SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10818-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
[RESPONDENT 1 – NAME REDACTED]	First Respondent
and	
DAVID JONATHAN JACKSON	Second Respondent
and	
FLEUR ANGHARAD ELINOR PALMER	Third Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Ms A. Banks
Mrs V. Murray-Chandra

Date of Hearing: 8th, 9th and 10th May 2012

Appearances

Hodge Malek QC and Heather Emmerson of counsel, 4–5 Gray's Inn Square, London, WC1R 5AH instructed by Iain Miller, solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, London EC4Y 7RF on behalf of the Applicant.

James Ramsden of counsel, 4–5 Gray's Inn Square, London, WC1R 5AH, instructed by Corbridges Ltd, Chancery House, 22 Finch Road, Douglas, Isle of Man, IM1 1NB for the First Respondent.

The Second Respondent appeared in person.

Mrs Penny Palmer solicitor appeared for the Third Respondent.

JUDGMENT

Allegations

1. The allegations against the First Respondent, the Second Respondent and the Third Respondent, made on behalf of the Solicitors Regulation Authority ("SRA") were that:

1.1 They caused, permitted or acquiesced in the non-disclosure of material facts to their lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the Solicitors Practice Rules 1990 (the "SPRs") and/or Rule 1.02 and/or 1.04 of the Solicitors Code of Conduct 2007 ("the Code");

1.2 They allowed their client account to be used as a banking facility to a third party contrary to Rule 1(a) and (d) and/or Rule 32(16) and/or Rule 15 note (ix) of the Solicitors Accounts Rules 1998 ("the SARs");

1.3 They caused, permitted or acquiesced in the firm acting or continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16 D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code.

It was also alleged that whilst dishonesty was not an essential ingredient of allegation 1.1, absent a satisfactory explanation from the Respondents it appeared that they were each aware of the nature of the schemes and that in particular that lenders were not told of material facts. Such conduct amounted to conscious impropriety or dishonesty. Alternatively the Respondents were grossly reckless in relation to their professional obligations.

2. It was further alleged in respect of the First Respondent and the Third Respondent that:

2.1. They acted in breach of Rules 32 (1) and 32(7) of the SARs in failing to keep PI Legal Services LLP's accounts properly written up and prepare proper client account reconciliations;

3. It was further alleged against the Third Respondent that:

3.1 She failed to deliver an accountant's report for the year ending 31 August 2008 in breach of Section 34 of the Solicitors Act 1974 (as amended);

3.2 She failed to make any payments to the Assigned Risks Pool ("ARP") in breach of Rules 10.3 and 10.12 of the Solicitors' Indemnity Insurance Rules 2008;

3.3 She failed to ensure that PI Legal Services LLP had at least two members and instead was the sole member in breach of Rule 14.05 of the Code.

Documents

4. The Tribunal reviewed all the documents including:

Applicant:

- Volume 1 Rule 5 Statement dated 5 September 2011 with exhibit;
- Volume 2 Witness statements as relied on by the Applicant;
- Volume 3 Respondents' responses to Rule 5 Statement and witness statements as relied on by Respondents, including supplemental undated witness statement of the Third Respondent;
- Volume 4 Client review files;
- Volume 5 File reviews;
- Volume 6 CML provisions and legal communications;
- Volume 7 Documents relating to B solicitors, E Trustees Ltd and SGH solicitors;
- Volume 8 RL disclosure (general file);
- Volume 9 RL file reviews;
- Volume 10 Communications between Respondents and Investigation Officer;
- Volume 11 various documents;
- Bundle of authorities
- Skeleton argument on behalf of the Applicant dated 2 May 2012, with Annex 1 Chronology and Annex 2 Schedule of sample transactions filed on behalf of the Applicant;
- Estimated Statement of Costs of the Applicant dated 3 May 2012;

First Respondent:

- None

Second Respondent:

- Skeleton argument undated

Third Respondent:

- None

Preliminary issues

5. Submissions on behalf of the Applicant in respect of proposed outcomes for First and Third Respondents

6. Mr Malek gave the Tribunal a brief outline of the factual background to the application which is subsumed in the background set out below in this judgment. The Tribunal was informed that discussions had taken place. The First and Third Respondents had indicated that they might be prepared to make admissions to the allegations. In letters sent on behalf of the Applicant to the First Respondent's firm and to Mrs Palmer on behalf of the Third Respondent, it was set out that the Applicant

considered that the public interest would be served by an outcome (on terms to be proposed to the Tribunal) although whether the proposals were appropriate was a matter within the Tribunal's discretion. Discussions had now concluded as follows, subject to the approval of the Tribunal with admissions, undertakings and proposals regarding sanction and costs:

The First Respondent - admissions

- Admitting that he had acquiesced in the non-disclosure of material facts to lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the "the SPRs" and/or Rule 1.02 and/or 1.04 of the Code.

- Admitting that he had acquiesced in PI Legal Services LLP ("the firm") acting or continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code;

- Admitting that he acted in breach of Rule 32(1) and 32(7) of the Solicitors Accounts Rules ("SARs") in failing to keep the firm's accounts properly written up and to prepare proper client account reconciliations.

It was proposed that the remaining allegation against the First Respondent (allegation 1.2) should lie on the file.

First Respondent - Undertakings

- Undertaking to the Tribunal and the Applicant not to renew his practising certificate at any time in the future and agreeing to the termination of his current practising certificate on 1 November 2012;

- Undertaking to the Tribunal and the Applicant that from 12 May 2012 he would not be employed, remunerated or associated with any business licensed or authorised by an Approved Regulator under the Legal Services Act 2007; and that he would apply to de-register Corbridges Ltd as a foreign practice by 12 May 2012;

The Third Respondent - admissions

- Admitting that she acquiesced in the non-disclosure of material facts to lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the SPRs and/or Rule 1.02 and/or 1.04 of the Code;

- Admitting that she allowed the firm's client account to be used as a banking facility to a third party contrary to Rule 1(a) and (d) and/or Rule 32(16) and/or Rule 15 note (ix) of the SARS;

- Admitting that she acquiesced in the firm continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender

clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code;

- Admitting that she acted in breach of Rule 32(1) and 32(7) of the SARs in failing to keep the firm's accounts properly written up and to prepare proper client account reconciliations.

- Admitting that she failed to deliver an accountant's report for the year ending 31 August 2008 in breach of Section 34 of the Solicitors Act 1974 (as amended);

- Admitting that she failed to make any payments to the ARP in breach of Rules 10.3 and 10.12 of the Solicitors' Indemnity Insurance Rules 2008;

- Admitting that she failed to ensure that the firm had at least two members and instead she was the sole member in breach of Rule 14.05 of the Code.

Proposed sanction

7. Both the First and Third Respondents had put forward mitigation in relation to their admissions and the Applicant proposed that the public interest would be satisfied by the First Respondent being suspended until 1 November 2012 and by his agreeing not to apply for a practising certificate thereafter. In respect of the Third Respondent, the Applicant had taken into account all the circumstances including her current mental health and was satisfied that the public interest would be satisfied by her being indefinitely suspended from the date of the Tribunal hearing.

Proposed costs

8. It was proposed that the First Respondent would pay 50% of the Applicant's total costs to include the costs of the forensic investigation, such costs to be subject to detailed assessment if not agreed and that he should make an interim payment of £50,000 to the Applicant, such payment to be made by 4 pm on 15 May 2012. In respect of the Third Respondent, it was proposed that an order for costs be made against her in the sum of £30,000 in settlement of the Applicant's cost of the proceedings against her and in relation to her means, the Applicant having reviewed a signed personal financial statement, proposed to keep the question of enforcement under review.

9. Mr Malek informed the Tribunal that the Applicant took the view that the First Respondent had been in the Isle of Man and had not been running the firm on a day-to-day basis. He had taken certain legal advice about disclosure, the subject of allegation 1.1 and while the Applicant did not suggest that constituted a defence, on that basis the Applicant no longer pursued allegations of dishonesty or recklessness against the First Respondent. He had no involvement with the lender clients and had not personally made confirmations to them and he did not see what went to them. Sometimes lenders asked specific questions about cashbacks or incentives and were given answers. This lay at the heart of the case around dishonesty. The First

Respondent said he did not know about the false confirmations made. The Applicant was obliged to prove the allegations beyond reasonable doubt. A great number of documents had been looked at and they did not prove that the First Respondent was running the cases on a day-to-day level. Mr Malek accepted that the Second Respondent did not agree but it was necessary to be guided by the evidence. The sanctions proposed in respect of the First Respondent were very severe. It was possible, although Mr Malek could not state it categorically, that there could be ramifications for him in the Isle of Man arising from these penalties. The First Respondent accepted allegation 1.3 relating to conflict of interest but made the same points regarding his not running the firm on a day-to-day basis. He accepted the SAR breaches which were the subject of allegation 2.1 but he did not admit allegation 1.2 allowing client account to be used as a banking facility. There was no evidence that he was involved in running the various ledgers concerned and so the Applicant was content for allegation 1.2 to lie on the file. If the Tribunal accepted the proposed outcome including the First Respondent's undertakings, it was submitted that this would achieve the Applicant's objective of removing him from practising in England and Wales.

10. In respect of the Third Respondent Mr Malek drew to the Tribunal's attention to her admissions and the proposal for an indefinite suspension. She had not made any admission of dishonest or reckless conduct which presented the Applicant with a difficulty but she agreed to a substantive outcome in the light of which it was possibly not in the public interest to proceed against her. The Applicant had also taken into account her mental health issues. It did not want to push her over the edge.

11. Mr Malek submitted that the position of the Second Respondent, in respect of whom no proposed outcome was put to the Tribunal, was different. Mr Malek referred the Tribunal to his skeleton argument where he set out what the Second Respondent had admitted in his response to the Rule 5 Statement. Mr Malek particularly referred the Tribunal to the Second Respondent's admissions regarding the CG property development where in respect of five plots of land he had assisted in obtaining mortgages on the basis of false representations. Mr Malek submitted that this was particularly serious and took the Second Respondent's conduct to a different degree from that of First and Third Respondents.

Submissions on behalf of the First Respondent

12. On behalf of the First Respondent, Mr Ramsden confirmed his agreement to the proposed outcome for him. Mr Ramsden emphasised that the First Respondent had sought to respond in a full and responsible fashion to the allegations. He accepted the various breaches but denied any conscious dishonesty or recklessness amounting to dishonesty. Mr Ramsden submitted that the outcome proposed was realistic and in the public interest.

Submissions on behalf of the Third Respondent

13. On behalf of the Third Respondent, Mrs Palmer informed the Tribunal that substantial mitigation had been put in via the Third Respondent's statements. Her admission in respect of allegation 1.1 was made on the basis that she came very late into the situation, made enquiries and accepted what she was told. When she ultimately discovered in January 2008 that contrary to her belief, disclosure had not been made to

the lender clients, she immediately reported the facts to the Applicant. She accepted that she was inexperienced and naive and had not taken enquiries as far as she should have and that she should not have accepted at face value what had been told to her. Having regard to allegation 1.2, the Third Respondent had accepted an accounting system which was in place prior to her arrival. Monies came in blocks and had to be paid into an account if they were not identified to a particular client. Rule 32(16) allowed the use of such an account if it was not possible to identify a payment but it appeared that monies had been left there for longer than was acceptable. When it became clear that there were problems with the system and the capabilities of the staff, the Third Respondent had taken immediate steps to remedy the situation, not necessarily entirely successfully. In respect of allegation 1.3 the Third Respondent admitted that she had acquiesced in the firm acting or continuing to act as set out in the allegation. She had failed to recognise the conflict at an earlier stage and should have taken steps to end the relationship with the parties Mr R and Mr B earlier. They had been unknown to her before she joined the firm. She had had no dishonest intent and no knowledge of the trust and other business structures that underlay T's investments. The conveyancing procedures at the firm were compliant with UK law and Land Registry procedures and led to successful registration of title. The amounts of money that she saw coming into the firm justified the prices paid as set out in the mortgage instructions. They had been independently valued by the lenders' valuers. It was submitted The Third Respondent had been subject to extensive bullying by the people at T and in spite of that and its effect on her health she had not allowed it to affect her professional obligations. The Third Respondent had told the First Respondent that she was not prepared to suffer attempts at interference and in early November 2007 the firm had ended its relationship with T. She was not in possession of all the information regarding the transactions and she accepted that over time she must have been misled. She had been quite shocked at the working practices at the firm on taking over and she had tried to remedy the considerable disorder that she found. In essence she had taken her eye off the ball. In respect of allegation 2.1, the Third Respondent admitted the breaches of the SARs. The system was in place when she joined the firm. She had received assurances that the accounts were in order. The firm had not been in existence for an entire accounting period and there was nothing for her to inspect and she was not entitled to inspect accounts until she was a member of the firm. Auditors oversaw the accounts. There were ongoing difficulties regarding the then cashier [who was replaced]. The accounts were rewritten and on 1 February 2009 the replacement, a qualified legal cashier stated that no client had suffered a loss of clients' monies and as a result of his efforts money was posted to the correct accounting period. He was satisfied that the bank reconciliation and accounting system were working correctly. The Third Respondent accepted responsibility for a technical breach but once she had realised she had taken appropriate steps although these had not been immediately successful. In respect of allegation 3.1 she accepted that the accountant's report for the year ended 31 August 2008 had not been delivered. She had been suffering from severe depression when the accounts were due. She had no means to pay for the report. In respect of allegation 3.2 and the payments to the ARP she had ended the firm's relationship with T in November 2007 and actively pursued other sources work and details of her efforts were set out in her witness statement. The First Respondent had tried to put lucrative work towards the firm but the loans necessary to support the firm did not materialise. The Third Respondent had to be insured for current and future work and ultimately her health failed and she had persuaded the Applicant to intervene in the firm. In respect of allegation 3.3 that she had failed to ensure there were two members of the firm, she was the sole member

once the First Respondent left. Mr K came but there were insufficient funds to pay him and so he left. She attempted to comply with the rules by having a company as the second member but the Applicant said that would not satisfy its requirements regarding insurance. The breakdown in her health had led to her removal and cessation of practice. The Third Respondent had cooperated with the investigation. She had not acted in her own interests and had lost everything, job, home, another property and as a result of her mental health issues, her self-worth. When she entered into a relationship with the firm she has been well regarded, as her statements showed. She relied on the evidence of good character supplied to the Tribunal. She suffered continued ill health. At some point in the future she might wish to return to practice and apply for her suspension to be lifted. On her behalf Mrs Palmer asked the Tribunal to accede to the Applicant's proposal for disposal of the allegations against the Third Respondent.

Submissions by the Second Respondent

14. The Second Respondent made submissions in respect of the proposed disposal of the allegations against the First and Third Respondents. He expressed sympathy with the Third Respondent's ill health. He said that he had explained fully to her the practices and complexities at the firm. She had joined from an experienced firm and was on the Law Society Panel. Regarding the First Respondent who had said he had little to do with the day-to-day practice of the firm, he had been in daily contact on the telephone and the Second Respondent had been in contact with him about every issue they faced. The Second Respondent did not understand the outcome which was being proposed in that the First Respondent would be free to practise in the Isle of Man. He submitted that it was not fair as he was felt he was being cast as the villain and being hung out to dry. He was willing to admit failings if appropriate but to be left to face the music on his own seemed to him a little bit harsh. Mr Malek submitted to the Tribunal that what the Second Respondent said was more in the nature of mitigation.

Decision of the Tribunal in respect of the First and Third Respondents

15. The Tribunal considered the submissions on behalf of the Applicant and each of the Respondents. It had noted the admissions of the First and Third Respondents and that in the case of the First Respondent; the Applicant did not consider that the evidence supported the maintenance of an allegation of dishonesty against him. In respect of the Third Respondent it had particularly noted her fragile mental state and ongoing mental health problems. The Tribunal agreed that the penalties to which the First and Third Respondents were submitting themselves were severe. Accordingly the Tribunal agreed that the proceedings against the First and Third Respondents should be disposed of in the way proposed and made orders accordingly. (For the detailed wording of the orders see Statement of Full Order at the end of this judgment.)

Factual background

(The allegations against the First and Third Respondents having been disposed of at the commencement of the hearing, references to them in this judgment are by way of background only. The factual background below relates to the First and Third Respondent where the same allegations were pursued against the Second Respondent as had been brought against them.)

16. The First Respondent was born in 1952 and admitted in 1976. His name remained on the Roll.

17. The Second Respondent was born in 1952 and admitted in 1978. His name remained on the Roll.

18. The Third Respondent was born in 1975 and admitted in 2002. Her name remained on the Roll but she was not currently holding a practising certificate.

19. The First Respondent practised on his own account from 5 January 2004 to 1 October 2006 at PI Legal Services Solicitors based in Douglas, Isle of Man. On 2 October 2006 PI Legal Services LLP was established with its registered offices in London.

20. On 2 October 2006, the Second Respondent was engaged as the office manager of the newly incorporated firm. He left the firm on 31 August 2007 and the Third Respondent, who initially joined the firm as an assistant solicitor on 2 July 2007 and Head of Legal became a member in September 2007, having acquired a 15% member's interest from the First Respondent. The Third Respondent remained a member until 28 August 2009 when the firm closed. The First Respondent had left the firm on 31 December 2007.

21. The allegations which were pursued during the remainder of the Tribunal hearing arose from a Forensic Investigation Reports ("FI Report") dated 13 May 2010, regarding conveyancing work undertaken by the firm.

22. The First Respondent had re-qualified in the Isle of Man and was an advocate solicitor and sole proprietor of the Corbridges Solicitors and a 99% shareholder in CO Law International, ("CO Law") a licensed Trust and Corporate provider registered in the Isle of Man. In 2005 he was instructed by Mr R and Mr B to set up family trusts on their behalf. They later instructed him to set up an offshore property partnership "R&B" which was administered by CO Law. Around October 2006 the First Respondent was instructed by Mr B to establish another partnership, "AB". The property partnerships R&B and AB were established to purchase and resell properties. Income accruing to the partnerships, by virtue of their structure, was taxable in the Isle of Man and not in the UK.

23. In 2006, Mr R and Mr B requested that the First Respondent establish a firm of solicitors in the UK to provide in relation to properties bought by R&B and/or AB, conveyancing services for clients referred to the firm by an entity T. The directors of T were Mr R and Mr B, and Mr R was the sole shareholder. The Second Respondent was the company secretary from 18 January 2004 to 21 April 2008. The First Respondent and Mr C established PI Legal Services LLP ("the firm") in October 2006. He held a 99% member's interest and Mr C (who was not subject of these proceedings) held a one per cent member's interest. Initially the firm traded as [T] Legal. Mr K, a solicitor, took over Mr C's member's interest on 17 March 2008. Mr K resigned on 26 June 2008 and was not the subject of these proceedings.

24. On 27 July 2006 a property sourcing agreement was entered into between R&B and T which provided for a £50,000 per annum payment to T. Under the agreement:

> "[T] is retained on a non-exclusive basis to provide the independent introduction and services specified in the First Schedule at such locations and at such times as the Partnership [R&B] and [T] shall from time to time agree."

The First Schedule included:

> "When requested by the Partners to locate and/or target properties, land, development land and property companies and/or unit trusts owning land in England to Wales for the purposes of resale only and not the purposes of investment…
>
> To assist in identifying funders currently active in the marketplace from time to time in relation to the type of property, shares and units to be purchased …"

25. On 23 November 2006 an Agreement and Indemnity was entered into between T, the firm and Mr R and Mr B. This recited the fact that T had procured the incorporation of the firm for legal services for its members. T also provided an indemnity in respect of the firm's expenses which was guaranteed by Mr R and Mr B. The paragraph numbers in the quotation below are taken from the Agreement:

> "2.1 [T] has procured the incorporation of [the firm] with a view to [the firm] enhancing the standing of [T] in the marketplace by providing a swift accurate and effective legal service to its members.
>
> 2.2 [The firm] has and will continue to incur liabilities in order to set itself up in practice and [T] has agreed to identify [the firm] in respect of such liabilities insofar as the firm is not able to recoup such liabilities from its own income or from third parties who have contractual obligations to it.
>
> 2.3 The Guarantors have agreed to enter into this agreement in order to guarantee the obligations of [T] to [the firm].
>
> 2.4 [T] have agreed to make a commitment to [the firm] in respect of continuity of instructions.
>
> …
>
> 4.1 [The firm] agrees that it shall not incur any obligations in connection with the setting up and running of the Business without the prior knowledge and approval of [T].
>
> …
>
> 7.1 Subject to [the firm] providing and continuing to provide legal services to Clients at a level of quality and service that a client might reasonably expect from a solicitor [T] hereby confirms that it will continue to procure the referral to [the firm] of instructions on behalf of purchasers and their mortgagees in property transactions in which they are engaged for a minimum period of five years from 1st October 2006.
>
> …
>
> 7.3 The parties agree that the minimum number of anticipated referrals is 750 per annum.

7.4 In the event of the number of referrals exceeding 1500 per annum [T] will give [the firm] due notice of such increase so as to permit [the firm] to increase its staffing arrangements in order to meet the additional demand.

…

The Schedule

1. All and any expenses and long term commitments incurred or entered into by [the firm] in connection with the setting of itself up in practice in the United Kingdom…"

26. During the course of the forensic investigation, Mr Bailey the Investigation Officer ("IO") established that members of T would be required to sign a "Membership Agreement" to which was attached a "Qualifying Form" and "Terms and Conditions of Membership" Form. T was a property investment club which identified properties that could be purchased from developers at discounted prices. It sought to encourage members to purchase buy to let properties at discounted prices usually amounting to 13% or 14% on the purchase price. In exchange for a five-year membership fee of £2,500, members were entitled to access to T's property portfolio, property reviews, property alerts and substantial financial incentives in the form of discounted purchase prices and small deposits. T secured these discounts for their members by negotiating the purchase of multiple properties, many being purchases "off the plan" or "off paper", that is prior to completion, from developers. T operated as a property sourcing consultant to R&B and/or AB and properties identified by T would be purchased by R&B or AB at a discount. R&B or AB would exchange contracts with the developer and pay a reservation fee. Properties purchased by them were advertised to members of T. In the prospectus with which they were provided R&B were mostly represented by B solicitors and on occasion by CR or R&C.

27. Prior to completion, R&B or AB would assign their interest in the property to the T member, and completion would take place between the developer and the T member. Any reservation fee paid by R&B or AB to the developer would be refunded. The deed of assignment would make reference to the Head Contract which contained the un-discounted purchase price and made no reference to any discount received by the assignor.

28. The firm was instructed on behalf of the T member and the mortgage lender and would attend to the assignment of the interest between R&B or AB and the T member and also completion with the developer. R&B or AB's solicitors would usually forward a completion statement to the firm advising on the division of funds to the developer and to R&B or AB. These statements showed that the funds remitted by the firm to the developer were the discounted purchase price.

29. With the exception of one development, for the purposes of these transactions, T would pay a contribution to the purchase price of the property acquired by the end purchaser, which usually amounted to the discount being offered to the T member. Between January and July 2007, these contributions were made on behalf of T directly to the firm and were transferred to the ledger account of T operated by the firm and then transferred into the individual investor's ledger account. On completion, funds would be paid to the developer in satisfaction of the discounted purchase price and an

"assignment premium" paid to the solicitors acting for R&B or AB. The contributions advanced by T were refunded to it after completion via R&B or AB.

30. Between 13 June 2007 and 19 June 2007 a ledger account was maintained at the firm in the name of RL solicitors from which T contributions were transferred to the end buyers' ledger accounts on 33 separate transactions. T funds were remitted from RL to the firm's client account. After 19 June 2007 contributions to the purchase of the property were received from RL or SGH solicitors acting as stakeholder for T and monies were remitted to the firm under cover of a letter stating that they acted for the individual investor concerned and that they had complied with their obligations in terms of the "Anti Money Laundering Legislation". Subsequently contributions from T were channelled through E Trustees Ltd and paid directly to the T members' bank accounts on the basis that these were a "gifted deposit" and funds would be remitted to the firm direct from the T member.

31. From 14 February 2007 to 3 June 2008 a ledger account was maintained on behalf of T known as the "[T] members feeder account". It was used as a suspense account to provide for the payment of T reservation deposits and contributions.

32. From 10 January 2007 to 22 February 2008 a ledger account had been maintained on behalf of AA Mortgage Brokers also known as T Mortgages which was used primarily for the collection of and payment to AA Mortgage Brokers of broker fees.

33. The firm was disinstructed in January 2008 and the majority of investors transferred their files to another firm on the advice of T. T was subsequently in liquidation.

34. In the FI Report the IO exemplified various matters in order to demonstrate the arrangements that were in place. These included:

<u>Ms S and Mr E purchase of 1 KC</u>

35. The firm (with the Second Respondent as supervising solicitor) was instructed by Ms S and Mr E in respect of the purchase of this property from R&B for the sum of £169,995. The property had been purchased by R&B from a developer KCD. The purchase was financed by way of a mortgage advance from EMC in the sum of £144,495 being 85% loan to value on the disclosed purchase price of £169,995. On 18 December 2006 the firm was instructed by EMC to act on their behalf "in line with Part 1 and Part 2 of the Council of Mortgage Lenders Handbook". The instruction letter stated:

> "When you send us the certificate of title you are confirming to us that you have complied fully with all of our instructions.
>
> If you have any doubt about any of the instructions, you must call us at once and you must not complete the mortgage until you have done so."

36. On 23 January 2007 EMC wrote to the firm stating:

> "with reference to the above and our mortgage offer dated 18/12/06 we refer you to paragraph 6.3 of the CML Handbook. Accordingly, we would ask you

> to confirm in writing whether there are any incentives or discounts being received by the client."

37. On 30 January 2007 the firm responded stating:

> "Thank you for your letter dated 22 January 2007 and the reference to the CML Handbook; I am not entirely sure what question you are asking me to clarify. However as section 6.3 deals with "incentives" I can only presume you wish me to reaffirm whether this transaction involved these. Therefore, I can confirm that the purchase price and the valuation price are both as per your offer and my COT, and that this price will naturally be reflected at the land registry when the property is registered.
>
> The client did not receive any builder incentive or cash-back, with a deposit coming from his own personal sources.
>
> The deposit and your mortgage monies were sent to the vendor by us and hence the case is now completed.
>
> I trust this satisfies your enquiry made in your recent letter."

The certificate of title was signed by the Second Respondent dated 7 February 2007.

38. The client ledger reflected the mortgage advance as having been received on 12 February 2007. The statement of account forwarded to the clients on 12 February 2007, indicated that an amount of £17,000 had been received on account and that a further sum of £1,000 had been paid as a deposit, both totalling £18,000, leaving an amount of £10,896.96 due to complete.

39. On 15 February 2007, B solicitors acting for R&B forwarded their completion statement indicating that an amount of £132,491.83 was payable to the developer's solicitors and that an amount of £37,759.75 was payable to B solicitors.

40. The client ledger reflected the transfer of the sum of £18,000 from the client account of T into the purchaser's client account on 14 February 2007 bearing the narrative "Allowance to complete short." The T client ledger had a corresponding entry dated 14 February 2007 bearing the same narrative "Allowance to complete Short"

41. The IO was unable to find any indication on the client matter file to show that the mortgagee had been informed of the fact that the property been acquired by way of an assignment from the seller, who was not the registered proprietor and that an allowance of £18,000 had been paid by T towards the purchase price of the property.

<u>Mr DWH, Purchase of 3 W, Rotherham</u>

42. The firm (the Second Respondent) was instructed by Mr DWH in respect of the purchase of the above property from R&B for the sum of £189,995. Contained within the file was an unsigned copy of the original head contract made and entered into between G R Ltd as "Sellers" and R&B as "Buyers". Under a heading "Schedule of Incentives" it was stated:

> "On legal completion, there will be a deduction from the balance due on completion in the sum of £37,999. This will be shown by way of an allowance on the completion statement."

43. The file also contained a letter addressed to CR solicitors acting for R&B dated 12 December 2006, from the developer's solicitors W&Co stating:

> "Please further note that if your client wishes to take advantage of any incentives being offered by our client company, an exchange of contracts must take place on or before the reservation deadline…"

44. The purchase of the property was financed by way of a mortgage advance from GMAC RFC in the sum of £180,420 being 95% loan to value on a disclosed purchase price of £189,995.

45. On 6 March 2007 the firm was instructed by GMAC RFC to act on their behalf in relation to the mortgage transaction stating:

> "…your instructions are contained in the CML Lender's Handbook for England and Wales, the Part 2A, shown in our Solicitors pack… and any relevant additional instructions set out in the Offer. I confirm that your instructions are subject to the limitations contained in Rule 6(3) (c) and (e) of the Solicitors Practice Rules."

Clause 11 of the mortgage offer stated:

> "If you are receiving a deposit and/or incentive greater than 5% of the purchase price in total, this offer is invalid. Failure to disclose a deposit or incentive may result in a change to, or variation of, the terms of this offer… Incentives include, but are not limited to: – Cash back – Money towards legal fees, stamp duty or valuation – Mortgage subsidy or allowance – Rental Subsidy or allowance – Money towards home furnishings – Any other cash amount or allowance offered…."

The certificate of title was signed by the Second Respondent and dated 5 March 2007. In a letter of the same day, the firm advised GMAC RFC that:

> "The Certificate has been prepared in accordance with our standard conveyancing procedures and following your specific instructions as set out in the mortgage offer.
>
> The Balance of the funds due on completion will be paid from our Client account utilizing the mortgage advance and funds provided or procured by the Purchaser.
>
> In respect of the provision of such funds we are satisfied that the lender's position is fully protected in that (i) Anti Money Laundering Regulations have been observed, (ii) no third party rights are created and (iii) the valuation of the property is not adversely affected."

46. An e-mail from MT at T to the firm about this and other matters, confirmed that an amount of £30,399 had been set aside as "the [T] holding deposit and the reservation deposit" from funds transferred from T to the firm for the benefit of Mr DWH.

47. A completion statement dated 7 March 2007 received from CR solicitors acting for R&B indicated that an amount of £190,259.38 was required to complete the transaction. A further e-mail from MT to the firm dated 7 March 2007 authorised payment of the sum of £30,399 from the T account to facilitate completion of the transaction.

48. The completion statement dated 7 March 2007 addressed to Mr DWH indicated an amount of £17,153.78 was due and payable to him, being a surplus on the purchase.

49. The client ledger reflected the transfer of the sum of £30,399 from the client account of T into Mr DWH's client ledger on 7 March 2007 bearing the narrative "[T] contribution". The T client ledger reflected a corresponding entry dated 7 March 2007 bearing the same narrative "[T] contribution".

50. The IO was unable to find any indication in the client matter file to show that the mortgagee had been informed of the fact that the property been acquired by way of an assignment from the seller, who was not the registered proprietor or that a contribution of £30,399 been paid by T towards the purchase price of the property.

Warwick development

51. During the investigation, the IO noted that the firm had acted in 23 transactions relating to a development in Warwick. All these transactions involved a T contribution and the properties were purchased at a discounted price. In 20 of the transactions the mortgage advance exceeded the discounted purchase price paid. The Second Respondent had signed all the certificates of title.

Mr JC – purchase of Unit 170 Warwick

52. In this particular transaction the discounted price exceeded the mortgage advance. The firm (the Second Respondent) was instructed on 6 December 2006 by Mr JC to act on his behalf in regard to the purchase of this property to be acquired at a purchase price of £172,500 from R&B. The client matter file contained a valuation certificate estimating the value of the property (subject to satisfactory completion) to be £172,500, stating however under 'remarks':

> "I was not able to inspect the property as access was not permitted. All information in this report is supplied by the sales office."

53. The Agreement to Assign, dated 29 December 2006, entered into between R&B as 'Seller' and Mr JC as 'Buyer' identified the 'Head Seller' as GW Ltd and the 'Head Contract' as being the contract made between the Head Seller and the Seller.

54. The purchase was financed by way of a mortgage loan from ME in the sum of £133,884 plus £2,712 for fees added to the loan, based on a disclosed purchase price of £172,500.

55. B solicitors acting for the "Seller" forwarded a completion statement dated 20 December 2006, indicating that an amount of £139,557.42 was payable to the Head Seller and that an amount of £33,402.97 was payable to B solicitors.

56. On 29 December 2006, the firm was instructed by ME to act for them in the transaction in accordance with the second edition of the CML Handbook subject to the limitations contained in Rule 6(3) (c) and 3(e) of the SPR.

57. The certificate of title was signed by the Second Respondent and dated 2 January 2007. In a letter, dated 3 January 2006 [sic] ME asked the firm to:

> "Please confirm the purchase price and that all monies including the deposit are to be paid through your client account…"

58. In a letter dated 3 January 2007, the firm confirmed that the purchase price was £172,500 and that all monies, including the deposit, would be paid through the firm's client account. The completion statement showed the amount payable to GW Ltd as £139,557.42 and recorded the amount payable to B solicitors as £33,402.97. The total payable was stated to be £172,960.39. A statement of account dated 9 February 2007 indicated that a deposit of £1,000 had already been paid and that an amount of £25,700 had been received on account.

59. The client ledger showed that on 16 February 2007, an amount of £26,647.52 had been transferred from the client ledger of T into the client ledger of Mr JC bearing the narrative '[T] Contribution'. The T ledger showed a corresponding entry bearing the same narrative. In a letter dated 27 February 2007, the firm confirmed to Mr JC that the transaction had been completed.

60. The IO was unable to find any indication in the client matter file to indicate that the mortgagee had been informed of the fact that the property had been acquired by way of an assignment from the seller, who was not the registered proprietor, and that an allowance of £26,647.52 had been paid by T towards the purchase price of the property.

<u>CG development Warwick</u>

61. The IO noted a variation to the method of operating which had been used for the CG development in Warwick where the majority of properties were purchased by Mr B. A total of five client matters were reviewed. The properties were acquired at discounted prices financed by way of mortgage advances. The mortgage offers were based on the valuation of the properties and not on the purchase price. Incentives were given by the vendors either in the form of a discount on the purchase price or a cashback incentive paid on completion to the purchaser. Developer's incentives and refunds in all five cases meant that the mortgage advances exceeded the price paid.

62. The IO was unable to find evidence in the client matter files to indicate that the mortgage lenders were aware of the fact that the borrowers were not the registered proprietors at the time that the mortgage funds were advanced and that the monies advanced were in fact being used to finance the purchase of the properties from the vendor and not to redeem any pre-existing mortgages or bridging loans. Neither was there any indication that the mortgage lenders were specifically informed that the

properties were being acquired subject to a discount or cashback incentive paid on completion to the purchaser.

63. All certificates of title were signed by the Second Respondent.

Purchase of unit G34 CG

64. The firm (the Second Respondent) was instructed by Mr B to act on his behalf in regard to the purchase of this property from GH limited.

65. The 'Agreement for Sale' dated 22 December 2006 reflected the purchase price as being £159,950. It contained a schedule of incentives which said:

> "On legal completion, there will be a deduction from the balance due on completion in the sum of £31,990.00. This will be shown by way of an allowance on the completion statement."

66. In a letter dated 1 December 2006 addressed to the firm, the seller's solicitors W&Co stated that the deadline for exchange and completion was 29 December 2006 and that if the purchaser wished to take advantage of any incentives offered, an exchange of contracts had to take place on or before the reservation deadline.

67. On 18 December 2006, the firm was instructed by RM, a lender, in accordance with the provisions of the CML Handbook and subject to the limitations in Rule 6(3) of the SPR, to attend to the registration of a charge in their favour in the sum of £135,957 being 85% loan to value on the estimated value of £159,950. The instruction letter concluded:

> "If there are any matters which you need to notify us of or take our instructions on in order to comply with our instructions to you, please ensure you do so before submitting your Certificate of Title and well in advance of completion."

The mortgage offer form bore the word "remortgage".

68. The certificate of title was signed by the Second Respondent and dated 28 December 2006.

69. In a telefax dated 3 January 2007, the mortgagee stated that in order for it to release the funds:

> "Solicitor to confirm in writing that the bridging loan with NatWest through [AA] Ltd used to purchase this property is fully repaid on completion of the new loan with [RM] and that [RM] hold first charge over the property."

70. The firm replied on 4 January 2007 stating:

> "We confirm that the bridging loan with Natwest [sic] through [AA] will be fully repaid on completion of the loan with [RM] and [RM] will hold the first charge over the property."

71. The IO noted that Mr B had also purchased unit 31 CG from the same seller and that a mortgage advance in the sum of £135,957 had been received from RM on 10 January 2007 from which the sum of £127,360 was transferred to the ledger of AA within narrative stating "TRF of [AA]". On the AA ledger, the credit of £127,360 was recorded which together with an additional transfer of £600 was used to pay W&Co for the purchase of G34 CG. On 10 January 2007, mortgage funds totalling £135,957 were received from RM in regard to the purchase of G34 CG and credited to the appropriate ledger from which the sum of £127,577.50 was transferred on 11 January 2007 to the AA ledger and used to pay for the purchase of 31 CG.

72. The client ledger in the name of AA reflected payments in the sum of £127,577.50 to W&Co on 10 January 2007, being the amount required to complete and bearing the narrative "[W&Co] to complete 34 [CG]" and on 11 January bearing the narrative "[W&Co] to complete 31 [CG]".

73. The IO was unable to find documentation on file to confirm that a bridging loan had been obtained with NatWest through AA or that the mortgagee had been advised that an incentive had been received from the seller in the sum of £31,990 on each purchase. During the course of an interview conducted on 28 October 2008, the above transactions were discussed at length with the Second Respondent. When he was asked whether he thought that he had breached the CML Handbook, he replied:

> "Well, yes no point in pretending otherwise."

<u>Mr Gordon purchase of 108 AV, Buxton</u>

74. This transaction was supervised by the Second Respondent who had written to confirm instructions by way of a client care letter dated 25 April 2007 and assured Mr G that T Legal was the trade name of the firm and that whilst the firm enjoyed a strong relationship with T it was entirely independent of it.

75. The Second Respondent advised Mr Gordon that to be certain of acquiring the property at the price offered and on the terms agreed exchange of contracts might take place without a mortgage offer.

76. The firm was instructed on 9 July 2007 by a lender WM to attend to the registration of a charge over the property in their favour in the sum of £163,775 being the loan amount to be advanced to Mr Gordon based on a purchase value of £181,950. An agreement to assign on the file cited the "Seller" as being R&B and the "Head Seller" as SS Ltd.

77. A certificate of title was signed on 22 August 2007 by the Third Respondent which cited the price in the transfer as being £181,950.

78. On 29 August 2007 the firm received a letter from SGH solicitors stating:

> "We confirm that we act on behalf of Mr [G]… in connection with the purchase of the above-mentioned premises. We confirm that the sum of £22,744 has been transferred to your account...We confirm that these funds are being sent for the specific purpose of completing the purchase of the abovementioned premises. We confirm that in connection with the funds sent

> we have complied with our obligations under the terms of the Anti Money Laundering Legislation..."

79. R&B's solicitors B forwarded a completion statement setting out the manner in which the completion funds would be distributed, namely the sum of £147,103 to LM solicitors on behalf of the developer WH Ltd and the sum of £25,919.15 to B solicitors.

80. The firm forwarded a statement of account to Mr Gordon, together with a cheque in his favour drawn on the firm's client bank account in the sum of £8,041.33 representing an amount due to Mr Gordon by way of a refund, described in the client matter file as being "client's overpayment due back".

81. Mr Gordon confirmed to the IO that the property was marketed to him by T at a valuation price of £181,950 less a twelve and a half percent discount of £22,744 and at a member's price of £159,206.

82. Mr Gordon confirmed that he had received a letter from T dated 29 May 2007 confirming his purchase of the property and instructing him to forward the sum of £9,097 less £1,000 reservation fee to the Second Respondent of [T] Legal in respect of the exchange deposit.

83. Mr Gordon showed the IO the Finders Fee Agreement from T reflecting payment of a finder's fee of £5.344.

84. A letter from SG H solicitors addressed to Mr Gordon dated 17 August 2007 stated:

> "we have been asked to act on your behalf to provide the stakeholder services detailed below… our instructions will be to receive from [T] payment of funds you have made to [T] in respect of your acquisition of one or more properties referred to you by [T] to hold those funds as a stakeholder and pay them out in accordance with your instructions or in accordance with any undertakings given by us in respect of such fund."

85. Mr Gordon confirmed to the IO that he thought he was buying property from the developer and that he did not know that T was contributing towards the purchase price. He said that he had faith in what T and the firm were doing and had been informed by T that SGH was "the holding bank" in place to hold money on behalf of T, the developer and himself. Mr Gordon stated that what was important to him was that the cashback would go directly into his bank account. He had been told the cashback was the difference between the valuation and the member's price.

86. It was noted that the amount repaid by SGH was the same as the discount due to Mr Gordon which had been offered to him by T at the outset. It was also noted from the client ledger that an amount of £8,861.25 had been received from Mr Gordon on 1 August 2007 and that the sum of £8,041.33 was paid to Mr Gordon on 7 September 2007.

Legal Advice

87. At various times the firm took legal advice about its disclosure obligations. Advice was taken from Leading Counsel in November 2006 about the 2005 version of the CML Handbook. Instructions to Leading Counsel were prepared by the Second Respondent. Advice was also taken from a firm of solicitors H in March 2007 about a standard form of disclosure, contact being with Mr G of that firm, mainly by the First Respondent. The email correspondence showed that this disclosure approved by H was later changed. It was not clear why the disclosure was changed or who it was changed by. However the First Respondent acknowledged in his interview with the IO that the change was approved by him. In late May 2007 following a change to the CML Handbook when disclosure obligations were tightened, H solicitors was contacted again by the First Respondent for advice. Mr G informed the First Respondent that he and a property colleague at the firm were of the view that the arrangement involving T needed to be disclosed. There were email exchanges including one dated 7 June 2007 from the First Respondent to the Second Respondent copying in Mr G of H solicitors. It included:

> "It is safe to say that we all agree that post 1st June 2007 [T] mode of operation gives rise to a disclosable arrangement on part of the purchasers Solicitors by reason of the amendment to the CMLH…"

Witnesses

88. The Second Respondent submitted to the Tribunal that he did not require the IO Mr David Bailey or the T investor Mr Anthony Gordon to be called as he was not disputing their evidence. Mr Malek submitted that this was a very serious case and the transactions involved needed to be looked at both in detail and in the round and this was difficult to do without witnesses. Some witnesses also made quite serious allegations, for example the lenders felt defrauded and misled and the witness Mr Gordon felt let down. He was a victim just as much as lenders. Mr Malek also submitted that as the Tribunal had a certain inquisitorial function it should hear the witnesses. The Tribunal noted that the Second Respondent was accepting the Applicant's case (save in respect of the allegation of dishonesty and allegation 1.2) but felt that it would need to look into the evidence and understand what had happened in transactions. It was agreed that there was no need to call two witnesses Ms R employed by the Applicant and Mr PW of B solicitors. Ms R's evidence was relevant to the case against the First Respondent which had been disposed of and Mr PW's evidence was only relevant to one document. Accordingly the following witnesses were heard: Ms Alison Hutchins, Mr Anthony Gordon and Mr David Bailey. The Second Respondent also gave evidence and where relevant that is recorded under his submissions in respect of the various allegations.

Ms Alison Hutchins

89. The witness confirmed the truth of her witness statement dated 24 April 2012. Before joining UCB a mortgage lender in 2001 as a mortgage underwriter, she had been employed by its parent company Nationwide Building Society for some 23 years. She was employed in a UCB team other than that which dealt with the firm, as all the firm's referrals came through AA mortgage brokers or another entity and work was generally assigned within UCB by geographical area. She confirmed the information

in her statement about the procedures used by UCB. Beyond the information obtained through UCB's automated system, information sought depended on the individual case. The criteria used were constantly changing and the teams were updated on the changes. The witness confirmed that guidance had been issued internally about new build incentive schemes on 20 February 2006 and that UCB in determining mortgage applications would work on the lower purchase price once the incentives had been applied. If an incentive was known about, UCB would refer back to its valuer to see if the incentive had any impact on the valuation. The witness was referred to the firm's instructions to counsel where it was stated:

> "The valuer is not told of any potential discounts. His sole task is to deliver an open market valuation of the units on sale."

90. She confirmed that the valuer should be told of any incentives. The witness confirmed that the provision of a 15% deposit from the customer's own funds which had to pass via the acting solicitor's account to the vendor, was extremely important. It was regarded as being related to the purchaser's level of risk and commitment and UCB would not lend at all if the individual was not providing 15% from their own money. It was important to know the true value of the property and that nothing unknown was going on behind the scenes. Further if UCB was told that a property had been bought less than six months ago and sold, then the UCB team would have to inform head office. The application for the mortgage would be stopped and head office would send a letter to the solicitors seeking more information. It would then be a matter for head office to decide whether UCB would lend or not. They would also refer to their in-house legal staff anything such as the T model where the developer agreed to sell to a purchaser who assigned to a T member with the initial purchaser dropped out and completion taking place between the developer and the investor. The witness confirmed that UCB was anxious to guard against money-laundering and to understand any hidden agenda where someone was buying at an undervalue. In this respect also UCB considered it important that mortgage applicants were putting their own money in to ensure that the funds being used were legitimate and that nothing untoward was going on. UCB's office manual covered gifted deposits. They were anxious to know whether this was anything other than a case of a family member helping out a child. Anything else was problematic. Regarding loan to value ratios, UCB's manual spelt out the various percentages for loan to value according to purchase price. The lower the price the higher the percentage they were prepared to lend within a band of 85% to 75%. The witness also confirmed that she had set out in her witness statement that she expected solicitors to comply with their obligations as set out in the CML Handbook and that by signing the certificate of title they were certifying that they had done so. The witness was not subject to cross-examination.

<u>Mr Anthony Gordon</u>

91. The witness confirmed the truth of his witness statement dated 16 April 2012. His occupation was petrol tanker driver. He had no legal experience (this was clarified in relation to a statement in the response of the First Respondent to the Rule 5 Statement that the witness was believed to be a former solicitor). The witness confirmed that he had paid a membership fee of £2,500 to T and received a letter from T dated 10 April 2007 which said:

> "Thank you for joining [T]. We are delighted to welcome you as a [T] ONE-TO-ONE MEMBER and look forward to getting started on building you a property portfolio that allows your finances to flourish…

The benefits described in the letter included:

> "…Big discounts, small deposits excellent discounts of up to 20% per property with deposits from as little as 1%;
>
> …
>
> Access to our End-to-End Property Service which includes [T] INVEST, [T] MORTGAGES, [T] LEGAL and [T] LETTINGS helping you to determine where to invest, how to finance and help find tenants;
>
> …
>
> Access to exclusive mortgage offers through [T] MORTGAGES…"

92. The witness had been assigned a portfolio manager Mr W and purchased a number of properties placing a sales reservation fee of £1,000. Six properties had been lined up for him, of which he eventually bought two. (One of these transactions, 108 AV is referred to in the background to this judgment.) The other of the witness's purchases was of a property 36 TH in Kent. The witness had described both transactions in his statement. The Tribunal had before it a schedule relating to the TH development which included information about plot 36. The valuation price was shown as £185,000; the member's price was £160,950 with a discount of 13% in the amount of £24,050. The schedule showed mortgage options; one an 85% mortgage, the other 90%. The witness confirmed that he had regarded this as an attractive investment opportunity. He was referred to an indicative cash flow statement provided by T which showed that with a maximum mortgage of 95% (£175,750) he would receive cashback before completion costs of £18,500. The witness also confirmed that according to a schedule of potential returns provided to him by T with different lenders, the maximum return on his investment would be 381%. He confirmed the details of an invoice in respect of the transaction from T dated 18 May 2007 showing due a finder's fee of £4,624.68 and the reservation fee of £1,000. [After the addition of VAT, £6,434 was payable.] He had received a letter of the same date congratulating him on his purchase, enclosing the Sales Reservation Form and Finder's Fee Agreement and referring to the Second Respondent at [T] LEGAL as T's recommended solicitor. The letter said that the witness's details would be forwarded to [T] MORTGAGES and he was to be contacted by [T] LETTINGS nearer to completion. The witness had received a letter dated 21 May 2007 from [T] LEGAL and signed by the Second Respondent. It included:

> "I understand from [T] Ltd that you would like us to act for you on the purchase of the above property.
>
> I would like to take this opportunity to introduce us…
>
> [T] LEGAL is a trade name of [the firm] of… the Isle of Man.
>
> Whilst the Firm enjoys a strong relationship with [T] Ltd it is entirely independent of it.
>
> …

> The Development has been offered to you usually while it is in the course of construction.
>
> Assuming that you require a mortgage to complete this purchase normal practice is that you have a mortgage offer before you exchange contracts.
>
> You are at liberty to adopt this course if you so wish.
>
> However in order to be certain of acquiring the property at the price offered and on the terms you have agreed with [T] you are invited to exchange contracts without a mortgage offer having been made to you.…"

93. The witness said that he would probably not have purchased without a mortgage but that he had put his faith in this company which had led him to believe that that was how the transaction was being handled. He had been assured that he would get a cashback. He received a letter dated 6 June 2007, from GMAC RFC a lender advising him that it had agreed a mortgage loan of £175,750. The mortgage offer in the same sum plus £4,770 for fees that would be added to the loan, was dated 20 July 2007 and showed the valuation of the property to be £185,000. It also said that the maximum loan available on this product was 95% of the value of the property, subject to conditions. [T] Legal had written to the witness on 16 July 2007 including a request for him to arrange for the sum of £3,463.75 to be sent to its bank to enable the firm to exchange. RL solicitors had written to him on 20 July 2007 thanking him for instructing their firm to handle completion of his purchase of 36 TH. The letter included:

> "…Our role will be limited to dealing with the receipt, verification and proper transmission of completion monies to enable you to complete your purchase of the property through your conveyancing solicitors.
>
> …
>
> On the information provided to date, we have agreed a set fee of £400 plus VAT (£70), together with a telegraphic transfer admin charge of £23 plus VAT (£4.03)…"

94. The witness had understood RL to be a holding bank for the monies involved and the monies referred to were from T. He had not provided them. The witness was also referred to a letter he received from RL dated 6 August 2007, in which it was stated:

> "I am pleased to confirm that, as per your instructions, we have sent the sum of £24,050 to [the firm]."

95. The witness did not know where this money had come from. On 6 August, RL also wrote to the Second Respondent at the firm saying that they acted for the witness in connection with the property transaction and:

> "I have today remitted £24,050 to your client account as follows:
>
> …
>
> This payment is for the specific purpose of completing the purchase of the above property for [the witness].

> We confirm that for the funds which [sic] are sending to you, namely £24,050 we have complied with our obligations under the terms of the Anti-Money Laundering Legislation…"

96. The witness said that the amount he expected to receive according to the statement of account dated 10 August 2007, £11,825.45 was to cover mortgage payments [for a period]. He did not have a complete understanding of the transaction and had left it all to the firm to get on with. He had trusted them but now thought he should have been a bit more diligent.

David Bailey

97. The witness confirmed the truth of his witness statement dated 20 April 2012. He was an IO employed by the Applicant and had joined the organisation in August 2005. Over the past six years he had completed in the region of 75 investigations. He had been on-site at the firm for around seven days and then continued his investigation off-site including contacting some of the investor clients including Mr Gordon who had given evidence before the Tribunal. In respect of allegation 1.1, the witness confirmed his understanding of the way the T scheme operated including a diagram which he had incorporated into the FI report. It showed the circulation of funds from T to the firm to the R&B partnership and ultimately back to T. The witness confirmed that in his witness statement he had said that in interview, the Second Respondent stated that he was aware of the fact that the properties had been offered to investors at discounted prices and he suspected that the discounts equated with the contributions paid. He also stated that the balance of the funds which contributed to the T contribution "must have come from R&B, but I don't know on what basis." The Second Respondent had confirmed that he assumed that this was the case from an early stage. As to the transactions involving RL and the Second Respondent's awareness of the structure of the transactions, the witness was referred to a fax from RL to the Second Respondent dated 13 June 2007 to which was attached correspondence relating to a payment to a client. There was also an email exchange dated 14 June 2007 sent on behalf of TC at RL to Mr B which referred to the Second Respondent in respect of a letter which was being drafted. It included:

> "As we discussed before and I appreciate the reason for [the Second Respondent] wanting [sic] on certain points. However, I am anxious to ensure that the letter is correct and not misleading.
>
> It is important for me that the letter accurately reflects the parts that we are <u>not</u> acting on the purchase of these properties. The responsibility for the conveyancing part of the transaction does not lie with my firm. Because of this [the Second Respondent] and his firm will have needed to have made their own "know your client" and anti money laundering investigations…"

98. The reply from Mr B to RL referred to his having spoken with the Second Respondent and he asked for the Second Respondent to be sent a copy of the draft. The witness confirmed that the Second Respondent seemed to understand the nature of the transactions including the circular movement of monies. The witness had concluded in his witness statement that it was necessary both pre-and post-June 2007 to make a disclosure in relation to the T contribution (which often resulted in cashback to the buyer); to any discounted purchase price; or to cease to act as both these factors were

material to the transaction. The witness identified various aspects of the instructions to Leading Counsel dated 3 November 2006 which were factually inaccurate as to the operation of the transactions. The witness also confirmed that at the time of the purchases of properties in the development at Warwick, the Second Respondent had supervision of all matters conducted at that time and signed all the certificates of title confirming compliance with the CML Handbook. Mr Malek took the witness through the transaction in which Mr JC purchased unit 170 in the Warwick development. The firm's letter to the lender of 3 January 2007 confirming the purchase price at £172,500 and answering a specific enquiry that all monies including the deposit would be paid through client account and the certificate of title of 2 January were incorrect. The witness confirmed that an amount of £5,673.42 described on the client ledger as "repayment of short fall" was the cashback.

99. Mr Malek also took the witness through the transactions relating to the development CG referred to in the FI Report including a schedule of the transactions. All had been bought at the same purchase price £159,950 with the same discount, £31,990 and a majority of purchases were by Mr B. A larger advance could be obtained through a remortgage than by way of an outright purchase. In a remortgage the actual purchase price and incentives were not disclosed and the mortgagee expected the property to have been held for more than six months.

100. In respect of how the Second Respondent had dealt with specific questions from lenders, the witness confirmed various examples of specific queries raised of the Second Respondent by lenders and set out in the FI Report. For example in respect of the purchase of 1 KC by Ms S and Mr E, the lender quite clearly asked about incentives or discounts and also asked an open-ended question which the witness did not believe was properly addressed in the answer which the Second Respondent sent. The witness was also taken through the purchase of 3W in Rotherham by Mr DWH. In the special conditions it was stated:

> "The applicant(s) have declared deposit and incentives offered by the builder totalling £0. The legal Representatives must advise GMAC RFC if this sum is incorrect..."

101. The witness had found no evidence that anything had been disclosed to the lender about incentives. Notwithstanding that special condition and another relating to an obligation to report if a deposit and/or incentive greater than 5% of the purchase price was being received, the Second Respondent had signed the certificate of title certifying compliance with the various obligations and a letter of the same date 5 March 2007 gave an assurance that the balance of funds due on completion would be paid from the client account utilising the mortgage advance and "funds provided or procured by the Purchaser". Full disclosure was not given. The witness was then taken through the documentation relating to the period after 1 June 2007 when the requirements of the CML Handbook became more strict. In his statement the witness said:

> "The advice received by [the First Respondent] from [H] on 30 May 2007 was that the arrangement needed to be disclosed in view of 6.3.2.3 of the CML Handbook. A form of draft wording was sent by [the First Respondent] which specifically identified that 15% of the purchase price was by way of a cash payment from [T]. A further draft was circulated with invitations for comment

> to Mr [B] and Mr [R] the same day. A further draft was circulated on 4 June 2007. Advice was given from [H] to the effect that the updated draft without reference to the third party and the amount of purchase price being provided may invite further query from the Lender. Advice in similar terms was given in relation to another draft, [H] noting that, "I do not agree that your latest draft provides sufficient disclosure in accordance with the CML requirements to satisfy most lenders."

And

> "Advice in fairly robust terms was received from [H] on 5 June 2007 in response to a further draft which noted that, "I have seen revised COTS letter that you have e-mailed to me and respectfully I think this misses the point entirely. I am not sure who has drafted this but I think it is even worse than the original COTS letters that has been proposed… Unfortunately I think it is time to accept that there has been a sea change and the time has now come to stand up to be counted by disclosing what is required."

The witness confirmed that he had found no evidence of disclosure of incentives after this advice.

102. The witness was taken to a transaction on behalf of Mr DWW of plot 18 at the Warwick development. In the agreement to assign the purchase price was given as £172,500. The mortgage advance from ME was £141,450. The firm had written to RL on 21 June 2007 asking for a transfer of £22,425 in order to go ahead with completion. On the same day RL had written that they acted for Mr DWW and had remitted that amount to the firm. They continued:

> "This payment is for the specific purpose of completing the purchase of the above property for Mr DWW.
>
> We confirm that for the funds which [sic] are sending you, namely £22,425 we have complied with our obligations under the terms of the Anti Money Laundering Legislation…"

103. The certificate of title was dated 18 June 2007 confirming the price stated in the transfer as £172,500. It did not disclose the discount. There was no evidence that the lender was informed of the assignment from R&B, of the discount or that the balance was from T not the purchaser.

104. In respect of allegation 1.2, the witness had described the T members feeder account in his witness statement. It recorded the monies received in from T or paid out on behalf of T as contributions and reservation fees. He had not been able to reconcile the large sum payments such as £216,000 and £500,000 recorded in February 2007 as T funds, to any particular client or to apportion them to clients. His concern was that the account was being used as a conduit for the transmission of T money to individual clients with no underlying transaction. T had never been a client of the firm. He confirmed what the First Respondent had told him in interview that provided the account was reconciled and zeroed on a regular basis, he was content. The rules required that a suspense account needed to be zeroed and reconciled as soon as they could. The ledger never reconciled to zero and he never saw any evidence that the

account was reconciled or zeroed on a regular basis. His main concern was that the account was being used as a banking facility. As to the RL Ledger it only related to 33 transactions. The amounts from RL were credited to the ledger and then allocated to a specific transaction. However its use constituted a breach of the SARs for the same reasons as did the T members feeder account. The AA Mortgages Ledger was opened on 29 December 2006. Initially monies were received from the CG transactions and paid to W&Co, the seller's solicitors, and £500 was recouped from each investor and paid to AA. The witness stated that there was no reason for the CG transactions to go through this account because there were no pre-existing mortgages with NatWest arranged by AA. He was concerned about the transmission of money through this ledger where there was no underlying transaction to justify it and with the account being used as a conduit.

105. In respect of allegation 1.3, in the witness's statement he recorded that the Second Respondent said about the relationship with T:

> "In an interview with [the Second Respondent] on 28 October 2008 he informed me that the work received was "almost entirely" from [T]. Describing the relationship between [T] and the firm [the Second Respondent] told me "There was quite a close relationship. We were pretty much [sic], the work we received was almost entirely from [T] and it was the brainchild of [T] to set the firm are because they wanted a firm that could provide them with a better service than others in the past. They came up with the idea of T Legal"

106. In cross-examination the Second Respondent asked the witness to what extent he felt the Second Respondent had been open and straightforward regarding the questions which the witness put to him in interview. The witness said that he thought that the Second Respondent had answered all the questions as frankly as he could. It was difficult to say otherwise. The witness had accepted the Second Respondent said at face value. He did not think that the Second Respondent had deliberately hidden anything from him.

Findings of Fact and Law

(The findings make reference to the written evidence as well as submissions and evidence heard before the Tribunal.)

107. Allegation 1.1: They [the Respondents] caused, permitted or acquiesced in the non-disclosure of material facts to their lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the Solicitors Practice Rules 1990 (the "SPRs") and/or Rule 1.02 and/or 1.04 of the Solicitors Code of Conduct 2007 ("the Code");

Submissions and evidence on behalf of the Applicant in respect of allegation 1.1

107.1 On behalf of the Applicant, Mr Malek referred the Tribunal to his skeleton argument and the background to the allegations. The clients of the firm were the members of T who purchased properties through it and were referred to the firm by T as well as the lenders. The firm owed duties both to the individual purchasers and the lenders to act in their best interest and to ensure that there was disclosure of all that needed to be disclosed.

107.2 With the exception of one development "CG", T paid a contribution to the purchase price of the property acquired by the end purchaser which usually amounted to the discount being offered to the T member. Therefore the balance of the purchase price aside from the mortgage lender, was not being provided by the borrower's own funds but by contribution from T. T members were also provided with a cash back sum. In his skeleton argument Mr Malek submitted that the nature of the transactions described arose out of and bore the hallmarks of a substantial mortgage fraud in which the key players were T, the property partnerships and the firm. He referred the Tribunal to the way the scheme operated including that the T members often by virtue of the T contributions, only paid 1% of the purchase price from their own funds. The purchase price of the property disclosed on the mortgage offer and certificates of title represented only an academic figure and not the true purchase price paid by the T member to the developer which was significantly less than this figure. Mr Malek submitted that the effect of the operation of the scheme was as follows:

107.3 The lenders were misled as to the nature of the transactions and had incurred substantial losses. For example the current loss to lender client UCB, in relation to 24 properties in which the firm were instructed, stood at £2,794,929.20. These losses could increase as default occurred or security was realised thus crystallising losses on individual transactions. The lender client's loan to value ratio was 85% to 95% but in many cases they were actually lending well over 100% of the true purchase price. They were not told that the balance of the purchase price aside from the mortgage was not funded by the investor but from the T contribution. Because of their low contribution, investors were not committed to the transactions which increased the risk of default. The final loss from defaulted mortgages was not known but it was likely to be very large because of the number of transactions where lenders had lent well above their loan to value ratios across numerous transactions.

107.4 The T members/borrowers were exposed to substantial risk. The skeleton set out that non disclosure of material facts could have the effect of rendering the mortgage offer void; borrowers were required to pay stamp duty based on the notional value of the property when the true purchase price fell below the stamp duty threshold and in any event they paid on a higher level than the true purchase price; sums were borrowed in excess of those that could be safely borrowed thus putting them at risk of default and a call in of the security in the event of default. Further, the structure of the scheme encouraged T members to contract to acquire interest in property in circumstances when no mortgage offer was in place.

107.5 The operation of the structure presumably resulted in substantial profits to the property partnerships (R&B and AB) which had been channelled to trusts in the Isle of Man. The Tribunal was referred to the diagram in the FI Report from which it was submitted it was evident that there was a circle of funds which passed from the partnerships, through T, to the T member, to the firm, to B solicitors and back to the partnership in order to facilitate what appeared to be a mortgage fraud. It was estimated that in the period January 2007 to June 2008 a total of 1,700 transactions were completed with contributions from T estimated at approximately £34 million. T was only getting £2,500 membership fee from each investor so it had to get money from somewhere. Mr Malek submitted that the firm played an important part in the fraud and in causing the resultant losses to the lenders. The firm provided certificates of title signed by either the Second or Third Respondents which were an essential element for the lenders in advancing funds. It also provided untrue responses to direct questions

raised. The firm was aware of the discounts, assignments, the fact that the actual price paid to the vendor was significantly lower than the price disclosed to the lenders and contained in the mortgage offers, the fact that T was providing the deposits save for a small amount, and the cashbacks. None of these matters were disclosed to the lenders despite the fact that the firm was retained by the lenders to protect their interests. Mr Malek submitted that the Second Respondent had disclosure obligations throughout the period of the transactions; November 2006 to February 2008, was aware of the material characteristics and knew that he had not made the necessary disclosure. He must have appreciated the materiality of the information because in the absence of disclosure lenders would have been lending 105% or 110% of the value of the properties in question when their guidelines generally limited lending to 85%. Mr Malek submitted that when the CML requirements became more extensive from 1 June 2007, the First and Second Respondents took the view that they could not continue operating the scheme hiding behind T and as a result an artifice was created involving RL and later SGH solicitors receiving money from T for the investors and remitting it to the firm. This arrangement ignored the reality of the situation and was designed to distance the firm from the fact that the investors did not have the necessary money. The Second Respondent was heavily involved in this arrangement, including in drafting the wording of the letters from RL to the firm. RL could not understand why up to 50% of the amounts that they sent to the firm then came back. They were told that there were problems with reconciliations and the Second Respondent was involved in that.

107.6 Mr Malek informed the Tribunal that by reference to the witness evidence and the written evidence he would cover a number of different transactions and he referred the Tribunal to the Schedule of (13) Sample Transactions attached to his skeleton argument. He took the Tribunal by way of exemplification to transactions involving a property MS in Essex. He referred to T's prospectus for the property which stated that T had negotiated a 14% discount with a 1% deposit; up to £34,999 discount/instant equity; up to 150% return on investment; member prices starting from £164,256 and a 12-month rental subsidy of £350 per calendar month. The lenders did not know about the 1% deposit, the instant equity which was the cashback or about the 14% discount. The lender's valuer had not seen the properties as these were new developments. In that situation the real test of the valuation was what someone would be prepared to pay for the property. In those circumstances the lenders' valuations were pretty worthless. The schedule also showed the different returns using different lenders and the prospectus included amounts of equity release. Investors received a letter congratulating them on their purchase. By way of example a letter to Mr SG for the purchase of unit 40 MS said:

> "As a [T] ONE-TO-ONE member, you will benefit from our end-to-end service supporting you every step of the way… Your details will be forwarded to our recommended Solicitor who will make contact with you shortly to discuss your property purchase…"

107.7 The Second Respondent at [T] Legal was named as the principal solicitor. Members were also informed that their details would be forwarded to [T] Mortgages who would assign a dedicated mortgage broker to them. The sales reservation form showed a valuation price for the particular property of £190,995 which was also stated as the contract price; the member's price was stated at £164,255 and the discount £26,740. There was one percent deposit on exchange of £1,909.

107.8 The Tribunal was referred to summary of transactions relating to the Warwick development at Annex 2 to Mr Malek's skeleton. The mortgage advances ranged from 95.93% to 108.62%. Mr Malek then took the Tribunal to the development called CG. He submitted that the Second Respondent's conduct in respect of these transactions had constituted a particularly serious breach of his duties. In his statement dated April 2012, the Second Respondent had said, (omitting the numbering of the statement):

> "I had not been with [T] for very long when we received papers for [Mr B] to acquire five units in a development called [CG].
>
> The draft papers arrived and in the draft contract was a clear discount from the builder. I told [Mr B] and his mortgage broker [DW] that we could not accept this.
>
> [DW] told me that there was a way around this by treating it as a re-mortgage. His company [AA Mortgages] would advance funds for the acquisition. Lender funds would then be used to re-mortgage the property that had already been acquired by [Mr B] using the funds from [DW] or his company.
>
> [DW] arranged for his company, [AA] to forward funds for [Mr B] to acquire a unit. This was used to complete. Funds then received from the lender were used to repay the private funding from [DW/AA].
>
> The CoT to the lender was clearly marked "re-mortgage". I wrongly assumed that if they wanted further information they would ask for it…."
>
> …
>
> I fortuitously had a phone conversation with PW at [B solicitors] at some stage in April/May 2007 who asked me what we intended to do about the CML rule change in June 2007. This would require disclosure of any "indirect incentive (cash or non-cash) or rental guarantee."
>
> I researched this and alerted [the First Respondent] to what I had discovered. He agreed to go back to [H and Mr G].
>
> …
>
> However there was an outcome of the rule change in that we began to receive funds not from [T] but from outside firms of solicitors. I recall firms such as [RL] and [SGH] being involved. The first I knew of this was when funds arrive from these firms.
>
> I was advised by [the First Respondent] that these funds represented the funds previously received from [T] and which were for the benefit of the individual club members buying properties through the Scheme. I was not involved in setting this up.…"

107.9 Mr Malek submitted that the paperwork showed a position much worse than the Second Respondent's explanation in his statement. By way of example, the certificate of title for unit 34 included that occupancy would be buy to let and against "Price Stated in Transfer", "REMORTGAGE – £127,960". It was signed by the Second Respondent on 28 December 2006 and included:

> "We, the solicitors named above, give the Certificate of Title set out in the Appendix to Rule 6(3) of the Solicitors Practice Rules 1990 as if the same were set out in full, subject to the limitations contained in it."

107.10 The Agreement for Sale was then amended in handwriting on 29 December and the incentive reduced to £23,992.50. It stated as follows:

> "5% cashback, to be returned by the Seller's solicitors to the Byers [sic] Solicitor via cheque on completion."

107.11 Mr Malek submitted that the lender was deceived about the re-mortgage and the representations made in the certificate of title illustrated the way that DW had explained the firm could get round the lender's requirements for disclosure. The response from the firm on 4 January 2007 to the lender's specific requirements about repayment of a NatWest bridging loan was a pretence and the Second Respondent knew that. Mr Malek referred the Tribunal to the transactions between the various ledgers showing money being borrowed from the ledger for unit 31 CG for the fictitious bridging loan for unit 34 and then being repaid. Monies were shown going in a circle between the ledgers with no bridging loan from NatWest. The Tribunal would have to decide whether the Second Respondent had displayed a lack of integrity and/or dishonesty regarding the transaction.

107.12 In his statement the Second Respondent had referred to the advice which had been taken from Leading Counsel dated 23 November 2006 regarding disclosure requirements, it was the Applicant's case that the opinion was useless because it was founded on various incorrect factual bases and did not cover the key issue of disclosure. It included:

> "The transaction which is in issue has been described in my instructions and has further been explained to me in consultation as follows:
>
> …
>
> I am told that the cash sum that is to be paid by [T] will expressly exclude any possibility of [T] or any other party ever having any recourse to the monies.
>
> The purchase price paid to the seller for the property is the same price as will have earlier been valued by the valuer and notified to the lender…"

107.13 This was not true as the seller was getting a discounted price. Leading Counsel had not been told about the circle of funds, that T made a contribution received from R&B and that the T contribution was not being given to the investor client as a windfall and that if the transaction did not go ahead the investor client did not keep the contribution. In respect of changes in the purchase price, Leading Counsel said:

> "Those are questions the answers to which I do not know, and which are better answered by a conveyancing solicitor with expertise in acting for and on behalf of lenders…"

He further said which was incorrect:

> "The price paid to the seller in this case is the same price as will have been advised to the lender and then set out in its instructions. There is no "cashback" in the sense that the term is usually used (the person receiving the payment pays back a part to the person making the payment), there are no "non-cashback incentives" of which I am aware…"

107.14 In his conclusion Leading Counsel said:

> "The particular elements of the proposed transaction appear not to infringe any specific requirement of either the Guide [to the Professional Conduct of Solicitors] or the [CML] Handbook. Both the Guide and the Handbook do, however, require (the requirement being formulated in various different ways) that information which is relevant to the lender's decision as to whether or not and on what terms to agree a loan, be reported to the lender, I am not myself qualified to give an opinion as to whether or not the cash payment by [T] part of the transaction is or is not a matter which would affect a lender's decision as to whether to make a loan or as to the terms of any loan.".

107.15 Mr Malek drew the Tribunal's attention to the specific requirements of the CML Handbook at the various times. The standard of care expected was that of a reasonably competent solicitor acting on behalf of the mortgagee, and the limitations contained in Rule 6(3)(c) and (e) of SPRs applied to the instructions contained in the CML Handbook. Any separate instructions also applied. The Handbook required that if there was any conflict of interest the system must not act for the lender and must return instructions. Nothing in the instructions lessened duties to the borrower. Mr Malek submitted that these requirements had not been complied with because the firm knew that doing so would bring the transactions to an end. In the 2005 version of Handbook the requirements regarding purchase price at 6.3 included:

> "6.3.1 The purchase price for the property must be the same as set out in our instructions. If it is not, you must tell us… You must tell us (unless we say differently in part 2) if the contract provides for:
>
> 6.3.1.1 a cashback to the buyers; or
>
> …
>
> 6.3.2 You must report to us (see part 2) if you will not have control over the payment of all of the purchase money…"

Solicitors acting contemporaneously for a buyer and a lender should consider their position very carefully if there were any change in the purchase price, or if the solicitors became aware of any other information which they would reasonably expect the lender to consider important in deciding whether, or on what terms, it would make the mortgage advance available. In such circumstances the solicitor's duty to act in the best interests of the lender would require him or her to pass on such information to the lender. This was later overtaken by the Law Society's warning on property fraud, the Green Card. It alerted solicitors to the possibility of being involved or implicated in mortgage fraud and about unusual instructions and said:

> "Misrepresentation of the purchase price

> Ensure that the true cash price actually to be paid is stated as the consideration of the contract and transfer and is identical to the price shown in the mortgage instructions and report on title to the lender.
>
> …
>
> Discuss with your client any aspects of the transaction which worry you…
>
> …
>
> Check that the true price is shown in all documentation – check that the actual price paid is stated in the contract, transfer and mortgage instructions. Where you are also acting for a lender, tell your client that you will have to cease acting unless the client permits you to report to the lender all allowances and incentives."

107.16 The 2007 CML Handbook extended obligations in respect of the purchase price. In addition to being required to report if the contract provided for arrangements such as cashbacks, the solicitor was required to report if they became aware of any arrangement in which these existed At 6.3.2.3 "any indirect incentive (cash or non-cash) or rental guarantee" was required to be reported.

107.17 It was contended on behalf of the Applicant that the Second Respondent was aware from November 2006 of various material characteristics of the property transactions in relation to which the firm were instructed on behalf of the purchaser and the lender. Mr Malek submitted that the Second Respondent:

- Admitted that he was aware that the properties had been offered to investors at discounted prices and he suspected that the discounts equated to the contributions paid by T;

- Attended to numerous transactions during the period of his employment with the firm and would have been familiar with the assignment document between the property partnerships and T members;

- Did not deny either in his response to the Rule 5 Statement, or in his evidence, that he had knowledge of the structure of the transactions, was aware of T's contribution or the discounted purchase price.

107.18 The instructions to Counsel, drafted by the Second Respondent in November 2006 set out his detailed understanding of the nature of the transactions; in the background section the Second Respondent said:

> "For the best part of 3 years [T] has sourced developers willing to sell, at a discount, the whole or part of a development. Reasons for developers being prepared to do this are numerous and suffice it to say that [T] has had little difficulty in finding developers willing to cooperate.
>
> [T] require a minimum discount of 15% on a purchase including white goods, flooring and a car space, most discounts are typically around the 17-18% mark.
>
> …

> The valuer is not told of any potential discounts. His sole task is to deliver an open market valuation of the units on sale. "

107.19 In her evidence Ms Hutchins had said how important it was that the valuer was told of any discounts. The instructions also recognised the importance of the loan to value ratio to the lender:

> "Armed with such valuation [T] then negotiate and conclude a deal for the purchase of the units at more or less the valuation price subject to a collateral agreement for the payment of a discount.
>
> Care is taken to ensure that the price per unit settled upon matches a lender's parameters as to loan to value or rental yield so as to ensure that a mortgage will be available at that price."

107.20 The instructions also showed the beginning of a recognition of the circle of funds although the Second Respondent never found out exactly what that was:

> "As stated there is a collateral agreement concerning the payment of a discount to the purchaser. In all cases the purchaser is R&B partnership.
>
> There is a further agreement between R&B Partnership and [T] for some (but not all) of the discount to be shared with [T] in return for [T] delivering purchasers for each individual unit
>
> …
>
> The package includes a price concession which will be a part but not a whole of the discount that the Developer has been [sic] agreed to pay. (The retained balance of the deposit is R&B's profit).
>
> Such concession is passed on to the client as a cash payment from [T]. This is the element on which Counsel's Opinion is being sought.
>
> Clients purchasing individual units through [T] proceed to apply for mortgages through [AA] (using the lenders that had previously been identified).
>
> Such clients will also be invited (not obliged) to instruct [the firm] to act for them in the purchase.
>
> The client acquires through an assignment of part of the head contract from R&B although the ultimate transfer or release will be granted by the Developer.
>
> The purchase price for the unit payable by each client is the same as that payable by R&B Partnership.
>
> Thus each client purchasing a unit is buying at full valuation without any discount from the Seller.
>
> Furthermore the purchase price is known to be one that meets the Lender's parameters lending on a buy to let mortgage."

107.21 This last statement was not true; however it showed that the Second Respondent was aware that there were lenders' parameters. The instructions also set out in the section entitled "the Current Structure of the Transaction":

> "Since [T] has been operating it has engaged at least four firms to act on behalf of the purchasers of individual units and over a thousand transactions have been concluded. None of the firms has ever declined to act.
>
> Because of the care that is taken to ensure that the unit is "mortgageable" clients are invited to exchange contracts before a mortgage offer is obtained.
>
> In its trading history [T] has never failed to obtain a mortgage for a client who has a clean credit record.
>
> Thus it is considered that the relevant time for [the firm] to enquire of the client as to the provenance of the balance of the purchase price (other than any deposit paid on exchange) would be on receipt of the mortgage offer which would typically be quite close in time to anticipated completion.
>
> Prior to that time [the firm] would have received a letter from [T] advising that [T] holds funds of £x on behalf of the client or a non recourse basis and that it will remit such funds to [the firm] in due course and certainly in time for scheduled completion.
>
> The amount stated in the letter would be the cash concession offered to the client when he first agreed to purchase the unit through [T].
>
> Whilst there is no reason to doubt the statement given by [T] that the funds are indeed held on behalf of the client there is a logistical imperative that such funds are remitted to [the firm] for merging with the mortgage advance to ensure timeous completion."

107.22 Mr Malek submitted that the last paragraph of that section of the instructions showed what it was all about. It said:

> "It is considered undesirable for the funds to be remitted direct to the client by [T] for banking and redirecting to [the firm]. Client unreliability could be an issue or worse the client might just choose to pocket the money and not proceed. Whilst this might generate contractual penalties and exposure to liability the imperative of [T] is the keeping of such seems to the absolute minimum and to manage timely and accurate completions."

107.23 The firm had tentatively formed the view that it was not in contravention of the lenders' requirements but the instructions showed that the money was T's and the feeder account was designed to give T and not the client control over it.

107.24 Leading Counsel had sent an e-mail on 6 November 2006 to the First and Second Respondents in which he said:

> "Having reviewed the material that you left with me and having also looked further into the area of solicitors' duties and into the usual features of mortgage lending with regard to "buy to let" properties, there are several areas of concern, the chief ones of which I list below. Since these do affect my generally favourable advice of Friday, I do not know whether you would wish me to put all of my thoughts into writing immediately or whether you would wish further to discuss matters with me, perhaps by way of a telephone conference."

107.25 In respect of the requirement in paragraph 6.3 of the CML Handbook that the purchase price for the property must be the same as set out in the firm's instructions and that if it was not the firm must tell the lender and also if the contract provided for a cash back to the buyer, Leading Counsel said (omitting the paragraph numbers):

> "Whilst the argument that the contract price will have remained the same is one which can reasonably be made, it is more difficult to avoid equating the discount (effective, as I understand it, at the moment of completion) with a "cashback" payment to the buyer. This direct reference to a cashback payment and to the need to notify the lender of any such payments, which is a feature not present in the Solicitors' Guide, is problematic. On (sic) could, of course argue that the discount is not the same as a cashback, in that the discount does not involve any actual payment of cash to the buyer, but instead an allowance off the stated purchase price. However, when one looks at the rationale behind lenders requiring that borrowers put up a deposit towards the purchase [text missing]… mortgaged properties it becomes difficult to sustain this argument.
>
> There is also an argument that the discount, even if it is properly to be treated as a "cashback", is not in this case provided for in the contract, and that there is therefore nothing about which the lender requires to be informed pursuant to para 6.3. That would not be a good argument. The absence of any reference to the discount on any contractual documents would not prevent it from being a part of the contract. It is not only the reasonable expectation of the purchaser to obtain the benefit of the discount, but it will, as I understand it, be his right.
>
> I am familiar with the levels of deposit required to be put up by purchasers of domestic properties (10%, 5% and sometimes 0%). I looked this weekend into the usual deposits required where the property is a "buy to let", I was surprised to see that the levels can be as high as 35%. That caused me to consider why lenders require purchasers to pt [sic] up deposits and in that way acquire an equity in the property being mortgaged. The only reason that I can divine is that it is so that the lender has the assurance of knowing that the purchaser has an interest in the property sufficient that the purchaser will do all that is required him to safeguard the safety, integrity and value of his (and the lenders) security (i.e. the property). The same rationale applies to the field of insurance and insurers' requirement that their insured carry the first tranche of any risk by way of a deductible or "excess".
>
> Were any transaction effected between seller and purchaser to have the effect of either removing or diminishing the purchaser's personal, financial interest in the property, then it is arguable that that is something about which the lender would wish to be informed.
>
> I do not know what are the usual terms of the [AA] loans with regard to deposits by purchasers. However if, say, the requirement were for a 20% deposit and if, say, there were to be a 10% discount on the purchase price, one can see that at a stroke the actual deposit paid by the purchaser would be half of the deposit that the lender required to be put up by the purchaser. It is difficult to see how or why, given that the lender had required a 20% deposit, it should not be informed of the fact that the purchaser's contribution were [sic]

in fact going to be considerably less by reason of the discount. This would point in favour of disclosure.

We can not, of course, know the reasons why particular lenders require of borrowers that they put up the levels of deposit that they do, and it may be that the reasons that I have surmised for deposits being required may be incorrect.

…

The "Green Card warning on property fraud at Annex 25G of the Solicitors Guide provides as follows:

"Misrepresentation of the purchase price – ensure that the true cash price actually (my emphasis) to be paid is stated as the consideration in the contract and transfer and is identical to the price shown in the mortgage instructions and in the report on title to the lender."

The reference to the price "actually to be paid" does not allow one to take comfort behind the reference (as in Annex 25F "Guidance – Mortgage fraud – variation in purchase price") to "price reductions" and the argument (with which I agree) that the contract price will have remained the same. Whereas the contract price may have remained the same, "the true cash price actually to be paid" will not have done, since the discount would have reduced the price "actually to be paid".

There is a further reference to the "actual price" in the section, "What steps can I take to minimise the risk of fraud? …

"Check that the true price it shown in all documentation – check that the actual price paid is stated in the contract, transfer and mortgage instructions. Where you are also acting for a lender, tell your client that you will have to cease acting unless the client permits you to report to the lender all allowances and incentives.

The reference to the "true price" (which we considered on Friday in the context of Annex 25F to the Guide) is thus clearly to be seen as a reference not so much to the contract price but to the price "actually to be paid".

If therefore, the price actually to be paid is the contract price less 10%, then it is difficult to see how this is not required to be disclosed, unless it can somehow be argued that the price "actually to be paid" is in fact the full contract price not including the discount."

107.26 This was Leading Counsel's preliminary opinion by way of email on the subject of disclosure. It was the Applicant's case that this opinion was not a complete answer to the key questions and the firm was recommended to get a conveyancing solicitor to advise but they carried on for some time.

107.27 The importance to lenders of disclosure was proved by way of example in respect of the property 40 MS. Following requests from UCB in relation to the transaction and the purchase price, the firm [the Third Respondent] disclosed to UCB the fact that the

client was taking an assignment of the contract from an assignor who had exchanged on the property. UCB advised on 3 October 2007 that due to the nature of the transaction they had decided not to proceed with the mortgage. The October date was significant because it was then it was understood that the First and Third Respondents had decided to complete transactions in the pipeline with T but not to undertake any new business.

107.28 Mr Malek took the Tribunal further through the history of the Second Respondent's and the firm's consideration of the disclosure issue. In his witness statement dated April 2012, the Second Respondent set out that upon his arrival at the firm, the methodology of how the T scheme operated was explained to him partly by Mr B and partly by DW [of AA]. He had visited B solicitors and said:

> "Following my visit to [B solicitors] I set out about a detailed study of the CML Handbook and the Law Society Green Card. This gave me grounds for concern. Particularly the Law Society edict "Report anything unusual" led me to the conclusion that I would be far happier disclosing all aspects of the proposed transactions from the outset."

He then set out the aspects of the Handbook he was concerned about and concluded:

> "Whilst the receipt of funds from [T] did not strictly appear to correspond with any of these points I still felt that we would be in a better place if there was a disclosure of the pavement received from [T]."

He continued:

> "When I told [the First Respondent] of my opinion he was against this. His view was to disclose what needed to be disclosed and no more. So much so that when discussing the fact that there was an assignment of contract in the Scheme he stated that this was "none of the lender's business". I believe that to some extent this was a cultural thing. The First Respondent comes from a litigious background where non-disclosure comes more naturally than disclosure. This was in October/November 2006."

107.29 It was submitted however that it was not necessary to go to counsel to know that the matters not disclosed were material facts and the reason why they were not disclosed was because it was known that the lender would not go ahead if they were and that in turn meant that the Respondents knew that the facts were material. At no stage did Leading Counsel advised that no disclosure was required. Some months later on 27 February 2007 the First Respondent sought the advice of Mr G of H solicitors in relation to disclosure. The First Respondent evidently had doubts about the disclosure issue. Mr G of H solicitors approved a form of disclosure to lenders which expressly set out that part of the purchase monies were being provided by someone other than the purchaser. The First Respondent recorded the advice that he had received in an email, namely that there was a requirement to disclose if the solicitor became aware that the buyer was not providing the balance of the purchase monies from his own funds and that disclosure should be given in view of the potentially wide construction of paragraph 5.1.2 of the CML Handbook. It was submitted that the advice received from H solicitors was not that no disclosure was required but that the firm should

disclose the fact that a contribution was being made by another party, T. An email of 1 March 2007 sent to the Second Respondent on behalf of the First Respondent said:

> "…As I understand it, Counsel's view is that providing the purchase monies belong to the client as at the day of completion there is no requirement to disclose. [H's] view is that by reason of the fact that [the firm] are aware of the fact, albeit from other sources, that part of the purchase money is being provided by a third party there is a requirement to disclose notwithstanding the fact that those monies belong to the purchaser as at the date of completion…"

107.30 In the email, the First Respondent instructed the Second Respondent that from 1 March 2007 they ought to make a disclosure in the report on title to each lender in terms of an annex attached to the e-mail. It said under a heading "FORM OF DISCLOSURE TO LENDER AS APPROVED BY [H] ON 1st MARCH 2007:

> "Part of the purchase monies are being provided by someone other than the purchaser. We are satisfied that the provision of this money complies with the Anti Money Laundering Regulations and further that it does not give rise to any third party rights nor does it adverse affect the value of the security."

In concluding his email of 1 March the First Respondent said:

> "As you are the person responsible for the delivery of the disclosure I will leave it to you how you do it."

A later version of the draft did not refer to funds being provided by a third party and approval was sought again from H solicitors but there was no evidence from the files that it was approved.

107.31 In the period between 1 March 2007 and 31 May 2007 files showed that the firm sent out correspondence in the following terms to lenders:

> "The balance of the funds due on completion will be paid from our Client account utilizing the mortgage advance and funds provided or procured by the Purchaser. In respect of the provision of such funds we are satisfied that the lender's position is fully protected in that (i) Anti Money Laundering Regulations have been observed, (ii) no third party rights are created and (iii) the valuation of the property is not adversely affected."

It was submitted that the valuation of the property was affected by the facts not disclosed. There was no evidence that this formulation was approved by H solicitors. In any event it was clear that a previously approved disclosure which made express reference to purchase monies being provided by a third party was disregarded. In the period prior to 1 March 2007 the firm had not received any advice in relation to disclosure required by the firm to lenders and the opinion of Leading Counsel left uncertainty and risk as to compliance with the CML Handbook. The Second Respondent accepted in his witness statement that the firm commenced conveyancing without resolving the issue of disclosure and he did not know if the firm was compliant. It was submitted that at best there was a level of uncertainty at the firm in relation to the disclosure required by the Handbook, however even when direct questions were raised by lenders manifestly false replies were given. Examples of this

were in the Schedule of Sample Transactions: the purchase of 1 KC by Ms S and Mr E in January 2007, Mr JC's purchase of unit 170, Warwick, Mr Ge's purchase of 40 MS and Mr Gr's purchase of plot D20 LW.

107.32 The lack of a concrete position on disclosure resulted in the Second Respondent contacting AA Mortgages, the in-house broker at T. For example on 3 January 2007 he emailed DW at AA Mortgages referring to mortgage condition 17 from a lender DB which read "Solicitor to confirm purchase price and the value of any sales incentives being offered". The Second Respondent requested DW's advice as to whether he could state the purchase price and that there were no sales incentives offered by the seller and noting:

> "These are the kind of issues that I would love to have covered by side letters from lenders such as DB as we have discussed briefly."

107.33 It was DW who had come up with the idea of advising lenders that there were remortgages in the CG cases. The Second Respondent was now going back to him for further advice. DW replied:

> "I agree you can confirm the purchase price and that no incentives are being offered by the seller. We will sit down when [Mr B] is back and address any issues there are."

107.34 Subsequently the firm confirmed to DB as DW suggested in a letter dated 3 January 2007:

> "Further to our telephone conversation today, as requested we advise that no sales incentives are being offered by the Seller."

107.35 This was clearly untrue. The seller was offering substantial discounts and being paid less than the official purchase price notified to the lender. In any event it was unclear why the Second Respondent made enquiries of the T broker but made no enquiries as to the expectations of mortgage lenders who instructed the firm and with whom the firm had a client relationship.

107.36 The Tribunal was asked to note regarding the Second Respondent's state of mind that he clearly had concerns and doubts about disclosure. In the period from 1 March 2007 onwards advice was sought from H solicitors on the issue. The evidence of the Second Respondent was that his understanding following H's advice, was that they recommended using words with the certificate of title to indicate that the client was in received funds from a third party. He said in his witness statement:

> "There was a tripartite exchange of e-mails between [H], [the First Respondent] and [T]. I was copied into the e-mail traffic. This culminated in two conclusions that I was aware of: –
>
> (1) there was no specific need for disclosure; and
>
> (2) to be on the safe side a form of words could be used with CoTs to indicate that the client was in receipt of funds from a third party."

107.37 The form of disclosure approved by H solicitors on 1 March 2007 was consistent with this advice. However this was not the form of disclosure which was ultimately adopted by the firm. There was further consideration of the draft which had previously been approved and an improved version was disregarded although it was not clear why. An email sent on behalf of the First Respondent to H solicitors dated 5 March 2007 stated

> "I have informed the people concerned that you are happy with the following draft."

It provided at the relevant part:

> "The Balance of funds due on completion will be paid from our Client account utilizing funds provided by the Purchaser or procured on his behalf and yourselves…
>
> In respect of the provision of such funds we are satisfied that the lender's position is fully protected in that (i) Anti-Money-Laundering Regulations been observed, (ii) no third-party rights are created and (iii) the valuation of the property is not adversely affected."

107.38 A draft sent on behalf of the First Respondent a few moments later included a slightly changed wording "funds provided by or procured by the Purchaser". [There was no response approving either amended wording] It was submitted these wordings were a materially different form of disclosure from what had been agreed with H solicitors.

107.39 In respect of the revised CML Handbook wording which came in on 1 June 2007, it was submitted that there was no doubt that the T contribution had to be disclosed to lenders. The Second Respondent immediately appreciated this as set out in his email to the First Respondent on 25 May 2007 where he said:

> "I had cause to look at the CML Handbook yesterday on account of the question of the validity of an Architect's Certificate where the architect had died after giving the certificate.
>
> I found the answer I was looking for and I am very glad that I did.
>
> As I went to this online… I discovered that the CML Handbook is subject to certain changes as at 1st June 2007.
>
> I attach the amendments to paragraph 6.3 about the purchase price which causes me grave concern.
>
> I have put the changes in bold italic but if for some reason these do not come through then you can see the changes in the scanned copy attached…
>
> Unless you have any views to the contrary it seems to me that we are in grave difficulties in submitting any CoT from 1st June onwards that does not disclose indirect incentives, cashbacks or rental guarantees."

Advice to this effect was communicated by H solicitors in an email dated 5 June which included:

> "Unfortunately I think it is time to accept that there has been a sea change and the time has come to now stand up and be counted by disclosing what is required…"

107.40 On 7 June 2007 on behalf of the First Respondent a detailed email was sent to the Second Respondent copying H in and including:

> "I refer to our numerous meetings and telephone discussions over the last few days with regard to the recent amendments to the CMLH. I also refer to our exchanges of e-mails and discussions with [H].
>
> It is safe to say that we all agree that the post 1st June 2007 [T] mode of operation gives rise to a disclosable arrangement on the part of the purchasers Solicitors by reason of the amendment to the CMLH.
>
> Until such time as [T] establish fresh mortgage arrangements on behalf of their members (which will be done within the course of the next 7/10 days) all of the purchasers who are currently in contract will have to provide the balance of the purchase monies from their own resources if they are to proceed.
>
> I understand from [Mr R] and [Mr B] that all of the [T] members who are currently adversely affected by the amendment to the CMLH have been contacted and have been appraised of the situation.
>
> Those members who are intending to proceed will provide the balance of the purchase monies from their own resources. Those who are not or who cannot proceed will be "relieved" from of [sic] their contractual obligations by other members/purchasers who are in a position to adopt the contract in question.
>
> This seems to be a sensible, commercial short-term solution to the current problem.
>
> By reason of [the firm's] obligations to the lenders and their duties under the terms of the Anti Money-Laundering Legislation I would like you personally please (not the fee earners concerned) to satisfy yourself by way of a direct personal and specific enquiry of any client who does which [sic] to proceed as to source of funds. Obviously if you are in any doubt at all as to the source of or the property in those funds you must subject to your obligations under the terms of the Anti-Money Laundering Regulations refused to complete without the appropriate disclosure…"

107.41 The Second Respondent handed up an exchange of e-mails dated 20 June 2007 between the First Respondent and Mr G of H solicitors which included in an email from Mr G to the First Respondent:

> "I confirm our discussion the other day that [the firm] can continue to act on the basis of the correspondence annexed to your email to me of 18th June 2007. It is of course a matter for each lender as to what information they require in order to complete their own due diligence…"

The First Respondent then sought clarification of the meaning of the last sentence and Mr G replied:

> "Put simply proceed. Any lender is always entitled to ask for further info as to source of funds etc. Given that I know where the funds are coming from, assuming that [T] are still involved, the second sentence is to protect [H solicitors]. I don't want it said that we said bat on without any comment made on this important issue."

107.42 Mr Malek submitted that this exchange did not help the Second Respondent who was copied in [to at least part of the exchange]. It made clear by a reference to where the funds were coming from assuming that T was still involved and that even after the device of using another firm of solicitors was implemented, the Second Respondent knew that T was still the source of monies.

107.43 Mr Malek submitted that instead of following H solicitors' advice, from early June 2007 onwards T contributions began to be channelled via other conduits namely RL solicitors and then later via SGH. The total funds remitted to the firm from RL were £4,378,906.54. The communications between the firm and RL followed a standard pattern which was evidenced upon review of the client files, namely that the firm requested by way of a standard letter that RL remit funds on behalf of their "mutual client" for the purpose of the purchase and RL remitted the funds, accompanied by a standard letter which said:

> "We confirm that these funds are being sent for the specific purpose of completing the purchase of the above-mentioned premises. We confirm in connection with the funds sent we have fully comply with our obligations under the terms of the Anti-Money Laundering Legislation.

107.44 The letter did not say that the funds belonged to, or were the property of the client or address the issue of the source of funds. Following completion, the firm remitted to RL funds that were owed to the client. It was submitted that it was not credible to suggest that there was any real change, through the device of inserting RL as an additional layer. Why would the firm's clients need yet another firm of solicitors to hold funds and remit them to the firm for completion and payment of that client's contribution? Why would clients all go to the same firm of solicitors? RL was not providing any advice; the only service in fact was to receive funds from T and to send it on the client's behalf to the firm. Mr Gordon had testified that monies which passed through RL in respect of his purchase of 36 TH did not come from him but from T. There was no evidence that during this period lenders were informed of the true position. RL acted between June and August 2007 and the Second Respondent left the firm at the end of August. Concerns had been expressed in June 2007 as to the operation of the arrangements and in particular the sums being received from the firm by RL as overpayments. On 26 June 2007 in an email from RL to T informing them that they had received five letters from the firm enclosing cheques in respect of errors, it was noted:

> "This is very concerning I must receive a very full explanation on this I find it very difficult to accept that lawyers completion statements can in some cases be out by over 50%"

107.45 Further on 3 July 2007 RL raised concerns about amounts being refunded to clients and expressed hope that these would be the exception rather than the rule, particularly where some of the amounts were nearly 50% of the amounts originally dispatched by RL. These concerns were expressed within less than a month of RL's involvement and illustrated the obvious concern at the way in which the system operated. In reality it was submitted on many occasions the funds being remitted from the firm to RL constituted cashback to the client.

107.46 From August 2007, upon RL ceasing to act they were replaced in their role of remitting T funds by SGH. Again a standard procedure was adopted in order to facilitate the transmission of funds. SGH, upon referral of the T member's details from T, wrote to the member with a payment authority form to be completed, authorising the provision of "stakeholder services". The letter stated that SGH would receive funds from T comprising the balance of the purchase price and SGH costs and SGH would be instructed to send the funds to the firm. An example of a fax sent from SGH to the firm accompanying remittance of funds was follows:

> "We confirm that these funds are being sent for the specific purpose of completing the purchase of the above-mentioned premises. We confirm that in connection with the funds sent we have fully complied with our obligations under the terms of the Anti Money Laundering Legislation."

The letter did not say that the funds were the property of the client.

107.47 Emails between T and SGH indicated the significant level of funds being transferred, for example as at 11 October 2007 a sum in excess of £2 million had been paid to the firm by SGH. It was submitted in conclusion in respect of allegation 1.1, that the Second Respondent had failed to disclose material facts to his lender clients and there was no evidence that he made any such disclosure. His own evidence in his witness statement was that he was advised by the First Respondent that the funds represented funds previously received from T and which would be for the benefit of individual club members who were buying properties through the scheme. His evidence was that the First Respondent advised him that funds from T would be remitted to solicitors after 1 June 2007. It was significant that he admitted that he knew the T contributions continued to be remitted to the firm for the purposes of completion of the purchase of properties. He asserted that he assumed that advice had been taken from H solicitors and that the procedure was compliant. However it was unclear what if any steps he took to satisfy himself that this was the case given that he was aware of the change to the CML Handbook. He continued the transactions using the fiction of other firms of solicitors. He continued to sign certificates of title where there had been no disclosure to lenders.

<u>Submissions and evidence of the Second Respondent in respect of allegation 1.1</u>

107.48 The Second Respondent confirmed the truth of his witness statement. He was not a conveyancer and had not been one for many years. His last conveyancing transactions had been in 1995. Before he joined the firm he has been a senior equity partner at a firm in Uxbridge and had set up a company commercial team. He had not wanted to spend the rest of his career as a lawyer. He had been introduced to Mr R from the company commercial field in around 2002. He had met Mr B in 2005. He met the First Respondent in 2006. As to when he had last been in contact with Mr R and Mr B,

he had not seen Mr B since he left the firm in August 2007. He saw Mr R in London in the summer of 2010 socially. He had not done any other work for Mr R. In 2006 Mr R asked if he would be interested in managing a law firm; the job which it was suggested he should take was very much managerial and not conveyancing. He had not given the impression that he was conveyancer. If the First Respondent had gained that impression it was mistaken. The job had a number of attractions and it was proposed that it would be run from near his home. It was only after he joined the firm that it was suggested that he should go to London. That had some attractions as he has a strong interest in art and the area of London in which the firm was to be located was very attractive in that regard. The First Respondent had suggested from fairly early on, the idea of having an office of his Isle of Man practice in London and the Second Respondent had ideas of developing a commercial and Notary Public practice of his own. The sheer pressure of work from T had prevented that happening. It has not been his understanding that his role would be a long-standing position rather that the firm would have a basic income from conveyancing and then be in a position to develop other lines of work if time permitted.

107.49 Regarding the T operated scheme, if the Second Respondent had realised it involved wrestling with the CML Handbook on an almost quarterly basis, he would not have taken the job. He had no concept of the whole scheme. He knew there was a property club but did not realise its complexities until he got to the firm. He had seen T through Mr R and not so much Mr B, although he did not deny that Mr B was involved in some of the work that the Second Respondent did for them. He did see T growing and that it was well run. Mr Gordon said something similar yesterday. When the Second Respondent arrived at the firm, he was briefed by Mr B and to some extent by Mr DW of AA Mortgages. He felt that he needed to understand the scheme more and so took it upon himself to visit PW of B solicitors and he set out the results of that meeting in his statement. They went through the process and PW made it clear that he was anxious to ensure that the requirements of the CML Handbook were observed. The Second Respondent had had no cause to look at the Handbook for many years although he was aware of it. As a result of looking at it and at the rules (the Law Society Green Card) he started to form concerns which he took to the First Respondent whose employee he was. The First Respondent had suggested that they go to Leading Counsel, chosen by the First Respondent. In the instructions to Leading Counsel, the Second Respondent had endeavoured to set out the scheme as he understood it. He had not understood it to be as it came out in evidence. The First Respondent had attended a conference with Leading Counsel. He could not attend the second conference. The Second Respondent had left the meeting and encounters with Leading Counsel with three impressions: that there was work to do regarding the scheme but not that they were on dangerous ground or that there was mortgage fraud; that the funds remitted by T belonged to the client and that the firm could treat those monies as clients' funds; and that there was unfinished business. In evidence Mr Gordon had said that he considered the T contribution his. If there had ever been an occasion when funds were being remitted to the firm and appropriated to the account of an individual client and then the transaction did not proceed, the funds would have come to the client not T but the Second Respondent thought that that had never happened. Leading Counsel had not been competent to deal with the issue of disclosure. The Second Respondent had not ignored it but in October/November 2006 he had spoken to a solicitor at a firm in Leeds which was undertaking work for clients introduced by T. That firm was already operating the scheme and the solicitor told him that no disclosures were made at all. The Second Respondent accepted that this

was not a complete picture, far from it, but it gave him some assurance that the firm was compliant. He wished to see the matter resolved more formally and would have like to see a resolution before the firm started trading. He had pressed the First Respondent and referred to an email from the First Respondent to him of 20 February 2007 where the issues were set out. There had been quite abrasive emails. The First Respondent had made it plain that there was to be a meeting in a couple of days. The Second Respondent had spent two days preparing for the meeting. The First Respondent did not come to the meeting instead he went to see Mr G of H solicitors whom the Second Respondent did not know. As the First Respondent owned the firm this was for him to decide. He then involved the Second Respondent in emails. On 1 March 2007 the Second Respondent received an email sent on behalf of the First Respondent. It included:

> "As I understand it, Counsel's view is that providing the purchase monies belong to the client as at the day of completion there is no requirement to disclose. [H']s view is that by reason of the fact that [the firm] are aware of the fact, albeit from other sources, that part of the purchase money is being provided by a third party, there is a requirement to disclose notwithstanding the fact that those monies belong to the purchaser as at the date of completion.
>
> Whilst I take the view that it is not prudent for you or I to make a determination in relation to the conflicting aspects of leading [sic] Counsel's advice and [H's] advice, I am of the opinion that [the firm] ought to err on the side of caution and that from 1st March 2007 they ought to make a disclosure in the Report on Title to each Lender in the terms of the draft annexed, which draft has been approved by [H]."

107.50 The impression given from that email was that the firm was compliant but to be sure that the position was more properly protected there would be a disclosure. There was some to-ing and fro-ing about it. The Second Respondent said that all he received was the final version of the disclosure and he put it in the letter to support certificates of title. It was only at that time that he started to be a little more comfortable about his position. From December 2006 to March 2007 he had been concerned. The Respondent was not aware that the assignment should be disclosed. He had accepted the First Respondent's view that it was none of the lender's business. In respect of the rule change in the CML Handbook, he thought the firm was compliant then fortuitously he had had a conversation with PW to the effect that the rule change made the position much tighter. The Second Respondent was not involved in a lot of the subsequent email exchanges with H solicitors, but he got the final outcome. He understood that involving RL solicitors was a short-term solution. He was brought into the discussions to ensure that the firm was complying with what had been agreed. No one had consulted him about going to RL or anyone else. He received instructions from the First Respondent. He trusted him and believed and accepted what he said.

107.51 The Second Respondent did set up T. He set up hundreds of companies for clients and if he could, he offered his services as company secretary. This was a relatively simple service that he could offer. Annually he received various circular documents from Companies House, regarding filing annual returns and accounts. Doing that gave him the opportunity to maintain a relationship with the client which he might not otherwise have had. He did not have a board position. He did not sit in on board meetings of any of the companies he set up. He received accounts from accountants and signed off

as company secretary before they were filed. He did not look at or change them. He looked at the first set which was nondescript. He suspected that there never were any T board meetings. He never attended any formal or informal meetings of T in any shape or form. He was never involved in any aspect of the creation of the investment club or day-to-day involvement in T operations. He did a joint-venture agreement for one development in South London where the other side was trying to wriggle and so he had attended one meeting. When he went to T at one point he was astonished at how it had grown since it was in St James across the road from the firm. The Second Respondent had forgotten that he was the company secretary. It was only when Mr R telephoned him before he left the firm and said that he should resign as the T company secretary that he was reminded. He did attend the Monday morning meetings. There was no reason not to attend. Mr B got very frustrated because the firm did not know when transactions would happen. The meetings ceased because they did not achieve anything. He was given a fair amount of grief by Mr B and had to resist that. The Third Respondent had suffered from it too. T could rant and rail as much as they liked but the firm knew who their clients were, the lenders and the purchasers.

107.52 In respect of the CG development, the Second Respondent said that he had got it wrong. He had admitted it to the IO in interview. He was presented with the situation of a contract with incentives. He had told Mr B that they could not accept that and Mr DW came up with the proposal to treat the transactions as re-mortgages where they did not need to disclose the seller's incentives, hence the letter that the Second Respondent had written [to the lenders]. Mr DW was not a client but their clients' mortgage broker. The Second Respondent had sought his advice on a number of things. He had not done it for any dishonest reason but because he thought it was acceptable. The IO said that it was not and he accepted his failures regarding the CG development.

107.53 The Second Respondent said he was replaced at the firm by the Third Respondent who arrived at 10 a.m. one morning and said that she was the head of the firm. He was making plans to leave. He suspected that the Third Respondent was brought in first because he was struggling with the accounts; the cashier did his best but the sheer volume of work [caused problems]; and because he the Second Respondent thought he was regarded as a troublemaker for Mr B as he had insisted on counsel's opinion and dealing with the disclosure issue and he had raised it at the change of rule time when the office had stopped engines for five or six days while it was sorted out. Once he got over the shock of no longer being head of the firm, he had gone through the whole T process with the Third Respondent and at the end she had said what is the problem? She had come from an eminent property firm and was on the Law Society panel and so he was pleased that her view of the position and his were the same. Maybe she did not understand all of it but she didn't raise any issues. He had done his best in a stressful and demanding situation. He did his best to seek advice. He felt that he had the support of the First Respondent about the issues. The First Respondent had dealt in his own way and did not always involve the Second Respondent who felt he could have faith in the First Respondent's advice and rely on it. The Second Respondent had seen the terms which the First and Third Respondent had agreed with the Applicant in respect of the allegations against them and with the exception of his conduct in respect of the CG development; he did not feel that he was in any better or worse position than they were. The First Respondent owned the firm and the Third Respondent was a partner. He, the Second Respondent was an employee. The Tribunal had heard what he had said about what he had tried to do to protect the firm.

He accepted his faults and failings but did not feel that he had been dishonest in any way.

107.54 In cross-examination the Second Respondent confirmed that the First Respondent had instructed him to form the firm. Presumably Mr R had referred him to the First Respondent. He was the second candidate for the role of practice manager. He had not told the First Respondent of his long established relationship with Mr R but he thought that he would have known about it from references that were made. It was quite possible that the subject of the Second Respondent being T's company secretary had not arisen. He had not been paid direct by T throughout the period he worked for the firm and he did not think that he had done any work outside of the firm for Mr R and Mr B during the period October 2006 to August 2007. His relationship with T and Mr R and Mr B was very close; it was based on the transactions they were doing. He had very little dealing with Mr R and certainly not with Mr B apart from that. He had not known at the time that the First Respondent has set up the trust partnership for Mr R and Mr B. He had been the practice manager of the firm from 2 October 2006 until the arrival of the Third Respondent. He had signed his first certificate of title in December 2006 and continued until August 2007. He had found himself the sole solicitor dealing with certificates of title and matters referred to him by conveyancing staff. The First Respondent's instructions specifically required and had direct access to the accounts from the Isle of Man. The Second Respondent accepted that he had personal responsibility for client account and wrote cheques for cashbacks. He agreed that he had a good salary but this was commensurate with the salary at his last firm when he left. He had also continued his notarial practice. His only other legal work was a little for some friends and existing clients from his former firm. The only work he did for Mr B and Mr R at that time was regarding their property purchases. They bought a number of properties and he signed a number of certificates of title. The joint-venture matter had occurred while he was at his former firm. He agreed that the firm had been a one-stop shop for T in the time he was there but the T was not a client. He expected that Mr R and Mr B made a lot of money but he had seen no evidence about that. He felt let down by Mr R regarding the job description that Mr R outlined to him when he asked him to set up the firm. The Second Respondent did not recall a situation where he had felt let down by Mr B. They gave him the scheme as Mr DW described it to him. They had concealed from him that there was a circle of funds. The Second Respondent said that the funds had to come from somewhere and he had his suspicions that that was the case. It did not strike him as dishonest at the time. From what had been described to the Tribunal he felt that if he had known about it, he would have been sure it was dishonest. In respect of his signing certificates of title for lenders, he said that it was against his wishes to be compliant, that he did so.

107.55 The Second Respondent said that he had purchased two properties through T which were not referred to in his statement. He had bought one of these while he was at his former firm and one after he left the firm in September, October or November 2007. That purchase transaction had been carried out through the firm and the T contribution had been paid to him direct by Mr B. The Second Respondent felt fully entitled not to proceed and to keep the T money. He disagreed that this was not a realistic proposition but it has not arisen because he had proceeded to buy.

107.56 The Second Respondent agreed that in interview he had described Mr B as "someone who was referring work to us" and had agreed that effectively the firm was an arm of T, virtually all the work they undertook came through T. He had also said:

"I found myself embroiled in a conveyancing factory which was never my actual intent."

He agreed that this was for the benefit of Mr R and Mr B. As to the role of the firm, the Second Respondent was referred to a T brochure and he agreed that the description of its role was fair:

"**The perks**

[T] LEGAL offers advice and assistance on all the legal aspects of your property transaction. Their experienced team of professionals are specialists in buy-to-let property transactions.

[T] LEGAL is an independent law firm regulated by the Law Society.

How it works

Once you've decided to buy property with [T], you are introduced to [T] LEGAL. You will be sent a standard "letter of engagement" to sign, which initiates your exclusive relationship with the firm.

[T] LEGAL will take it from there, and remain with you every step of the way, through exchange, mortgage, completion and post-completion. Because they are part of the [T] Group, you are provided with a seamless service from initial exchange through to completion.

The [T] difference

Of course, you are under no obligation to use [T] LEGAL, but there are several reasons why you should:

- [T] LEGAL is first to obtain all the information necessary to complete your transaction. Thus, they are one step ahead even before you instruct them
- No need to worry about searches, transfers, registrations and disbursements, [T] LEGAL will take care of it all on your behalf
- Throughout the process, all the steps are outlined in easy-to-read, jargon-free documentation and, if you have a particular question, [T] LEGAL is only an email or a phone call away.

With a team of solicitors, conveyance managers and notaries dedicated to your property transactions, you can be sure of a quick, thorough and efficient service.

[T] LEGAL works for you."

107.57 The firm had initially been set up as [T] LEGAL. He had felt the name was inappropriate because the firm was acting for [purchaser] clients and lenders and he wanted some separation. This was the case even though they were still close to T and in its offices at least once a week. The Second Respondent agreed that a lot of documents retained the old name including his own email address.

107.58 The Second Respondent was aware of the property sourcing agreement between the R&B partnership and T and agreed that Mr R signed it as a director and he had signed it as secretary for T. He has also been involved in the preparation of the indemnity

document; the First Respondent had asked him to prepare it and he had submitted a draft. It had not been his choice that T's and the firm's offices should be close. He did not dispute the description in the IO's witness statement of the close relationship.

107.59 He agreed that he had confirmed in his witness statement that the methodology of how the T scheme operated was explained to him on his arrival. He understood that the only seller that the lender knew about was the developer and that the lender did not know about the [R&B] partnership being the seller. He didn't know definitely but suspected from previous experience that the developer would only be paid the lower discounted price. He agreed that when he started transactions he did know it although Mr Malek accepted that he may not have known it when he prepared the instructions to counsel. He knew that money would come from T to the firm to pay the bulk of the deposit. He knew that the difference between the amount paid in the purchase and the amount paid to the developer went to the partnership's solicitors. He had got it into his head that the deposit [provided by T] was the property of the purchaser and he didn't think about it at the time although he thought now that he should have done. Sitting here now he agreed that if the lenders had been told about the assignment, the purchase price, the discount and the circle of funds as well as the borrower getting money from T which came from R&B, they would not have gone ahead. He had not thought at the time that the lender was being cheated into lending in circumstances where they would not otherwise do so. The Second Respondent confirmed that he was aware of the various duties and obligations of someone acting for a lender and borrower and that it was dishonest to make false or misleading statements to a lender and of the duty to ensure that any questions in the CML Handbook were properly and accurately answered and that on signing the certificate of title all material facts were disclosed and that any specific questions raised in instructions were properly and correctly answered. His thinking at the time was that he was compliant with the CML Handbook. He accepted that in interview with the IO he had said that in respect of papers received from R&B's solicitors:

> "I vetted those papers and examined them and prepared the report on title and asked additional questions and then that report on title was used in connection with the papers sent out to our clients who are purchasing buy to let units."

107.60 He said that the certificate of title was prepared for him but he checked it before he signed it. He agreed that he had never shied away from responsibility for answering the additional questions from lenders. In respect of the purchase at the development MS, the Second Respondent confirmed that he had never told the lender of the discount (14%), that the bulk of the deposit did not come from the investor, about the cashback, the T contribution, the assignment, or of his suspicion of the circle of funds. He was referred to a letter of 30 July 2007 setting out the figures in the case of the purchase by Mr SG at 40 MS and when asked whether he accepted that mortgage fraud was involved here, he said that it looked like it. Sitting here he could see that he had failed and by not making disclosure had exposed the lender to risk of default. That was certainly not how he felt at the time. He agreed that he was concerned in October 2006 following his study of the CML Handbook as he said in his witness statement and that he had referred in his statement to the Law Society edict to report anything unusual which lead to the conclusion that he would be far happier disclosing all aspects of the proposed transactions from the outset.

107.61 The Second Respondent accepted the basis of the Applicant's case in support of allegation 1.1 as set out in Mr Malek's skeleton argument. In respect of the warning in the Green Card which he had studied when he joined the firm, he agreed that on any viewing in 2006 he knew the transactions were unusual. When asked if his concerns went much wider than receipt of funds from T, the Second Respondent said he did not consider that at the time. He was fixated on the money from the seller. Sitting here now he agreed that he had had a reckless disregard of the interests of the lenders but he had not thought that at the time. He had feared that if all these things were disclosed the lenders would not go ahead and that that was why the reason why Mr R and Mr B were resistant to disclosure. He agreed that when the Third Respondent told lenders of the assignment they pulled out without even knowing about the circle of funds. The Second Respondent was referred to his instructions to counsel in which he had referred to a further agreement between the R&B partnership and T for some but not all of the discount to be shared with T in return for T delivering purchasers for each individual unit. He did not know if that was a property sourcing agreement. The Second Respondent quoted what he had included in instructions to Leading Counsel about the way the transactions worked:

> "R & B proceeds to exchange contracts on the whole development with a 5% deposit. The contract provides for assignment of the benefit of the contract for each individual unit.
>
> Thus R&B is contractually bound by the total agreed number of units in the development within a period of 28 days from exchange for ready built units or on notice if the units are in the course of construction.
>
> The race is then on to match sub purchasers to the units that R&B has agreed to buy.
>
> The deal is packaged into a prospectus by [T] and launched to its database of potential investors.
>
> The package includes a price concession which will be a part but not a whole of the discount that the Developer has been [sic] agreed to pay. Typically the price concession is about 10% of the purchase price. (The retained balance of the deposit is R & B's profit).
>
> Such concession is passed on to the client as a cash payment from [T]. This is the element on which Counsel's Opinion is being sought…"

197.62 As to whether the Second Respondent had told Leading Counsel he knew or suspected there was a circle of funds he said that for better or worse that was what he thought he was saying in these paragraphs. He agreed that he had not in so many words told Leading Counsel that funds were passing across and back. He wished he had said that and said that it looked bad enough reading it now. He had not been involved in consulting H solicitors which was a lasting regret. He had made an honest attempt to set out the facts for Leading Counsel and he had done nothing to obscure the position. When he had prepared the instructions he had not fully understood the position, although he had been signing cashback cheques a month later. He had not told Leading Counsel about the cashback or referred to any specific queries in documents from lenders in the instructions. He had not shown Leading Counsel completion

statements because the instructions had been prepared and advice taken before they started trading. This was also before the T members feeder account had been set up. He agreed that the instructions stated that the valuer was not told of any potential discounts and that the instructions continued:

> "Care is taken to ensure that the price per unit settled upon matches a lender's parameters as to loan to value and rental yield so as to ensure that a mortgage will be available at that price."

107.63 The Second Respondent accepted that there were parts of the scheme that he had not put in the instructions and that if he had time again he would set them out. He agreed having regard to the UCB guide that it was pretty obvious that the valuer should be told of incentives. He also agreed it was clear from his instructions referring to the price concession that he knew of the discount. As to whether he must have realised that the lender should have been told, he said he wished that he could say "yes" but he was not registering at the time, he was trying to understand the scheme and to get it down as accurately as possible. He agreed that the statement in the instructions that:

> "Thus each client purchasing a unit is buying at full valuation without any discount from the Seller"

was not true and that the next paragraph was misleading in saying:

> "Furthermore the purchase price is known to be one that meets the Lender's parameters for lending on a buy to let mortgage."

He did not know then that it was untrue to say:

> "As there is not any change in the purchase price from the developer/builder in the model outlined above [the firm] have tentatively formed the opinion that the provisions of the Guide are not contravened by the transaction as outlined above."

107.64 It was a fair assumption that Leading Counsel did not know of the circle of funds from conversations they had had. As to Leading Counsel's statement that he had been:

> " ...told that the cash sum that was to be paid by [T] will expressly exclude any possibility of [T] or any other party ever having recourse to the monies.."

the Second Respondent did not know where this was set out in any agreement between T and its members. He agreed that for example in the MS development, investors were not told that the sum belonged to them and came back to them if the transaction did not go ahead; they just knew they were buying at a discounted price. The Second Respondent also agreed that the next statement in Leading Counsel's advice that:

> "The purchase price paid to the Seller for the property is the same price as will have earlier been valued by the valuer and notified to the lender."

was also untrue. He agreed that the opinion was highly qualified and that in the analysis section, if Leading Counsel had been told the truth he had misunderstood the transaction where it said:

> "In the transaction under consideration, there is no "change in the purchase price" of the property, since the purchase price paid to R & B will be the same as the open market valuation."

as the purchase price to R&B reflected the discount. It was also untrue where Leading Counsel stated:

> "The price paid to the Seller in this case is the same price as will have been advised to be lender and then set out in its instructions. There is no "cashback" in the sense that the term is usually used (the person receiving payment pays back a part to the person making the payment), there are no "non-cash incentive" of which I am aware…"

107.65 The Second Respondent denied that Leading Counsel had been instructed on a partial and misleading basis to get cover for what was going on. He referred to Leading Counsel's email and their further discussions. He absolutely accepted that Leading Counsel had been persuaded to come back with an opinion that left the matter open as he said he was not qualified to comment and that the email was not exactly encouraging. The major issue of disclosure had not been dealt with. The Second Respondent confirmed that he was not saying now that Leading Counsel's advice was a defence to the allegation he faced. He did not rely on it at the time.

107.66 In respect of his ongoing concerns about disclosure after the receipt of Leading Counsel's opinion, the Second Respondent was asked whether an honest solicitor would not consult the lenders before proceeding. He replied that he was told not to by the First Respondent, so he didn't. He was not relying on that as a defence. He believed having spoken to the firm of solicitors in Leeds that a disclosure might not be required. He did not feel that it was dishonest, he wasn't sure.

107.67 The Second Respondent was referred to the email sent on behalf of the First Respondent on 16 February 2007 which said that reference must not be made to the R&B property partnership within any mortgage application. The Second Respondent agreed that on the basis of this email he knew that the mortgage applications did not disclose the role of R&B. It was submitted that this email established that the lenders never knew of the assignment and that the Second Respondent did not tell them about the assignment and sub sale. The Second Respondent confirmed in cross-examination that the action recommended in the email sent on behalf of the First Respondent was not implemented:

> "May I suggest that you review again the CML Handbook in the light of the proposed disclosure by the borrower in order to satisfy yourself that providing such a disclosure were in fact made by the borrower to the lender then it would not be necessary for [the firm] to make a disclosure in the event of an Assignment/Contract by way of Sub-sale. This is vitally important as it may be that notwithstanding the borrowers disclosure to the lender that [the firm] will still have to disclose to the lender (its client) by reason of the terms of [the firm's] mortgage instructions. Also the lender will have been alerted to the position quite rightly by the borrower's disclosure."

107.68 The Second Respondent was then referred to an email from the First Respondent to him of 20 February 2007. It began:

> "Following our telephone conversation yesterday during which (contrary to what I have been led by him to believe) you informed me that [DW] has not specifically confirmed to you at all that the lenders for whom you act are fully conversant with let's call it the [T] Modus Operandi..."

107.69 The Second Respondent said he was amazed by this email as he had never suggested to the First Respondent that lenders knew from DW or his brokers. The email also included:

> "The... Questions which in my view you have not got to grips with are:
>
> 1) Whether the cash payment made by [T] is something which would effect the lender's decision to make the advance and/or
>
> 2) Whether the cash payment falls into the category of information which you as Solicitor for the lender would reasonably expect the lender to consider important in deciding whether and on what terms the lender would make the advance available."

107.70 The e-mail continued by referring to the Second Respondent's analysis as to why there was no requirement to make a disclosure. He said he never suggested that; he had been dumped on. When asked why he did not just say at the time that he had not made the suggestion, the Second Respondent said in respect of the points raised in respect of the above email exchange and why action was not taken that he was expecting a full-blown meeting to go through the issue once and for all and that the First Respondent never turned up instead he went to H solicitors for advice. It was put to the Second Respondent that he was giving the impression that he was pushing disclosure and all the others were pushing back but when the specific questions were asked he had not disclosed. He replied that he wanted to disclose as much as possible to the lender and would have been delighted to do so. Another paragraph in the e-mail was put to him which said:

> "With regard to December it seems from what I have been told that a number of transactions were completed with out following Counsels Advice. I forgot to tell you that I did discuss this issue with [S] and he agreed with me that there was no benefit at all to anyone in accepting your offered resignation as a result of what happened in December. To have done so would have achieved nothing at all and would have simply moved the December issues to someone else to deal with."

107.71 The Second Respondent said that he had been deeply unhappy and offered to resign but not because he had been disregarding Leading Counsel's opinion. Mr R had gone abroad and the First Respondent was uncontactable. The team was inexperienced and faced with a number of completions. It was clear there were insufficient funds to complete all the transactions scheduled for 29 and 30 December. The firm could have stopped engines completely or a more likely alternative to protect clients, completed transactions but not paid sums due to R&B. This was what the Second Respondent did. He realised it told against him because it demonstrated quite clearly the circulation of funds. Before he left, Mr B had effectively asked him to recycle funds due to R&B, to retain them and put them into the T members feeder account and complete the transactions.

107.72 The Second Respondent had refused on the basis that he did not act for R&B and it was inappropriate to use their funds for other transactions. He completed with the seller and left it until January for T funds to flow in to repay R&B. He thought Mr B had assumed that he would agree because Mr B had done this in the past with other firms. The Second Respondent said that he was beleaguered and out of his depth. The matter had sorted itself out in January. The First Respondent did not offer him any help but just said what he said in the email. The Second Respondent agreed that Mr B had put a dishonest proposition to him and he had refused to do it. He had not known it was dishonest but it was inappropriate to use funds belonging to R&B for the benefit of his clients. He said it was better that the Tribunal heard from him that he knew about the circle of funds from then on. It was put to him that given that he knew of the circle of funds and that it was fraudulent, the honest thing would be either not to act further or make disclosure to the lenders, and that he had not done the honest thing. The Second Respondent agreed. As to whether what Mr B asked him to do in terms of eking out money from T over the Christmas period had rung any alarm bells about Mr B's integrity, the Second Respondent said no more than Mr B not understanding the obligations between solicitors and clients.

107.73 Mr Malek then turned to email exchanges in March 2007. The Second Respondent did not know what the First Respondent had told Mr G of H solicitors but he agreed that it was clear from the e-mails that it was H solicitor's view that there should be disclosure that some of the purchase monies were being provided by someone other than purchaser. The Second Respondent said that this was manna from heaven insofar as he was concerned. It was put to him however that concerning Mr DWH's purchase in Rotherham where the lender was GMAC RFC, there was a letter dated 5 March 2007, already referred to, in which disclosure was not made. The same thing had happened in the purchase by a Mr BS of another property in the same development. In the interview he had told the IO that there was a standard disclosure on every letter the firm sent after 1 March 2007:

> "…we took advice from [H] and it was a disclosure to the effect that a proportion of the purchase price was provided by a third party which was [T]... It was with every report on title...Every certificate of title that we sent back had a covering letter with that disclosure on it…"

107.74 The Second Respondent said that when he was interviewed he thought that was the case but it had been changed and he could see that from the email traffic. He referred the Tribunal to the email exchanges in early March 2007. On 1 March at 18.02 the First Respondent had e-mailed to him:

> "Ignore my e-mails. We need to review the draft disclosure. Speak Monday"

On 5 March he had e-mailed the First Respondent:

> "Tried to speak with you this morning.
> Can you come back to me when you can on proposed wording.
> Under considerable pressure to submit some CoTs for completion today/tomorrow but as agreed will not do so until we have something settled."

107.75 There was then an email sent on behalf the First Respondent to Mr G of H solicitors:

> "Many thanks for your help yet again this morning. I have informed the people concerned that you are happy with the following draft.
>
> "Please find enclosed our Certificate on Title in respect of the Property.
>
> Kindly let us have funds in time for completion on [....]
>
> The Balance of the funds due on completion will be paid from our Client account utilizing funds provided by the Purchaser or procured on his behalf and yourselves…
>
> In respect of the provision of such funds we are satisfied that the lender's position is fully protected in that (i) Anti Money Laundering Regulations have been observed, (ii) no third party rights are created and (iii) the valuation of the property is not adversely affected."
>
> If there are to be any changes I will revert to you before the draft is signed off."

107.76 The Second Respondent said that it was clear that the First Respondent had gone back to H solicitors and he did not know why that had not been shared with him. An email was sent the same day 5 March from the firm to H solicitors setting out a final draft and commenting that the First Respondent thought that this read better than the last draft whilst saying the same thing and asked if Mr G was happy with it. The final version read where it was different from the earlier one:

> "The Balance of the funds due on completion will be paid from our Client account utilizing the mortgage advance and funds provided by or procured by the Purchaser."

107.77 There was a further e-mail from the Second Respondent to the First Respondent dated 21 May 2007 regarding the covering letter that went with each certificate of title. The Second Respondent said that he put wording that had passed H solicitors in the covering letter with each certificate of title. He was not suggesting that Leading Counsel or Mr G had seen his responses to specific queries, nor did he suggest that First Respondent knew about the CG development situation.

107.78 In respect of the change in the CML Handbook 2007 the Second Respondent agreed that he had realised that as a result of the change incentives had to be disclosed and that was when he brought the matter to First Respondent's attention in his email of 25 May 2007 quoted earlier. (It was put to the Second Respondent there was a slight inconsistency between the email and his witness statement about how he had come across the change. In his witness statement he said he learned of it fortuitously from the telephone conversation with PW of B solicitors. The Second Respondent put this down to time playing tricks. He asked for his statement to be amended to reflect the explanation in the email which was accepted.) An email from the First Respondent dated 25 May 2007 to the Second Respondent said:

> "This needs some thought.

> I will consider the matter over the weekend.
>
> I intend to ask [H] to review their advice on Tuesday
>
> Lenders are clearly very concerned about cash backs and incentives and that's clear from the amendment to the CML Handbook which seems to me to be a general catch all or at least an attempt at one.
>
> My initial view is that the members entitlement is likely to fall within 6.3.3 and therefore it must be disclosed.
>
> I will review the position with [Mr R and Mr B] at [T].
>
> I also think the amendment ought to be discussed with the mortgage broker sooner rather than later which I will do once I have spoken to [T].
>
> Subject to everyone's views and [H] advice we cannot submit any COTs without disclosing after 31st May 2007.
>
> I will speak to on Tuesday."

107.79 The Second Respondent said "hallelujah" this was the kind of support he needed from the First Respondent but he agreed that the disclosure never happened. He had left it to the First Respondent as to how they proceeded. On 4 June 2007 he sent an email to the First Respondent including:

> "Given the change in the CML Handbook we are bound to disclose any indirect incentives received before use mortgage funds."

The First Respondent had replied:

> "Having considered your e-mail I am afraid you have no alternative but to return funds pending discussions with [H].
>
> I cannot fault your analysis of the current (post 1st June) situation or indeed your anticipation.
>
> I think it would be folly to compete based on the fact that the COTs predate the 1st June 2007. The duty owed is at the date the funds are used not the date of the COTs.
>
> I'm due to speak to [H] shortly."

107.80 On 5 June 2007 H solicitors provided its conclusions in the "sea change" email. The Second Respondent had observed the email sent on behalf of the First Respondent to him on 7 June 2007 about meeting his obligations, and about satisfying himself as to the source of funds for any client who wished to proceed. He agreed that the First Respondent had placed responsibility on him. In respect of the subsequent involvement of RL, he had not dreamed up its involvement, he had just been asked by the First Respondent to draw up a formal letter. He accepted that had been involved in discussion about the draft wording and he asked to correct his witness statement which denied that. He assumed that the First Respondent was happy with the wording and that it was being advised on by H solicitors. He had trusted others to guide him in areas he was not familiar with. He agreed that the use of RL was obviously a device. Between £4 million and £5 million passed from T to RL to the firm. The Second Respondent said he had not seen an RL attendance note of a meeting dated 11 June

2007 examining why the firm needed RL's assistance. The meeting had involved TC of RL, Mr R for T and a partner at another firm R&C representing T. The note included:

> "The reason for their need for assistance is that until recently the ultimate clients were represented by [the firm]. They would hold funds, and subsequently remit funds at the appropriate time for completion to the individual clients purchasing conveyancing solicitors. It seems that [the First Respondent] has had to withdraw from the operation due to a professional conflict. This only happened a few days ago.… What they would like us to do is in connection with each individual client, is to take over the role of [the firm], namely to receive the balance of completion monies, and for those monies to be paid out against a specific completion statement which will be forwarded from the conveyancing solicitors.
>
> Their solicitors cannot hold the money due to conflict…"

107.81 The Second Respondent said that he had the email from the First Respondent of 20 June saying that he was taking advice from H solicitors so he didn't know which document was true. The First Respondent was his boss and advising him as to what should be done. As to transactions with RL, the Second Respondent was referred to the IO's statement. He described how in some cases RL effectively made payments to the end buyers which were referred to as "overpayment amounts". It appeared RL was uncomfortable with the arrangement. On 3 July 2007 TC of RL expressed concern about some of the amounts being refunded in particular where some of them were nearly 50% of the amounts originally dispatched. On 18 July RL was becoming very concerned and TC asked to speak about the repayment in an e-mail to T. The Second Respondent agreed that these were repayments of cashbacks. His team was dealing with them. He agreed that RL regarded him as leading. An e-mail from TC of RL dated 17 July 2007 said to T:

> "When I spoke to [the firm], [the Second Respondent] said he would be dealing with the repayment of any excess funds – which made more sense. Now we seem to have received some of those repayments."

107.82 RL notified its withdrawn in a letter to him dated 8 August 2007 asking him to make his staff aware. He was not curious about why they did so because the Third Respondent had arrived and he was withdrawing from the whole process. The Second Respondent was asked about an e-mail he had sent to TC at RL on 4 July explaining the repayments. He had said:

> "I write to confirm that the reason why we have had to remit certain funds back to you was on account of the fact that calculations were made on the basis of the client receiving the standard 85% mortgage.
>
> In certain cases, however, the client, in fact, obtained a 90% or even a 95% mortgage which meant that we found ourselves with more funds than were actually necessary.
>
> As you stipulated in your letter that funds remitted to us were to be used solely for the purpose of the purchase it was considered appropriate to remit any funds that were surplus to the needs of the transaction back to yourselves."

107.83 He was asked whether this was really accurate and replied that having heard what he had heard today it wasn't. At the time he believed what he said was correct. Some of the money was as stated in the letter but there were also cashbacks. On 6 July 2007, an e-mail sent on behalf of TC at RL to Mr B asked:

> "[T] has indicated that the monies we are receiving are "over-payments" due to errors. This seems to be slightly at odds with the client's belief that this is due to "cashback payment". Could you shed some light on the matter?"

In his reply dated 6 July, Mr B said:

> "Cash back due to the fact that the client had exchanged and arranged a higher than expected mortgage. Therefore clearly on completion there was surplus funds etc. In short the same as the others. Sorry about the confusion."

107.84 The Second Respondent agreed that in retrospect in his letter he had not stated the true position, whether he fully understood this at the time he doubted. He saw that there had been cashbacks and RL should have been told.

107.85 Having regard to the CG development, it was put to him that he lacked integrity. The Second Respondent said at the time he had believed DW and he was out of his depth. He was far too gullible and feeble in terms of someone not his client telling him to go along with a lie. He did not dispute the IO's evidence about how the money had moved between the ledgers for the different units and then gone back again. To his knowledge he had not used this device for other properties; he was unable to explain something which looks similar in respect to other properties involving AA brokers. It was put to him that in his witness statement he had said that the certificate of title was clearly marked "remortgage" and that he had wrongly assumed that if the lenders wanted further information they would ask for it. He accepted that was wrong and did not know how they could ask for more information if their solicitor was telling them that it was a remortgage. In his statement he said:

> "I deeply regret this now. However at the time I allowed myself to [sic] influenced by DW who I thought I could trust and on whose experience I thought I could rely.
>
> In retrospect I accept that I should have stood my ground to a far greater extent and just refused to accept the papers in the format in which they were sent to us. I have been criticised in the past for being too trusting in my dealings and this is a case in point."

107.86 He agreed that he was the person in the position of trust and that he had breached the lenders' trust. He said that he didn't intentionally do it dishonestly. He didn't feel it was dishonest at the time. He had not considered whether to disclose the discounts might have killed the transaction, and in retrospect agreed that in the CG cases five loans had been obtained by false pretences on the back of false certificates of title and false confirmations that these were remortgages of loans from NatWest. He had not thought this at the time. The same applied to whether this amounted to mortgage fraud. He had not taken advice because he was under a lot of pressure and he had not taken advice from the First Respondent because he did not think it was wrong.

107.87 The Second Respondent accepted that advances totalling over £3.2 million had been obtained according to the IO's schedule in the FI report in respect of the Warwick development and that as the lender was lending up to 108%, way in excess of the stipulated loan to value ratios, there was a risk of default and shortfall. He said that he had never denied that he should never have allowed it to happen.

107.88 Mr Malek referred the Second Respondent to his admission in the e-mail dated 12 March 2012 from his former representative of failing to disclose material facts to his lender client putting him in breach of Rules 1.021 and 1.04 in relation to the CG matters. Mr Malek put to him that his breaches related to all the transactions. The Second Respondent replied that he did not deliberately set out to mislead. Mr Malek took the Second Respondent through the facts of the purchase at the Warwick development by Mr JC. He accepted the various non-disclosures and that he had misled the lender from where he was sitting now but he did not think of it at the time. In respect of the purchase for Ms S and Mr E of 1 KC, he agreed that his response to the lender EMC in his letter of 30 January 2007 in answer to the specific question in its letter of 24 January was misleading about incentives and discounts. However he said he had first seen that letter when the IO showed it to him. He had no recollection of seeing or signing it but must take responsibility. It was put to him that when specific questions about incentives and cash backs were asked his response was not to disclose and that there were plenty of examples in respect of other transactions than CG, where lying responses had been given. He said he gave these responses because he believed they were correct because he believed that money belonged to the (investor) client. Mr Malek referred to purchases including that on behalf of Mr DWH of a property 3W in Rotherham. The Second Respondent accepted from where he sat now that the letter of 5 March 2007 from the firm stating that the valuation of the property was not adversely affected was false. Regarding a purchase for Mr BS of another property in the same development, the Second Respondent thought that his letter was sufficiently based on the advice of H solicitors.

107.89 The Second Respondent was referred to an exchange of e-mails between him and DW regarding a purchase for a Mr PT of a property in Retford. He had referred to a mortgage condition set by the lender DB Mortgages:

> "Mortgage Condition 17 reads
>
> "Solicitor to confirm purchase price and the value of sales incentives being offered.
>
> Do you agree that I may state the purchase price and that there are no sales incentives offered by the Seller.
>
> These are the kind of issues that I would love to have covered by side letters from lenders such as DB as we have discussed briefly.
>
> I wonder if you and I could meet at some stage in the near future to explore this further."

DW had replied:

> "I agree you can confirm the purchase price and that no incentives are being offered by the seller. We will sit down when [Mr B] is back and address any issues there are."

107.90 It was put to the Second Respondent that this was the Mr DW who had persuaded him to go along with the fraudulent mortgage scheme on the CG development and that here it was his, the Second Respondent's suggestion that incentives should not be disclosed. The Second Respondent said that he took it in terms of sales incentives from the head seller. When asked what difference that would make to the lender he said that he accepted now [that it would not make a difference], but not at the time and agreed that the lender only knew about the head seller and not about the assignment.

Allegation of dishonesty

107.91 Mr Malek submitted on behalf of the Applicant in respect of allegation 1.1 that the Second Respondent's conduct had been dishonest or grossly reckless with regard to his professional obligations. It was no indictment of the Second Respondent generally who was an erudite, learned and intelligent person. The charge related to what he had done regarding those particular transactions. Someone who was generally honest could end up doing something dishonest. He submitted that the Second Respondent's conduct in respect of the CG development was a very serious dereliction of duty and amounted to dishonesty. From December 2006 he knew about the circle of funds and he knew the transactions to be dishonest and he issued misleading certificates of title. When the lenders asked specific questions they were given letters which contains lies. When RL solicitors became very concerned about the issue of repayments coming back to the investor clients they were told the lie that this was not a cashback. The Second Respondent happily gave this story and it was backed up by Mr B the next day in an e-mail exchange which was untrue. Mr Malek submitted that the Second Respondent's conduct had at the very least been reckless disregard and amounted to dishonesty.

107.92 The Second Respondent denied the allegation of dishonesty in respect of allegation 1.1. He said that since the day he had met the IO he had taken it upon himself to tell the truth and this was why he had not been represented by a solicitor or a barrister and had not bought any character witnesses to the Tribunal. He wanted the Tribunal to judge him for what he was. Over the three days of the hearing he had seen the enormity of what was done at firm and how naive and gullible he was. He had been far too willing to trust people that he should not. He had been lulled into a false sense of security by others whom he trusted with his best interests. He should not have accepted the job or he should have left it as soon as he realised he was out of his area of expertise. He tried to be as compliant with the lender clients as he could and he thought that he had been. He tried to be as open as he could. No one had asked him to do anything dishonest. The Second Respondent admitted his failings. He had made no secret profit. In 34 years of practice he had never before been in trouble and he deeply regretted what the Tribunal had had to listen to during the hearing and apologised unreservedly for his part in it.

Finding of the Tribunal in respect of allegation 1.1

107.93 The Tribunal had considered the submissions on behalf of the Applicant, the evidence and submissions of the Second Respondent and the evidence of the witnesses in

connection with allegation 1.1. The Second Respondent did not dispute the facts as established by the IO. He did not contest the basis of the Applicant's case as set out in Mr Malek's skeleton argument. In the email from his then representatives of 12 March 2012, the Second Respondent had admitted failing to disclose material facts to his lender client putting him in breach of Rules 1.02 and 1.04 in relation to the CG matters as set out in the Rule 5 Statement. During the course of the hearing the Second Respondent had admitted the allegation in respect of other transactions and the Tribunal found allegation 1.1 to have been proved beyond reasonable doubt.

107.94 In determining the allegation of dishonesty, the Tribunal applied its usual test that set out in the case of Twinsectra v Yardley [2002] UKHL 12. It considered that by the objective test the standard of reasonable and honest people, the Second Respondent's conduct in causing, permitting or acquiescing to the nondisclosure of material facts to his lender clients was dishonest. As to the subjective test whether the Second Respondent himself realised that by those standards his conduct was dishonest, the Tribunal had heard that he was a very experienced solicitor and while he had not done much work recently in conveyancing he had undertaken conveyancing previously. He was conversant with the rules and had set himself the project of considering the CML Handbook as soon as he was instructed in the transactions. He was therefore well aware of the requirements of paragraph 5.1.2 which appeared with slightly different wording in both the 2005 and 2007 versions of the Handbook. It related to any matter which came to the attention of the Second Respondent which he should, in wording common to both versions:

> "…reasonably expect us to consider important in deciding whether or not to lend to the borrower (such as whether the borrower has given misleading information to us or the information which you might reasonably expect to have been given to us is no longer true) and you are unable to disclose that information to us because of a conflict of interest, you must cease to act for us and return instructions stating that you consider a conflict of interest has arisen."

107.95 The Second Respondent had also made a study of the Law Society's Green Card warning against property fraud at Annex 25G to the Guide to the Professional Conduct of Solicitors applicable prior to 1 July 2007. It included a bullet point on "Misrepresentation of the purchase price" which was clearly applicable to the transactions which were the subject of allegation 1.1. There were numerous other warning signs continuing until RL solicitors pulled out of the transactions after a short involvement when the Second Respondent asked no questions about the reasons for their decision. The Second Respondent had disguised and failed to disclose to his lenders clients that his investor clients were acquiring the properties by way of assignment; that they were in receipt of discounts and cashbacks; that the purchase price in the certificates of title was not the true purchase price paid and that funds had been introduced from a third party T so that the balance of the purchase price aside from the mortgage advance was not provided solely by the investor clients. The Tribunal considered this to have been a dishonest scheme from start to finish which was designed to hide mortgage fraud, to hide the true position from the lenders. In evidence the Second Respondent had told the Tribunal that he had real concerns about disclosure and this was clearly evidenced. He admitted that he suspected that there was a circle of funds of which there was also evidence and in his own evidence admitted that he had been was sure of it from December 2006. He had thoroughly

investigated the regulatory requirements by which he was bound but he nevertheless continued with the deception of the lenders and carried out many more transactions (even after the requirements of the CML Handbook became more demanding). On a number of occasions lenders asked specific questions and were given either deliberately misleading or false answers. The CG transactions were a case in point. The Second Respondent told the Tribunal that he accepted that he was wrong to act as he did in those transactions. The Tribunal found that they indicated a further example of his dishonesty. It was no excuse for a senior and experienced solicitor to say that he was acting on instructions from his employer or that he trusted the advice given by that employer when his own actions amounted to a fundamental deceit practised in the course of his employment on his own clients. The Tribunal found the subjective test to have been proved beyond reasonable doubt and was satisfied that the Second Respondent knew at the time of his misconduct that his actions were dishonest. Accordingly the Tribunal found dishonesty proved against the Second Respondent in respect of allegation 1.1.

108. Allegation 1.2: They allowed their client account to be used as a banking facility to a third party contrary to Rule 1(a) and (d) and/or Rule 32(16) and/or Rule 15 note (ix) of the Solicitors Accounts Rules 1998 ("the SARs");

108.1 On behalf of the Applicant, Mr Malek submitted that this allegation related to three ledgers in the client account. He drew the Tribunal's attention to the various rules including Rule 32(16) providing that suspense client ledger accounts might only be used when the solicitor could justify it; for instance, for temporary use on receipt of an unidentified payment, if time was needed to establish the nature of the payment or the identity of the client. The relevant case law was the Tribunal case of Wood and Burdett which held that it was not a proper part of the solicitors' everyday business practice to operate a banking facility for third parties whether they were clients of the firm or not and that banking facilities should not be provided through a client account. The case of Bryant and Bench was also relevant where the Tribunal held that as a matter of professional conduct a client account was not to be used as a mere conduit for the transmission of monies from one person to another and where the Tribunal noted that there was the risk that the account may be used in these circumstances for improper or illegal purposes.

108.2 From 14 February 2007 until July 2008 a ledger account was maintained known as the T members feeder account which provided for the payment of T reservation deposits and contributions. As could be seen from the ledger, large round sums were paid into the client account by T and these did not equate to specific deposits for specific transactions. It was submitted that the ledger had the attributes of a banking facility for T as could be seen from the entries. The feeder account operated in such a way that funds were remitted from T mostly in large batches of round sums, for example £200,000 or £300,000 and these sums would in due course be allocated to specific transactions. The funds would be provided in order to facilitate the completion of the purchase of properties by way of inflating the funds available and thus making up the difference between the undiscounted and the discounted purchase price. Effectively the funds were injected into specific transactions to facilitate the fraud that the undiscounted purchase price was being paid. When the funds were remitted by T they were not capable of being identified to particular clients or particular transactions. This was a symptom of the funds being remitted from T in batches. The account was not capable of being reconciled or zeroed. This supported the Applicant's position that

the operation of the T feeder account was akin to the operation of a bank account. T was not a client of the firm and there was no client's matter where the firm had represented T in relation to a particular transaction. The Second Respondent was at the firm when the feeder account was opened. There was email traffic about monies coming in globally. The Second Respondent was involved and with allocating the money to individual clients. In March 2007 a payment of £6.345 was made and described as "Interest due on Dec/Jan completions". The payment of interest made the account look even more like a banking facility. There were also numerous smaller entries described as "[T] contribution". In interview the Second Respondent was asked why T would have a ledger account in the client ledgers of the firm. He replied:

> "The investor was entitled as part of the membership of the investors club to a cash contribution towards the purchase of the unit they were buying and, for convenience, that cash contribution was paid to them by the investors club and for convenience, a lump sum was paid into a [T] suspense account which was then appropriated to the particular investors for their purchases with the authority of [T] and [the First Respondent] permitted that provided the account was the zero'd [sic]at the end of each month and any funds that were no longer required or weren't required then they were sent back to [T]."

108.3 When asked did he view the T account as being a suspense account, the Second Respondent replied "Yes. Very much so." He continued in respect of whether the account related to any specific transaction:

> "No. It depended on, well if there was a particular run of completions about to occur, then the funds for that, that were required for that transaction would be placed with us."

He agreed that it was really just an account which could be used for the processing of the finances.

108.4 In respect of why he was concerned he said:

> "Well only in terms of the Solicitors Accounts Rules. It's not something that we should be permitting our account to be used for."

108.5 In respect of whether the account actually was zeroed after each batch of transactions, the Second Respondent said they tried to do it monthly and they were more or less successful in that, although there was a bit of an issue at times. Mr Malek submitted that this was an admission by the Second Respondent that he knew he was in breach of the SARs and that it was clear that these funds belonged to T which was not a client of the firm. During the interview the Second Respondent said that the First Respondent was happy with the fact that T was contributing funds towards the transaction on the basis that:

> "… they belonged to [T] until they were remitted to us, but the understanding was that once they'd been remitted to us they belonged to the client and were used for the client purchase."

108.6 In respect of how he felt about the fact that T were contributing he said:

> …"I was sufficiently concerned that I felt the need to take advice about it, which is what we actually did before we even started the process."

This was a reference to Leading Counsel's advice of November 2006. Mr Malek submitted that it was hard to understand why zeroing the account at the end of the month made a difference to its being a breach of the SARs. If this activity had been undertaken by an inexperienced solicitor one might understand, but the Second Respondent was very experienced and knew what the rules were and so this was a serious breach.

108.7 During the period 13 June 2007 to 19 June 2007 a ledger account was maintained at the firm in the name of RL from which T contributions were remitted and then transferred to the individual investor's ledger accounts. This reflected funds in the client account which should not have been held there. RL was not a client of the firm.

108.8 From 10 January 2007 until 22 February 2008 a ledger account had been maintained on behalf of AA Mortgage Brokers which was used primarily for the collection of payment to AA Mortgage Brokers of broker fees. It was also used for the bridging finance for the CG development, in a way designed to avoid disclosure of incentives and the true purchase price. Money from one unit was used as bridging finance for another where the lender was told that the transactions were remortgages when they were not. Mr Malek submitted that this account was used to facilitate the fraud based around remortgages and was provided as a facility for a third party AA Mortgages which was not a client of the firm.

Submissions and evidence of the Second Respondent in respect of allegation 1.2

108.9 The Second Respondent had denied allegation 1.2 in the 12 March email from his former representative. However he now accepted the charge stating that he was doing what he believed to be the instructions of the First Respondent, he having taken instructions of the firm's accountant. He didn't did do it deliberately at the time but from where he was sitting now it was clearly incorrect. The First Respondent said that it was acceptable if they zeroed the accounts which they did. The First Respondent was the partner in charge and the Second Respondent was only a member of staff. He accepted that large round sums came into the T feeder account which were subsequently allocated to facilitate the scheme and to facilitate the fraud regarding prices. As to the fact that the account was never zeroed, the Second Respondent said he had instructed the cashier to do that and make payment back to T and he understood that it was done. In respect of payment of interest, he agreed that he knew the account was used as a bank for T but said that he did not know that he was in breach of the rules because of what the First Respondent had told him. He now accepted the allegation in respect of the ledgers for RL and for the mortgage broker AA. He also accepted the latter was a very serious breach of the rules, not just because this ledger was operated for brokerage fees but also because of its use for the circle of funds for the CG development.

Finding of the Tribunal in respect of allegation 1.2

108.10 The Tribunal had considered the submissions on behalf of the Applicant, the evidence and submissions of the Second Respondent and the evidence of the IO in connection with allegation 1.2. During the course of the hearing the Second Respondent had

admitted the allegation and the Tribunal found it to have been proved beyond reasonable doubt.

109. Allegation 1.3: They caused, permitted or acquiesced in the firm acting or continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16 D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code.

Submissions on behalf of the Applicant in respect of allegation 1.3

109.1 Mr Malek submitted that the agreement and indemnity between T and the firm showed that the firm was 100% dependent on T and R&B for its operations. There was no other reason for the firm's existence. It required the prior knowledge and approval of T to incur any obligations in connection with setting up and running the business. The agreement included the promise of continued instructions with a minimum number of 750 per year. The schedule included an indemnity for liabilities. Mr Malek in his skeleton argument invited the Tribunal to consider (a) the extent of the relationship between the firm and Mr R, Mr B and their associated companies and whether the link compromise the independence and integrity of the firm and the Respondents and (b) whether the nature of the transactions caused a conflict of interest between the firm's interest in maintaining its relationships with Mr R and Mr B (and their various associated companies) and the duty to their clients, that is the end investor who purchased the development property and the lender client who was agreeing to lend the end investor monies. It was crucial to the issue of conflict that if full disclosure had been made, the lenders would have ceased to lend and there would have been no more business for the firm. This was in fact what happened when disclosure was made by the Third Respondent and the house of cards collapsed. Mr Malek drew the attention of the Tribunal to the SPR which had been in force prior to 1 July 2007. Rule 1 covered basic principles including that a solicitor should not do anything in the course of practising which compromised, impaired or was likely to compromise or impair his independence or integrity, his duty to act in the best interests of the client and the good repute of the solicitor or the solicitor's profession. Rule 16D covered conflict of interest. These obligations were replaced by the Solicitors Code of Conduct 2007 which set out that solicitors must not allow their independence to be compromised (Rule 1.03) and that they must act in the best interest of each client (Rule 1.04). Rule 3 covered conflicts of interest. If a solicitor was in a position where they should make disclosure to a mortgagee and the client did not authorise that, they were obliged to tell the mortgagees that they could not act in the transaction. This had been the situation in large number of transactions and the Second Respondent and the firm had been happy to continue acting and to issue certificates of title. Mr Malek submitted that the Second Respondent had a pre-existing relationship with Mr R and Mr B and summarised the key links as follows:

- the First Respondent had set up the partnership and trusts for Mr R and Mr B in the Isle of Man and their affairs were administered through his trust company;
- Mr R and Mr B had got the First Respondent to set up the firm;
- Mr R and Mr B were the directors of T. The Second Respondent admitted that he had formed T and was its company secretary;

- T had provided an indemnity in favour of the firm, guaranteed by Mr R and Mr B;
- Mr R and Mr B interfered with the affairs of the firm. The Second Respondent said in interview that he met Mr B weekly at T's offices;
- The sole work of the firm was the referrals from T. If the firm failed to provide certificates of title acceptable to lenders, then it followed that the referrals would dry up;
- It would have been easy for the firm to make proper disclosures to lenders. It was obvious that it did not make those disclosures as it was feared (correctly) that the lenders would not lend in the knowledge of the true position;
- When in both March and May 2007 there were concerns over disclosures, both the First and Second Respondents liaised with Mr R and Mr B and brought them into the discussion. It appeared that no thought was given to consulting with the lenders who were also clients of the firm and who were relying on the firm to make proper disclosure and certificates of title.

109.2 The Second Respondent saw money from T coming into the firm's client account and going out to R&B and then back through T creating a clear conflict of interest. There was a very strong link between the firm and T which compromised the firm's integrity. The Second Respondents took a £100,000 salary from his job and if he had told the lenders the true position that would come to an end. The offices of T and the firm were around the corner from each other in St James, London. AA Mortgages was established in the same building as T. In interview the Second Respondent was asked whether he ever went to T's offices and he said that he did:

> "… [Mr B] asked for a weekly meeting at eight o'clock on a Monday to review the progress of files, which we attended and there was a meeting on Friday evening just to sort of close the week, which we were invited to attend to see how the week had gone in terms of sales and I would go from time to time to meet [Mr R] or [Mr B] there to discuss issues, ongoing matters."

109.3 The Second Respondent confirmed that Mr B was the managing director and had hands-on control. When asked why Mr B wanted to have a weekly meeting to review the progress of files, he replied:

> "Because of the clients that we were acting for were people purchasing property and he wanted to well, he wanted to keep track of the transaction really. He had an interest in them moving forward quickly."

109.4 Mr Malek referred the Tribunal to an email dated 16 February 2007 to the Second Respondent on behalf of the First Respondent which copied in Mr B and Mr R. This was a very important e-mail concerning the disclosure debate. It included:

> "Reference must not be made to the R&B Property Partnership within any mortgage application for the simple reason that it may imply (which is quite wrong) that the Partnership has a place of business or a presence in the UK. This would be an unmitigated disaster from a tax point of view…"

109.5 In an email dated 30 May 2007 from the First Respondent to Mr G of H solicitors, Mr R and Mr B were also copied in along with the Second Respondent, and First Respondent said:

> "By this e-mail I am inviting comments from [the First Respondent], [Mr B] and [Mr R]."

109.6 Mr Malek submitted that if an honest analysis were being made of the situation, the lenders would have been consulted. He referred the Tribunal to the evidence of the IO on the relationship between Mr R, Mr B, the property partnerships and the firm. The strong interest of Mr R and Mr B was in keeping disclosure to lenders to an absolute minimum as was evident from the discussions concerning the extent of disclosure required. In the event the position of the firm was that the material disclosures were not made and the T scheme continued without material change to the detriment of lenders and T members who had instructed the firm. The firm was compromised in terms of its ability to act with impartiality and independently.

Submissions and evidence of the Second Respondent in respect of allegation 1.3

109.7 The Second Respondent initially stood by his admission of this allegation in the March email from his former representative in respect of the CG development only. In cross examination he agreed that it was in the lenders' interests to have the full facts regarding the true purchase price and all relevant information to support their decision to lend. He also agreed that investors should not be put at risk of default and having to pay more stamp duty than was appropriate. He said that he could see that now but not at the time. He also agreed that investors were left holding the baby when disclosure was ultimately made to UCB. So far as clients being encouraged to exchange contracts before having a mortgage offer, that had never happened in his time at the firm. When it was put to him that it could have happened, he said that unless there was a reason for the person to be declined and he could not get a mortgage, R&B would not enforce the transaction. The Second Respondent did agree that the investor client could be left holding the baby. He was directed to the counsel's opinion on the conduct of the firm obtained by the witness Mr Gordon. It referred to a letter from the firm dated 13 December 2006 which in counsel's view positively encouraged Mr Gordon to exchange without a mortgage offer (which he did, obtaining a mortgage offer subsequently), not something a competent and responsible solicitor should do. This had occurred on the Second Respondent's watch. He said that when he was conveyancing he would not exchange without a mortgage offer. The Second Respondent accepted that the firm relied on Mr R and Mr B for business, that they had an indemnity agreement with the firm and that business would have dried up if disclosure had been made to the lenders. He said that he must have been concerned about the impact of disclosure when asked why he was so desperate not to make disclosure. At the time he had not felt that there was conflict as set out in the allegation but he would have been more happy if disclosure had been made. In conclusion he said that sitting here he now accepted the allegation.

Finding of the Tribunal in respect of allegation 1.3

109.8 The Tribunal had considered the submissions on behalf of the Applicant, the evidence and submissions of the Second Respondent and the evidence of the witnesses in connection with allegation 1.3. During the course of the hearing the Second

Respondent had admitted the allegation and the Tribunal found it to have been proved beyond reasonable doubt.

Previous appearances

110. None

Mitigation

111. The Second Respondent relied on the points which he had made at the conclusion of his evidence and submissions and which are set out in respect of the allegation of dishonesty set out above.

Sanction

112. The Tribunal was extremely concerned to have before it a case which it considered involved a large scale mortgage fraud where a firm of solicitors had been set up to facilitate the transactions. Sanction in respect of the First and Third Respondents had been determined at the beginning of the hearing. In respect of the Second Respondent, the Tribunal having found dishonesty proved against him and the dishonesty having taken the form of repeated deception of his lender clients over a considerable period of time in numerous matters, he should be struck off the Roll of solicitors.

Costs

113. On behalf of the Applicant, Mr Malek applied for costs against the Second Respondent. A schedule of costs in the amount of £263,918.59 had been served by way of estimate including a four rather than a three day hearing. It was proposed that the costs be subject to assessment if not agreed. The costs liability of the Second Respondent was considered in conjunction with the agreements as to costs made between the Applicant and the First and Third Respondents subject to endorsement by the Tribunal. The Applicant had recognised the difficult financial circumstances of the Third Respondent and while she had agreed to pay a contribution of £30,000 towards the costs, the Applicant had agreed to keep the question of enforcement under review. The First Respondent had agreed to pay 50% of the costs of and incidental to the application and enquiry up to and including the disposal of the allegations against him. Mr Malek submitted that ordinarily the Applicant would seek a joint and several costs order in respect of all three Respondents. However he submitted that in the particular circumstances of this case the cost liability of the First Respondent should not extend beyond the conclusion of the hearing on 8 May when the outcome in respect of him was determined and that the Second Respondent should pay all the costs of the hearing after that point. That was the substance of his agreement with the Applicant subject to the endorsement of the Tribunal although it had not been expressed specifically in the letter of agreement between those parties. Mr Malek also sought an interim payment of costs against the Second Respondent in the same amount as the First Respondent had agreed to pay, £50,000 and in the case of the Second Respondent within the longer period of 28 days.

114. The Second Respondent submitted that it would be unfair if he were to have to subsidise the costs liability of the Third Respondent because she was in financial difficulties and that the costs should be reduced by the amount of her contribution and

that the remainder should be divided equally between the First Respondent and himself. He pointed out that he had not been consulted about the agreements arrived at between the Applicant and the First and Third Respondents.

115. The Tribunal ordered that the costs be subject to assessment if not agreed and endorsed the contribution by the Third Respondent of £30,000 towards the costs of and incidental to the application and enquiry. In respect of the First Respondent it ordered that as agreed between him and the Applicant he should pay 50% of the costs of and incidental to the application and enquiry up to and including the hearing on 8 May 2012. In respect of the Second Respondent it ordered that he should pay the balance of the costs but in respect of the application for an interim payment, it gave directions concerning his filing a detailed Statement of Means.

Statement of Full Order

116. Upon the Tribunal hearing Leading Counsel for the Applicant and Counsel for the First Respondent and reading the Statement made under Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 and the documents placed before the Tribunal by the parties.

And upon the First Respondent, solicitor, through his counsel:

1. Admitting that he acquiesced in the non-disclosure of material facts to lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the Solicitors Practice Rules 1990 ("the SPRs") and/or Rule 1.02 and/or 1.04 of the Solicitors Code of Conduct 2007 ("the Code");

2. Admitting that he acquiesced in PI Legal Services LLP ("the Firm") acting or continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code;

3. Admitting that he acted in breach of Rule 32 (1) and 32 (7) of the Solicitors Accounts Rules in failing to keep the Firm's accounts properly written up and to prepare proper client account reconciliations;

4. Undertaking to the Tribunal and the Solicitors Regulation Authority not to renew his practising certificate at any time in the future and agreeing to the termination of his current practising certificate on 1 November 2012;

5. Undertaking to the Tribunal and the Solicitors Regulation Authority that from 12 May 2012 he will not be employed, remunerated or associated with any business licensed or authorised by an Approved Regulator under the Legal Services Act 2007; and that he will apply to de-register Corbridges Ltd as a foreign practice by 12 May 2012;

And upon the Tribunal accepting these admissions and undertakings,

It is Ordered that the First Respondent, solicitor be suspended from practice as a solicitor for the period from 12 May 2012 to 1 November 2012.

It is further Ordered that the remaining allegation should lie on the file at the Tribunal and should not be proceeded with without the permission of the Tribunal.

It is further Ordered that the First Respondent do pay 50% of the costs of and incidental to this application and enquiry up to and including the hearing on 8 May 2012, such costs to be subject to detailed assessment if not agreed; an interim payment of £50,000 is to be made by 4 pm on 15 May 2012.

117. The Tribunal ORDERS that the Second Respondent, David Jonathan Jackson, solicitor, be STRUCK OFF the Roll of Solicitors.

Following the Order of the Tribunal that the First Respondent do pay 50% of the costs of and incidental to this application and enquiry up to and including the hearing on 8 May 2012 and that the Third Respondent do pay a contribution of £30,000.00 towards the costs of and incidental to this application and enquiry, the Tribunal further Orders that the Second Respondent do pay the balance of the costs of and incidental to this application and enquiry to be subject to a detailed assessment if not agreed.

It is further Ordered that the Second Respondent do within 7 days file and serve on the Applicant a detailed Statement of Means and that the Applicant be at liberty to apply for an interim payment towards the Applicant's costs of this application and enquiry.

118. Upon the Tribunal hearing Leading Counsel for the Applicant and the Solicitor for the Third Respondent and reading the Statement made under Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 and the documents placed before the Tribunal by the parties.

And upon the Third Respondent, Fleur Angharad Elinor Palmer, solicitor, through her Solicitor Mrs Penny Palmer:

1. Admitting that she acquiesced in the non-disclosure of material facts to lender clients in breach of Rule 1(a) and/or (c) and/or (d) of the Solicitors Practice Rules 1990 ("the SPRs") and/or Rule 1.02 and/or 1.04 of the Solicitors Code of Conduct 2007 ("the Code");

2. Admitting that she allowed PI Legal Services LLP's ("the Firm's") client account to be used as a banking facility to a third party contrary to Rule 1 (a) and (d) and/or Rule 32(16) and/or Rule 15 note (ix) of the Solicitors Accounts Rules 1998 ("the SARS");

3. Admitting that she acquiesced in the Firm continuing to act in circumstances of conflict or a significant risk of conflict between the interests of the lender clients and/or purchaser clients and their own interests in continuing their relationships with Mr R and/or Mr B and/or their associated businesses contrary to Rule 1(a) and/or (c) and/or (d) and Rule 16D of the SPRs and/or Rules 1.03, 1.04 and 3 of the Code;

4. Admitting that she acted in breach of Rule 32(1) and 32(7) of the SARs in failing to keep the Firm's accounts properly written up and to prepare proper client account reconciliations;

5. Admitting that she failed to deliver an accountant's report for the year ending 31 August 2008 in breach of Section 34 of the Solicitors Act 1974 (as amended);

6. Admitting that she failed to make any payments to the Assigned Risks Pool in breach of Rules 10.3 and 10.12 of the Solicitors' Indemnity Insurance Rules 2008;

7. Admitting that she failed to ensure that the Firm had at least two members and instead she was the sole member in breach of Rule 14.05 the Code.

And upon the Tribunal accepting these admissions,

It is Ordered that the Third Respondent, Fleur Angharad Elinor Palmer, solicitor be suspended from practice as a solicitor for an indefinite period to commence on 12th May 2012.

It is further Ordered that the Third Respondent do pay a contribution of £30,000.00 towards the costs of and incidental to this application and enquiry.

Dated this 21st day of June 2012
On behalf of the Tribunal

Ms A Banks
For and on behalf of J. N. Barnecutt, Chairman