face of the file had no connection with the vendors, on the instructions of the purported vendors. The amounts of £25,799.73 and £23,884.40 were disbursed in reliance on fraudulent redemption statements; although it appeared these sums had been paid to Mortgage Express, the amounts paid were not enough to discharge the charges, which were now understood to have been approximately £1.6 million.

40.4 The First Respondent's meeting with the purported clients on 22 January 2010 had provided an opportunity to prevent the fraud occurring, but that opportunity had been missed. The Tribunal considered the First Respondent's attendance notes. It noted that he had checked Mr SM's passport, questioned why the properties were being sold

at a loss and queried the proposed payment to Silk Emporium UK Ltd. With regard to Mr WM, the First Respondent had queried why the properties were being sold at a loss and queried the payment to a company. The First Respondent had not pursued his queries further.

40.5 The Tribunal was satisfied to the required standard that, in failing to take all proper steps and make full enquiries with regard to this transaction, the First Respondent had conducted himself in a way which would diminish the trust the public would place in him or the profession. Whilst it was not suggested he was in any way involved in a fraud, it was clearly the case that the transaction had a number of suspicious features which should have been questioned further, including the instruction to remit the sale proceeds to a third party; furthermore no searches or enquiries were conducted to show if there was any connection between the vendors and the companies to which substantial sums were remitted. Solicitors should be capable of being trusted to handle money properly. In this instance, there had been a lack of proper controls on when and how money was paid out which had led to significant losses and disastrous consequences for the First Respondent personally, his Firm and the wider profession. Civil proceedings had been instituted to recover the monies lost by the purchaser. The Tribunal found the allegation proved to the highest standard both on the admission and on the evidence.

41. **Allegation 1.4: That he failed to properly supervise the Second Respondent in breach of Rule 5.01 of the Code**

41.1 This allegation was admitted by the First Respondent. The Applicant relied on the First Respondent's failure to supervise the Second Respondent in respect of all of the transactions set out at paragraphs 21 to 37 above and also on the Firm's system for transferring client monies.

41.2 The Second Respondent had carried out the day to day work in a number of suspicious transactions. In three transactions (set out at paragraphs 22 to 31 above) the Firm had been instructed by the vendors, or the purported vendors, of properties sold at auction in December 2009. All three completed on the basis of fraudulent mortgage redemption statements. The balance of the completion monies were sent to third parties who were not, on the face of the file, connected with the vendors or the transaction. In each of these three cases, the original owners of the properties subsequently denied instructing the Firm. In four transactions, two of which were exemplified in the proceedings (as set out at paragraphs 32 to 34 above), the Second Respondent had acted in back to back transactions. The intermediate purchaser was a company, which bought the property on the same day as the sale to the Firm's client where the ultimate sale price was significantly higher than the price paid by the intermediate purchaser. The Second Respondent had in one transaction notified the lender client that this was a sub-sale transaction and that the Firm would not hold all of the sums required to complete but did not receive a response from the lender to that information before completing the purchase. In a further transaction, the Second Respondent had not informed the lender that it was a sub-sale matter and so the vendor had not owned the property for at least six months, nor that there was an uplift, nor that the Firm would not control all of the purchase monies. In a third category of transaction, on two occasions the Firm had sent sale proceeds to third parties without

making proper enquiries concerning the reason for that instruction or concerning the connection, if any, between the vendor and the company.

41.3 Save for the transaction set out at paragraphs 22 to 26 above, there was no suggestion that the First Respondent had had any personal involvement in the transactions. The Tribunal was satisfied that there was inadequate control of the Firm's client bank account, as set out further in relation to allegation 1.6 below. In particular, client account transfers could be, and were, executed without his signed permission. The Tribunal noted and found that the First Respondent had relied on and trusted the Second Respondent as a result of which, as the First Respondent admitted, he had exercised a light touch in supervising her. The Tribunal found on the evidence presented that there was no meaningful checking of files handled by the Second Respondent and he did not oversee any of the transactions noted above. There had been no spot checks and there was no evidence of regular discussions concerning workload or any issues with files. On the one file in which the First Respondent had been aware of the transaction, he had failed properly to supervise in that he had not noted or acted properly with regard to the signs of a potential fraud. The Tribunal had seen details of seven transactions, one of which involved ten properties – and had seen references to others – which had been handled poorly by the Second Respondent and which all appeared to have suspicious characteristics. Those transactions had all occurred between October 2009 and January 2010, a period of about four months. Any meaningful system of supervision would have allowed such transactions to be spotted and possibly stopped. The Tribunal was satisfied to the highest standard that the allegation, which had been admitted, had been proved.

42. **Allegation 1.6: That he permitted withdrawals of money from client account other than in accordance with Rule 23(1) of the Solicitors Accounts Rules 1998 ("SAR")**

42.1 This allegation was admitted by the First Respondent. The factual background to the allegation is set out at paragraphs 19 to 20 above.

42.2 The Tribunal noted from the FIR that the First Respondent, the Second Respondent and the bookkeeper, Mrs B, could each make payments from the client bank account using the LloydsLink online banking facility. The First Respondent had admitted during the investigation that he had not signed specific authorities in respect of transfers made using LloydsLink, nor had he signed a number of TT requests. There was no documentary evidence that the First Respondent had signed any authorities to transfer monies in respect of the transactions set out above. As noted above, from paragraphs 22 to 37, significant sums were disbursed by the Firm, purportedly to redeem charges or to make payments to third parties. Those payments were made without authorisation by a proper person under Rule 23 SAR. The system within the Firm meant that the First Respondent did not have or exercise proper control over client account and was such that payments could be made without his authority. The Tribunal was satisfied to the highest standard that the allegation, which had been admitted, had also been proved to the highest standard.

Second Respondent

42.3 The Tribunal noted that the Second Respondent had not made any admissions. All of the allegations under consideration were scrutinised fully by the Tribunal, in accordance with the principles set out in R v Jones [2001] EWCA Crim 168, and the Tribunal remained mindful of the Second Respondent's right to a fair trial. The Applicant was required to prove the allegations so that the Tribunal was sure; if the Tribunal was not sure then an allegation would be found not proved. The Tribunal took into account the Second Respondent's comments made during the course of the investigation and recorded in the FIR. It also took into account her email to the SIO dated 18 November 2010 and subsequent emails and communications dated 5 September 2011, 15 January 2013, 8 May 2013 and 3 June 2013.

43. **Allegation 2.1: She acted contrary to Rules 1.02, 1.03 and 1.06 of the Code by virtue of her acting in transactions that were suspicious, bearing the hallmarks of money laundering and potential mortgage fraud**

43.1 The factual background to this allegation is set out at all of paragraphs 21 to 37 above.

43.2 The Tribunal noted that there were three broad categories of suspicious transactions. Those arising from the auction sales (paragraphs 21 to 31) were in many ways the most troubling although back to back transactions (paragraphs 32 to 34) and those in which payments were made to third parties (35 to 37) also had suspicious characteristics. The Tribunal was satisfied to the required standard that all of the transactions exemplified showed some of the hallmarks of money laundering and/or potential mortgage fraud. It was not necessary for the Tribunal to find that there had in fact been fraud or money laundering. The hallmarks of such suspicious transactions, which should have been apparent at the time the Firm was instructed, included: instructions to pay sale proceeds to third parties; the entirety of the purchase price would not pass through the Firm's account; all of the clients on the auction sale matters were clients new to the Firm; there was a substantial uplift on the back to back transactions; in the matter of Mr BJ (paragraph 36), there had been a cashback payment of £19,600 to the purchaser. The Tribunal also noted that in respect of the letters of instruction to remit sale proceeds to third parties in the matters of Mr SM/Mr WM, Mr GR and Mr JSR the wording and layout of the letters of instruction were similar. On the basis of all of these facts, the Tribunal was satisfied to the required standard that the Second Respondent had acted in transactions that were suspicious.

43.3 The Tribunal noted that in her responses to the proceedings the Second Respondent had alluded to personal difficulties, which may have had an impact on her judgement and ability to handle her work properly in late 2009/early 2010. Such matters would properly be considered with regard to mitigation and sanction. The Tribunal noted that the Applicant did not allege any collusion or complicity with the Firm's clients or those who may have been involved in fraudulent activity. Mr Bullock had informed the Tribunal that whilst these matters had been investigated, there was no action by the police against the Second Respondent.

43.4 The Tribunal considered whether the Second Respondent's actions proved the breaches of the Code which had been alleged. The Tribunal was not satisfied on the evidence that the Second Respondent had acted without integrity. She may have been

careless and may have lacked the competence to carry out the work properly, but this was not enough to show she lacked integrity. However, the Tribunal was satisfied that she had allowed her independence to be compromised. In respect of the back to back transactions, the Second Respondent had in effect preferred the interests of her purchaser clients to those of her lender client, in failing to report material matters to the lender. She had failed to query the instructions to make payments to third parties and had thereby failed to act with the necessary degree of detachment and scepticism. Further, the Second Respondent had failed to note and act upon the suspicious signs in all of these matters and had acted in back to back transactions without reporting material facts to lender clients. The Second Respondent had not reported any suspicions to the First Respondent or sought his guidance. Her actions had allowed significant sums to be misappropriated; following proper procedures would have reduced the risk of such misappropriation. The purchasers of the properties at Cutmore Ropeworks, 100 H Road and 82 C Road had suffered losses which could potentially have been avoided had the Second Respondent conducted herself properly. The Second Respondent had worked within a solicitor's practice; in falling short of the standards expected with regard to her conduct of the conveyancing transactions in issue, her actions would reduce the trust and confidence of the public in the Second Respondent and in the profession. In all of the circumstances, the Tribunal was satisfied to the required standard that the allegation had been proved with regard to breaches of Rules 1.03 and 1.06 of the Code, but had not been proved with regard to Rule 1.02 of the Code.

44. **Allegation 2.2: She failed to act in clients' best interests or to provide a good standard of service to clients, contrary to Rules 1.04 and 1.05 of the Code**

44.1 The factual background to this allegation is set out in particular at paragraphs 32 to 34 above. In the back to back transactions exemplified, the Second Respondent had been instructed by both the purchaser and the lender.

44.2 The Rules relied on by the Applicant dealt with the Second Respondent's duties to her own clients. In failing to await instructions from Nat West before completing the purchase of 185A H Road and in failing to inform the lender that the Flat 2, 315 B Road matter was a sub-sale and that the purchase monies would not all pass through the Firm's account, the Second Respondent had failed to act in the best interests of her lender client or provide that client with a good standard of service. The requirements of the CML Handbook were well known to conveyancers and the Second Respondent had not acted in accordance with those requirements. The Tribunal was satisfied on the evidence presented that this allegation had been proved to the higher standard.

45. **Allegation 2.3: She acted in a conflict or potential conflict of interest situation, contrary to Rule 3.01 of the Code**

45.1 The factual background to this allegation is again set out in particular at paragraphs 32 to 34 above. In both of the matters set out, the Second Respondent had been instructed by both the purchaser and the lender.

45.2 The fact that the Second Respondent acted for the purchaser and lender did not in itself imply there was or would be any conflict of interest; it was normal practice for there to be such dual representation. However, the Tribunal found that as soon as

circumstances arose in which the Second Respondent should have reported matters to the lender – including the nature of the transaction and the fact that not all purchase monies would be remitted through the Firm – or should have awaited instructions before proceeding to completion, a potential conflict of interest situation arose. In failing to inform the lender of material facts, in accordance with the CML Handbook, the Second Respondent had in effect favoured the purchaser client in the Flat 2, 315 B Road matter; the interests of the lender and purchaser had not been in alignment and the Second Respondent did not take any proper steps to put matters right. In the 185A H Road matter, a conflict had arisen when the purchaser's interest was in proceeding to completion before the lender had responded to the report of material facts made by the Second Respondent. There was no evidence that the Second Respondent had chased the lender for a response. In all of the circumstances, the Tribunal was satisfied to the required standard on the evidence presented that the Second Respondent had acted in breach of Rules 1.04 and 1.05 of the Code.

Previous Disciplinary Matters

46. There were no previous disciplinary findings recorded against either Respondent.

Mitigation

First Respondent

47. Ms Heley addressed the Tribunal on matters relevant to mitigation and presented the Tribunal with a bundle of testimonials for the First Respondent.

48. With regard to the specific allegations, Ms Heley submitted that there had been no specific guidance from The Law Society concerning the need to investigate instructions to remit monies to third parties and on matters relevant to property/registration fraud until after the events in question. By October 2010, when the new guidance was issued, it was clear that such matters were a major problem for the profession. However, it was accepted that The Law Society warning cards on money laundering and property fraud were extant and should have informed the actions of the First and Second Respondent.

49. The matters in issue had occurred over a short period of about four months from October 2009 to January 2010. Of all of the transactions under consideration, only one had involved the First Respondent personally. When he had become aware of problems and potential problems with a number of transactions, on or about 26 January 2010, the First Respondent had promptly notified the police, the Serious Organised Crime Agency, his professional indemnity insurers and the SRA. The SRA investigation had commenced less than a month later. Civil proceedings arising from the various matters had been settled by June 2010. Throughout the short, intense period after discovering the problems with the transactions above, the First Respondent had tried to assist all of the investigations.

50. The First Respondent had made three admissions and the Applicant had not proceeded with any further allegations. He had accepted promptly that a number of unauthorised transfers had been made and that both the Second Respondent and Mrs B had been in

a position to be able to make such transfers. Both of his employees were of long-standing service and were trusted; Mrs B had worked for the Firm for about 26 years.

51. In supervising the Second Respondent, the First Respondent had had regard to the fact that she was experienced and had been a reliable employee of the Firm for about 11 years at the time of the material events and had worked directly for the First Respondent for about 9 years. The Second Respondent had had several years' conveyancing experience prior to joining the Firm. As a result of her experience and good track record the Second Respondent was in a position of trust and had her own client base. The First Respondent had a process for checking the post but accepted there had not been a sufficient process with regard to checking faxes or emails. In a response document, the Second Respondent had suggested that there was a facility whereby the First Respondent was able to check emails but Ms Heley was instructed that the First Respondent had not been technically proficient and had not been able to use that facility. For many years, the Firm had run well with the same systems of supervision in place which had clearly failed in the four month period from October 2009. The Second Respondent had referred to personal problems at the relevant time. The First Respondent's position was that prior to this period there had been no issues and the Second Respondent had a proven track record.

52. The First Respondent had been a solicitor for 32 years by the time of the relevant events, with no previous disciplinary issues; save for the issues before the Tribunal at this hearing, the First Respondent had had no compliance issues found against him.

53. The frauds or suspicious transactions in issue had been reasonably sophisticated. For example, the identification documents exhibited to the First Respondent's statement, which were copies of a real passport and a driving licence of Mr SM/Mr WM were very nearly identical to the copies held on the Firm's file. Indeed, the only difference in the documents was the signature. In accordance with the various warning cards, in relation to the matter of Mr SM and Mr WM, the First Respondent had asked questions, as demonstrated by the attendance notes of 22 January 2010. It was submitted that the First Respondent had acted properly in retaining a deposit in relation to this matter; the deposit had been received from the auctioneers, was returned to them due to a problem which had arisen, was remitted to the Firm again and then retained which reduced the loss suffered by the purchaser. A further transaction arising from the auction sales had been put on hold prior to completion.

54. It was submitted that the crux of the Applicant's case was that the Firm had not carried out company searches to establish if there was a connection between the vendors and the companies to which the sale proceeds had been sent. It was submitted that at the relevant time there had been no requirement to take such steps. That said, it was submitted that the Firm had been the target of fraudsters and its procedures had not been sufficient to protect the Firm against the actions of a trusted employee with a previously good record.

55. It was submitted that none of the aggravating factors noted under the Tribunal's Guidance Note on Sanctions (August 2012) were present. There had been no dishonesty; the misconduct did not involve the commission of a criminal offence; the conduct was not deliberate or calculated and was repeated only within a four month period; the First Respondent had not taken advantage of a vulnerable person; he had

not concealed any wrongdoing and had been frank with the SIO; at the relevant time, the First Respondent did not know that he was in material breach of obligations to protect the public and the reputation of the profession; and there had been no previous findings in disciplinary matters.

56. It was submitted that, in contrast, a number of the mitigating factors noted in the Guidance Note were present. There had been deception by a third party, in quite a sophisticated way; the First Respondent had sought promptly to make good the losses and had notified the relevant authorities including the SRA, the police, SOCA and insurers; all of the misconduct occurred in a period of about 4 months, which was a relatively short period in a career of over 30 years; the First Respondent had made open and frank admissions to the SIO and had cooperated with the investigation. There had been a dispute between the First Respondent and his insurers, which had been settled. The First Respondent had learned the sad lesson that he could not trust people.

57. The Tribunal was told that the First Respondent had paid approximately £211,000 from his own resources to the purchasers of the Cutmore Ropeworks properties. Under a settlement agreement, his insurers had reimbursed £75,000 of that, but the First Respondent had incurred unrecovered legal costs in excess of £100,000 in proceedings against his insurers, who had initially refused to indemnify the Firm. The First Respondent's financial position had been severely affected. Most of his assets had been used in paying the purchasers in the Cutmore Ropeworks matter; the insurers had agreed to accept responsibility for other matters. A rental property owned by the First Respondent and his wife had been sold to make the necessary payments; the sum due to the First Respondent's wife had been added to her share of the matrimonial home.

58. The First Respondent had suffered a stroke in January 2012, the continuing effects of which included restricted mobility. His home had had to be adapted. The First Respondent's only source of income at the time of the hearing was Disability Living Allowance, at the higher rate, and from his financial summary statement it appeared that his outgoings extinguished his income.

Second Respondent

59. The Tribunal noted the matters raised by the Second Respondent in her email to the SIO of 18 November 2011. She had raised issues concerning the First Respondent's supervision of her and various procedures within the Firm which had been relevant to the allegations. Further such points were made in the email/letter received at the Tribunal on 15 January 2013. In particular, the Second Respondent stated that: her requests to progress her training were ignored; the First Respondent had supervised and checked/signed post and checked all matters prior to completion; the First Respondent had not given the Second Respondent information on the Law Society warning cards; she had tried to alert the First Respondent to problems with the various transactions but had been ignored; she had not been charged with any criminal offence; she had not deliberately concealed anything from the First Respondent and had not lied to him.

60. The Second Respondent had also referred in her communications to personal problems she had experienced in the period in question, which she believed had been noticed by the First Respondent. The Second Respondent had referred to various health issues but, despite being invited by the Applicant to provide medical evidence (in particular in a letter of 7 September 2011) had not done so. The Second Respondent had indicated, however, that she suffered from two particular medical conditions and that she was in receipt of state benefits.

Sanction

61. The Tribunal had regard to its Guidance Note on Sanctions (August 2012).

First Respondent

62. The Tribunal noted that there were no substantial aggravating factors in this matter and a number of mitigating factors were present, as submitted by Ms Heley and recorded at paragraphs 56 and 57 above. That said, there had been a serious impact on entirely innocent parties involved in transactions conducted by the Firm. The First Respondent's admitted and proved breaches had had catastrophic outcome, for third parties and for himself. He had suffered significant financial losses in paying compensation and legal fees, had lost his practice, and his health was now poor such that he received higher level Disability Living Allowance. The Tribunal noted that the Second Respondent had cooperated with the SRA investigation and had taken appropriate steps to alert the police and others to the suspicious transactions. It also took into account the testimonials provided.

63. Whilst the Tribunal had some personal sympathy for the difficult position in which the First Respondent now found himself, it was aware that personal mitigation was of less significance in determining sanction than the principles set out in Bolton v The Law Society [1994] 1 WLR 512 ("the Bolton case"). It was clear from the Bolton case that,

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him..."

It was further noted that the purposes of sanction included punishment, preventing any repetition and,

> "...most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, or whatever standing, may be trusted to the ends of the earth..."

64. In this matter, there was no attack on the personal integrity of the First Respondent. However, conveyancing transactions are matters of great importance to those involved in buying, selling or lending on property and all such transactions should be conducted to the highest standards. The First Respondent had failed to supervise an employee, such that a number of transactions with suspicious characteristics had been carried out in a four month period and, indeed, significant losses had been suffered by purchasers. The First Respondent had not had in place sufficient safeguards or

controls on the operation of his Firm's client account. In the light of the seriousness of the proven allegations, nothing less than a fine would be proportionate. However, the mitigating factors and the absence of aggravating factors meant that neither suspension nor striking off were proportionate. The Tribunal took into account the First Respondent's difficult financial circumstances and the fact that he had already paid significant sums in recompense to affected parties. But for those factors, the fine to be imposed would have been higher. Having taken into account all of the circumstances, including the First Respondent's financial circumstances, the Tribunal determined that the appropriate and proportionate fine was £3,000.

65. The Tribunal further noted that all of the defaults had occurred in the context of the First Respondent being the principal of a firm; there had been no direct criticism of his abilities as a conveyancing solicitor. The Tribunal therefore determined that it would be appropriate to place restrictions on the First Respondent's ability to practice, such that he could not be the principal of a firm or recognised body, could not hold client money and could only work as a solicitor in employment approved by the SRA.

Second Respondent

66. The Tribunal noted that in relation to the Second Respondent, the only choices open to it were to make a s43 order or to determine that such an order was not appropriate. The Tribunal noted that a s43 order is a regulatory measure; it was not a sanction or punishment but would simply control the circumstances in which an individual could work within a legal practice.

67. The Tribunal had made a number of findings against the Second Respondent in relation to breaches of core duties under the Code. The Tribunal noted that in order for a s43 order to be justified, lesser findings would be sufficient. It was enough that the Applicant had shown that an experienced conveyancing legal assistant had failed to recognise signs of potential fraud on a number of occasions. Not only had she shown a lack of knowledge of her obligations generally and in particular to lender clients, she had compounded this by not asking the First Respondent for guidance. The Tribunal noted the Second Respondent's contentions on this point, contained in various documents, but had not had the benefit of hearing from her in evidence. In any event, it was undoubtedly the case that the Second Respondent had conducted all of the transactions set out in the proceedings, all of which had had suspicious or unusual features, without taking any appropriate action to reduce the risk of fraud or money laundering.

68. As noted in paragraph 65 above, conveyancing transactions must be carried out with the utmost care and probity. Whilst the Second Respondent had not lacked integrity, her failure to comply with the requirements of the CML Handbook and/or Law Society warning cards was conduct which meant it was appropriate and proportionate to control her further employment by solicitors. She had, in the opinion of the Tribunal, 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 Tribunal, 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 ("the Act") as amended by the Legal Services Act. Accordingly, the Tribunal would make an order under s43 of the Act.

Costs

69. On behalf of the Applicant, Mr Bullock made an application for costs to be paid by the Respondents in the total sum of £42,705.57, including SRA investigation costs of £24,248.16. Mr Bullock pointed out to the Tribunal that whilst on the face of the schedule it appeared that the investigation costs were in accordance with the Schedule of Charges in Appendix 1 to the SRA Costs of Investigations Regulations 2011 ("the Regulations"), the costs were not in accordance with that Schedule and the reference to the Regulations was an error. It was understood that the costs were not agreed by either Respondent so Mr Bullock addressed the Tribunal on how the costs had been calculated.

70. The Tribunal was told that the legal costs element of the schedule included both the costs of Field Fisher Waterhouse, the solicitors instructed in the matter until shortly before the hearing, and the Applicant's in-house legal costs. Mr Bullock told the Tribunal that the Applicant had been assiduous in ensuring that there was no charge for any duplicated work, such as Mr Bullock's time spent reading in to the case. The time for which he claimed was that for his preparation for the hearing and the time at the hearing. It was submitted that the case had involved quite a lot of documents, including two ring binders of papers to accompany the reasonably long Rule 5 Statement. There had also been two preliminary hearings. It was submitted that in the round the legal costs claimed were not unreasonable for a case of this type, in particular as it was a matter in which there had initially been a two or three day time estimate for the hearing.

71. Mr Bullock told the Tribunal that the forensic investigation costs had been claimed in the way which was usual in Tribunal cases. The Regulations applied to the caseworker costs, not the costs of the forensic investigation; no case-working costs had been claimed in this matter. The rate claimed for the forensic investigation time was at a higher rate than the case-worker costs permitted under the Regulations as the costs of employing the forensic investigators was higher than the cost of case-workers. Mr Bullock told the Tribunal that the rates used were based on the costs of employing the relevant staff and overheads and there was no element of profit. It was submitted that there was good authority for the proposition that where a body acts through in-house counsel, as was the case in this matter, the costs of so doing could be claimed at a reasonable rate, which was generally taken to be about two-thirds of the rate which would normally be allowed on detailed assessment of costs for work of that type. Mr Bullock's work was charged at a lower rate than the work done by Field Fisher Waterhouse. It was submitted that insofar as the costs incurred by the SRA were not recovered from Respondents, those costs fell on the profession as a whole. It was further submitted that the issue of whether or not the forensic investigation costs should be recoverable was within the discretion of the Tribunal under its procedural Rules; it was the normal practice of the Tribunal to allow such costs to be recovered. Mr Bullock had no representations to make with regard to whether any costs order should be joint and several, or how any costs should be apportioned between the Respondents. It was submitted that if the Tribunal was considering making a costs order which was not to be enforced without the Tribunal's further permission, the question of the amount of costs became more academic and so it may be possible to agree a suitable figure with the First Respondent through his solicitor. The Tribunal indicated that it was not prepared to say whether it was or was not

minded to make such an order; it would hear all submissions on the amounts and the fairness of making an order and would then consider what order to make.

72. On behalf of the First Respondent, Ms Heley submitted that the Regulations applied to matters in which findings were made by a SRA Adjudicator, not the Tribunal, and that the costs which were claimable under the Regulations were lower than those on the schedule of costs. There had been no prior notification of any difference between the figures. It was submitted that, as noted in the Tribunal's Guidance Note on Sanctions at paragraph 55, one of the purposes of making a costs order against respondents was to compensate the Applicant for the costs incurred by it in bringing the proceedings. It should not be the case that the SRA should profit and it was queried whether there was an element of profit in the costs claimed. It was submitted that the rate of £115 per hour for the forensic investigation was quite high, given that the forensic investigation officers were employed by the SRA, even when overheads and direct costs of employing the officers were taken into account. In the present case, the SRA was claiming for internal costs of both the advocate and the forensic investigation officer. Ms Heley submitted that this case was not one in which a joint or several order for costs should be made as there was no continuing connection between the parties. A statement of the First Respondent's means had been prepared and presented to the Tribunal for consideration when determining what costs order to make.

73. The Tribunal noted that it had no specific representations from the Second Respondent on the issue of costs, but had received various documents from her which suggested she was in difficult financial circumstances.

74. The Tribunal considered carefully what orders for costs would be appropriate in this case, bearing in mind the submissions made and the documents received from the Second Respondent. It considered what sum for costs would be reasonable and proportionate, given the nature of the case which had become apparent as the case unfolded. In brief, the Applicant had had to prove a case involving a failure of supervision and several failures to identify suspicious transactions; this was less difficult to do than to prove a case involving, for example, dishonesty or in respect of which the facts were complex. Given the two main themes within the case the Tribunal found that the case had been over-pleaded and indeed noted that Mr Bullock had indicated as much in opening the case. The First Respondent had made early admissions to most of the breaches which had been proved and had been right to resist the allegations which had been withdrawn. The Second Respondent's engagement with the process had been minimal, so a limited amount of time and effort had been required in order to deal with her after the proceedings started.

75. The Tribunal noted it had heard competing representations concerning the correct rate and/or recoverability of the costs claimed for the forensic investigation. The Tribunal noted that under Rule 18 of the Solicitors (Disciplinary Proceedings) Rules 2007, it may "make such order as to costs as the Tribunal shall think fit..." and that in applying its discretion should make an order which was reasonable. Accordingly, the Tribunal was not bound by the rates set out in the Regulations, although such rates were a matter to which it could have regard in assessing reasonableness.

76. Having taken into account the nature and over-prosecution of the case, the work set out in the costs schedule and the rates claimed, the Tribunal determined that the reasonable overall costs which should be recoverable was £30,000. This figure was, in the Tribunal's assessment, fair and proportionate to the nature of the case and work properly required to prosecute it.

77. The Tribunal was satisfied that there was no reason to make a joint and several order against the Respondents, noting that there was no ongoing connection between them. In assessing how to apportion costs between the Respondents, the Tribunal took account of the fact that the First Respondent was the principal of the Firm and therefore accountable for ensuring proper supervision systems were in place and that the suspicious transactions were, with one exception, wholly handled by the Second Respondent. In balancing these factors, the Tribunal determined that the First Respondent should be ordered to pay 60% of the total costs, i.e. £18,000 and the Second Respondent 40% of the total, i.e. £12,000.

78. The Tribunal went on to consider whether the means of either or both Respondents should be taken into account. The First Respondent's financial circumstances had been substantially depleted as a result of the matters considered in this case. He had provided information concerning his capacity to pay, which information was not challenged by the Applicant. The Tribunal was satisfied that in the circumstances outlined, it was appropriate to order that the costs should not be enforced without the permission of the Tribunal. The Second Respondent had not provided information in anything like the detail required under SRA v Davis & McGlinchey [2011] EWHC 232 (Admin). However, all of the items she had submitted to the Tribunal indicated that she was in receipt of state benefits and that she had health problems. Whilst this information was not supported by a statement of truth, the Tribunal found it particularly telling that the Second Respondent had stated she could not afford to travel to the Tribunal, noting that her address was in Essex rather than many miles from London. The Tribunal could reasonably assume that she was in poor financial straits. On that basis, and noting that as a non-solicitor she may not have understood the requirements to provide information in a particular way, the Tribunal determined that it was fair to make the costs order against her enforceable only with the further permission of the Tribunal.

Statement of Full Order

79. The Tribunal Ordered that the Respondent, solicitor:

1. Do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen.

2. The Tribunal further Ordered that the Respondent may not from today, for an indefinite period:-

2.1 Practice as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Partnership (LDP) or Alternative Business Structure (ABS).

2.2 Hold client money.

For the avoidance of doubt the Respondent may only work as a solicitor in employment approved by the SRA.

3. Permission to either party to apply to vary the conditions set out in paragraph 2.

4. The Tribunal further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,000.00 such Order not to be enforced without the permission of the Tribunal.

80. The Tribunal Ordered that as from 5th June 2013 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Jackie Elizabeth Filtness;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Jackie Elizabeth Filtness;

(iii) no recognised body shall employ or remunerate the said Jackie Elizabeth Filtness;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Jackie Elizabeth Filtness in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Jackie Elizabeth Filtness to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Jackie Elizabeth Filtness to have an interest in the body.

And the Tribunal further Orders that the said Jackie Elizabeth Filtness do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00 such Order not to be enforced without the permission of the Tribunal.

DATED this 18th day of June 2013
RE-DATED this 7th day of August 2013
On behalf of the Tribunal

E. Nally
Chairman

Note: Amendments made to the original Judgment, dated 18th June 2013, under the "slip rule" to correct typographical errors.