SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11013-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

FIRST RESPONDENT – NAME REDACTED First Respondent
SECOND RESPONDENT – NAME REDACTED Second Respondent
KATHLEEN CHADWICK Third Respondent

Before:

Mr A. Ghosh (in the chair)
Miss N. Lucking
Mrs L. McMahon-Hathway

Date of Hearing: 30th January 2013

Appearances

Mr. Geoffrey Hudson, solicitor, of Penningtons Solicitors LLP, Abacus House, 33 Gutter Lane, London EC2V 8AR for the Applicant.

Mr. Gareth Edwards, solicitor, of Crangle Edwards, 159 Councillor Lane, Cheadle, Cheshire SK8 2JE for the First and Second Respondents, who were present.

The Third Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the First Respondent, and (insofar as the relevant conduct took place after 1 March 2009) the Second Respondent, were that:

1.1 they acted in breach of Rules 1(f) and 32 of the Solicitors Accounts Rules 1998 ("SAR") in that they failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust;

1.2 they acted in breach of SAR 6 in that they failed to ensure compliance with the SAR, both in respect of themselves and an employee of their practice;

1.3 they acted in breach of SAR 7 in that they failed to promptly remedy the improper payment out of funds from a client account;

1.4 they acted in breach of SAR 19(2) in that payments in respect of fees were taken from client account before bills of costs had been provided to clients;

1.5 they acted in breach of SAR 21(1)(b) in that funds paid to their firm in respect of disbursements incurred were lodged in office account without being applied towards the settlement of those disbursements within 14 days of receipt

1.6 they acted contrary to the guidance at SAR 15 note (ix) in that the First Respondent provided banking facilities to clients through the firm's client account; the Second Respondent as a principal of the practice was by reason of Rule 6 also in breach of this provision;

1.7 they acted in breach of SAR 22 in that:

1.7.1 contrary to Rule 22(1)(a) funds were withdrawn from client account by the First Respondent when they were not properly required for a payment on behalf of the relevant client;

1.7.2 contrary to Rule 22(1)(e) client funds were withdrawn by the First Respondent on the instructions of a person who was not the client and those instructions were not in any event given or confirmed in writing.

The Second Respondent, as a principal of the practice, was by reason of SAR Rule 6 also in breach of these provisions.

1.8 The First and Second Respondents acted in breach of Rule 5.01 of the Solicitors Code of Conduct 2007 ("SCC") in that they failed to make arrangements for the effective management of the firm as a whole, and failed to make arrangements for the effective supervision of their bookkeeper.

2. The further allegations against the First Respondent were that:

2.1 he acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:

2.1.1 contrary to paragraph 5.1.2 of the Council of Mortgage Lenders Handbook (version current between 1 June 2007 and 30 November 2010) ("CMLH") he failed to provide lender clients with information that could reasonably be expected to be important in deciding whether or not to lend to the borrower;

2.1.2 contrary to paragraph 5.9 of the CMLH he failed to inform his lender clients that borrowers were not providing the balance of purchase funds from their own funds;

2.1.3 contrary to paragraph 6.3.1 of the CMLH he failed to inform lender clients that purchase prices for properties were not the same as set out in their instructions;

2.1.4 contrary to paragraph 6.3.3 of the CMLH he failed to inform lender clients that he did not have control of all of the purchase moneys;

2.1.5 contrary to the certification given at paragraph 2(vii)(c) of the standard form Certificate of Title annexed to SCC Rule 3, he failed to inform lender clients that he was acting for both the purchasers/borrowers as well as the vendors of the properties;

2.1.6 in breach of SCC rules 1.02, 1.04, 1.05, 1.06 and 10.05 he failed to comply with the undertaking given at paragraph (h) of the standard form Certificate of Title annexed to SCC Rule 3, that he would inform lender clients of matters which came to his attention prior to completion of property transactions which rendered his Certificates of Title untrue or inaccurate;

2.1.7 in breach of SCC Rules 1.03, 1.04 and 1.06 he took instructions in respect of a conveyancing matter from a person who was not his client;

2.1.8 in breach of SCC Rule 3.01 he acted for two clients in circumstances where there was a conflict of interest or possible conflict and the two clients had not given their informed written consent to him so acting; and

2.1.9 in breach of SCC Rule 3.18(1)(b) he failed to inform lender clients that he was acting for the seller, buyer and lender in the same transactions.

It was submitted by the Applicant that the breaches by the First Respondent referred to in paragraphs 1 and 2 above were extremely serious and were at the upper end of the spectrum of misconduct;

3. In respect of the Third Respondent it was alleged that she had occasioned and/or engaged in conduct of such a nature that it would be undesirable for her to be involved in a legal practice, without the written permission of the SRA, in that she:

3.1 took from the firm's office bank account, without authorisation, the sum of at least £300 for her own personal use;

3.2 knowingly and improperly transferred funds between client account ledgers for the purpose of masking a client account shortfall; and

3.3 drew up invoices for fees which she knew were not rightfully payable for the purposes of balancing the firm's accounts.

Documents

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

Applicant:

- Application dated 12 June 2012
- Statement pursuant to Rules 5 and 8 of the Solicitors (Disciplinary Proceedings) Rules 2007 with exhibit, dated 12 June 2012
- Outline submissions dated 28 January 2013
- Schedule of costs dated 23 January 2013

First Respondent:

- Position statement dated 10 October 2012
- (With Second Respondent) Copy Tribunal judgments in matters 10767/2011 ("the Hindle case") and 109511/12 ("the Taylor case")
- (With Second Respondent) 3 page bundle of documents
- Bundle of 9 testimonials and copy email 9 January 2013 re Conveyancing Quality Scheme

Second Respondent:

- Position statement dated 10 October 2012
- (With First Respondent) Copy Tribunal judgments in matters 10767/2011 and 109511/12
- (With First Respondent) 3 page bundle of documents
- Bundle of 5 testimonials and copy email 9 January 2013 re Conveyancing Quality Scheme

Third Respondent:

No documents submitted.

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

5. The Tribunal noted that the Third Respondent was not present or represented and considered as a preliminary issue whether the case should proceed in her absence.

6. Mr Hudson informed the Tribunal that his correspondence to the Third Respondent during these proceedings had received no reply. The Third Respondent had not attended the Case Management Hearing in this case on 7 August 2012. Mr Hudson informed the Tribunal that there had initially been a problem with the Third Respondent's address as some documents had been sent to an incorrect house number, although the road was believed to be correct. As a result, Mr Hudson had instructed

enquiry agents who had established the correct address for the Respondent, which had been used by the Tribunal and the Applicant thereafter. Mr. Hudson submitted that the notice of hearing had been sent to the correct address, and although there had been no acknowledgement or engagement in the proceedings by the Third Respondent, submitted that the Tribunal should proceed in her absence.

7. The Tribunal was satisfied that the Third Respondent had been served with the proceedings and with notice of the hearing. In all of the circumstances, it was appropriate and just to proceed with the hearing of the allegations against the Third Respondent and the two other Respondents.

Factual Background

8. The First Respondent was born in 1961 and was admitted to the Roll of Solicitors in 1994. The First Respondent held a current Practising Certificate and his name remained on the Roll.

9. The Second Respondent was born in 1976 and was admitted to the Roll of Solicitors in 2008. The Second Respondent held a current Practising Certificate and his name remained on the Roll.

10. The Third Respondent was an unadmitted person.

11. From August 2000 the First Respondent was a sole practitioner, practising as JS and Company [REDACTED], solicitors, at 22 Wellington Street, St Johns, Blackburn, Lancashire BB1 8AF ("the Firm"). On 1 March 2009 the Second Respondent became a partner in the Firm. At all material times, the Third Respondent was the Firm's cashier/bookkeeper.

12. An inspection of the books of account and other documents of the Firm was commenced on 3 June 2010 by Ms Hogg, a SRA investigation officer ("the FIO"). The investigation was continued in May 2011 by Ms Prue (now Kerr), senior investigation officer ("the SIO"), who produced a report dated 19 July 2011 ("the Report") on which the Applicant relied.

13. The allegations in these proceedings arose from matters recorded in the Report. The factual background and the contents of the Report were accepted by the First and Second Respondents and the Third Respondent had not indicated her position formally. The allegations arose from a number of conveyancing transactions and accounting matters.

<u>Payment of £120,000 11 November 2008 and resulting accounting issues</u>

14. In the matter of 13 R Road, detailed further below, the First Respondent acted for the purchaser, Mr SR and the vendor, Mrs FR (Mr SR's mother) and also for the mortgage lender, BOS, in respect of its loan to Mr SR of £116,000. The First Respondent acted in this matter on the instructions of Mr AR, the brother of Mr SR/son of Mrs FR.

15. The BOS mortgage funds of £116,000 were received by the Firm on 12 September 2008. On Mr AR's instructions, the funds were not immediately applied to the purchase of 13 R Road and the redemption of the existing mortgage on the property which was in favour of B&W.

16. On 7 November 2008 the BOS mortgage advance of £116,000 was paid to Dowson Billington Solicitors, who were acting on behalf of Mrs SR, the wife of Mr AR. Four days later, Dowson Billington paid the sum of £128,000 back to the Firm. On the same day, £120,000 was paid out to Ms FAP. There were no written instructions from any of the Firm's clients in respect of these payments, nor was there written confirmation of oral instructions.

17. In a written statement the First Respondent explained that Mr AR had instructed him to make a payment of £20,000 to Ms FAP as a short term loan, which would be repayable in December 2008. Although the First Respondent had signed the accounts slip authorising the payment to Ms FAP, the amount that ought to have been paid was £20,000, the figure "1" having been added in error by the Firm's cashier, the Third Respondent. The First Respondent said he had signed the payment authorisation after the form was "placed in front of me by way of (the Third Respondent) interrupting me whilst I was busy with another client". In a letter from the Third Respondent to the FIO dated 12 July 2010 she stated that the First Respondent had written the sum of £120,000 on a scrap of paper and, after speaking to Ms FAP, she had asked the First Respondent to confirm that the sum to be transferred was £120,000, which he did. The Third Respondent did not believe that she had caused the overpayment.

18. The First Respondent asked Ms FAP to return the overpayment but she did not do so. As a result: (i) there were insufficient funds to redeem B&W's mortgage over 13 R Road; (ii) BOS' loan of £116,000 could not be secured against the property; and (iii) the transfer of ownership of 13 R Road from Mrs FR to Mr SR, which had taken place on 12 September 2008, could not be registered (although as set out at paragraph 56 below, the transfer was registered on 6 July 2009, nearly 10 months later).

<u>Transfers which concealed over-payment</u>

19. In a report dated August 2010, commissioned by the First Respondent, Beevers & Struthers Chartered Accountants ("B&S") concluded that:

19.1 there had effectively been "teeming and lading of loans" for the purpose of concealing the £100,000 client account shortfall which had resulted from the over-payment of £100,000 to Ms FAP;

19.2 14 separate matters had become "linked" as a result of transfers between client ledger accounts on those matters in the course of the teeming and lading;

19.3 only six of the linked matters related to the R family. The remaining eight matters were for clients who were unrelated to the R family;

19.4 the main funding of the shortfall, in the sum of £82,215, came from the funds of an unrelated client, Ms BH, in circumstances where there was no evidence that she knew Mr AR and/or would have authorised such funding.

20. A schedule showing the fourteen matters and a summary of the way in which those matters funded the shortfall was produced to the Tribunal.

21. On 18 May 2009 the Firm paid £106,000 to B&W to redeem that lender's mortgage over 13 R Road. That payment was funded largely through the transfer to the 13 R Road ledger of £99,450 which had been advanced to Ms SN (Mr AR's wife) by Halifax for the purchase of a different property, 373 WN Road (set out in more detail at paragraphs 63 to.69.below).

First Respondent's response

22. In an interview with the SIO on 14 July 2011 ("the July interview") the First Respondent said:

22.1 he had authorised the transfers between the six R family ledgers and that this was "logical" as he had treated the R matters as those of the family as a whole;

22.2 the transfers on the eight unrelated client matters had been undertaken by the Third Respondent without his authorisation and without his knowledge; and

22.3 he had brought in his accountants to assist the Third Respondent when she had said she was having problems and they had advised him that her work was "fine".

23. The Firm's letter to the SIO dated 8 August 2011 ("the August letter") stated that:

23.1 the various members of the R family operated their finances "as a family, and not individually";

23.2 the Third Respondent had transferred monies inter-ledger without the knowledge or consent of the partners and that they were "puzzled" as to why she had done what she did;

23.3 "the teeming and lading of mortgage allegations are in respect of the mortgages in the name of the R family and (the First Respondent) did not think that what he was doing was in fact "teeming and lading" at the time and therefore improper";

23.4 the partners had asked the Firm's former accountants, Edward Bridge & Co ("EBC") to oversee and if necessary assist the Third Respondent as the partners were concerned that she was behind with her bookkeeping and refusing assistance. However, the Third Respondent had never indicated that she had a problem and neither did EBC, even after having sent an accountant to the Firm's offices to assess her work.

Effect of the overpayment and subsequent transfers on the Firm's accounts

24. The Report noted the following deficiencies in respect of the Firm's accounts which arose as a result of the overpayment of £100,000 to Ms FAP on 11 November 2008 and subsequent transfers:

24.1 a client account payment of £239,110.96 to a client, Ms BH, on 24 December 2009 had not been posted to Ms BH's client ledger, and in any event there were insufficient funds to the credit of Ms BH's client ledger account to cover that payment;

24.2 as a result of the teeming and lading described by B&S in their report, entries on client account ledgers were necessarily incorrect. For example, B&S noted that "the (BH) matter listing (ledger) has so many erroneous entries that all of those entries will need to be reversed at the same time as posting the payment of £239,111; and

24.3 funds had been transferred between client ledgers in circumstances where there were no proper reasons for making such transfers.

Erroneous invoices

25. The First Respondent instructed B&S to investigate the reason for the increase in turnover at the Firm from £325,869 in the year ended 31 July 2008 to £406,584 in the year ending 31 July 2009.

26. B&S concluded in their report dated August 2010 that:

> "a number of erroneous invoices were entered on the accounting system... The reason for the entries appears to be to enable the Firm to demonstrate solvency when it was having a difficult time keeping within bank imposed constraints on office account."

A list of the invoices in issue was produced to the Tribunal.

27. B&S further noted that:

27.1 the invoices were quite large and out of proportion to the Firm's normal billing;

27.2 in due course all but one of the invoices was reversed in the period August to December 2009 (i.e. after the accounting year end);

27.3 the effect of reversing the invoices was to reduce the Firm's turnover by £101,319.

28. In the July interview, the First Respondent said that the erroneous invoices had been at the Third Respondent's instigation and the Firm had not been aware of them at the time.

29. In a letter to the FIO dated 12 July 2010 the Third Respondent said:

> "(The First Respondent) would tell me how much would need to be transferred to office to cover the over the (sic) overdraft amount and then when I can to try and to enter the cost transfers I would normally be short for the amount I had been told to transfer and when I went to (the First Respondent) at the end he would just say to me (what the heck can I do about it) and so I would have draw up interim bills for matters to be able to balance the accounts. This happened every month I was there."

> "The numerous errors were probable (sic) the bill credits that I had to do and transfer back to client for nearly all the interim bills I had to do to balance the accounts".

30. The August letter stated that funds had not been physically transferred between the Firm's client and office bank accounts as a result of the erroneous invoices and also that there were "no problems with the bank". The letter also stated that the quote from the B&S report at paragraph 26 above needed to be read with B&S' comment at paragraph 33 of their report which stated:

> "The Firm would still show a solvent position after all the credit note corrections".

Additional deficiencies in the Firm's accounts

Shortfall identified in client account reconciliation

31. The Firm's client account reconciliation statement for 30 April 2011 showed a difference on reconciliation of £161,618.78, indicating a substantial shortfall in clients' funds. The list of liabilities to clients as at 30 April 2011 also did not list additional minimum liabilities to clients of £5,720.64.

32. A comparison of the total liabilities to clients, including those not shown by the books, with the cash held on client bank accounts, showed book liabilities to clients of £371,528.27, less client cash available of £209,909.49 giving the book difference on reconciliation of £161,618.78 which together with the minimum cash shortage due to office credit balances of £5,720.64, giving a minimum shortage of £167,339.42.

Client ledger office credit balances

33. The list of client matter balances as at 30 April 2011 showed a total of 133 office credit balances against client ledgers, totalling £63,584.22.

34. Ten of the largest balances were investigated and a minimum shortage of clients' funds of £5,720.64 was identified in respect of four of those matters. The shortages arose in the following way:

34.1 between 15 December 2010 and 20 April 2011 a total of £2,992.19 was transferred from the client account to office account ledgers on three of the First Respondent's client matters, without the delivery of bills of costs to the relevant clients; and

34.2 on 6 January 2011 two amounts each of £1,368.75 (totalling £2,737.50) had been received from the Legal Services Commission in respect of a consultant's fee, i.e. a disbursement. These funds were not paid out or transferred to client account within 14 days and the funds remained in the Firm's office account as at 30 April 2011, nearly four months after receipt.

35. In respect of the remaining 123 office credit balances, the Firm undertook to investigate those balances and address any further shortages as necessary.

First Respondent's responses

36. In the July interview the First Respondent said:

36.1 he had relied on his accountants and B&S in respect of the difference on the reconciliation and they had advised him that this was not a shortage of funds but was as a result of bookkeeping entries to rectify the previous problems. This explanation was subsequently confirmed by the SIO in a conversation with the Firm's accountants, who confirmed that the apparent shortage would be corrected in due course through appropriate accounting entries;

36.2 the office credit balances were mostly due to delays in raising bills after transferring funds from client to office bank account. The First Respondent said that he had not been aware of these balances as nobody had brought them to his attention and he hoped to deal with them by the end of the financial year, i.e. 31 July 2011.

37. In the August letter the Firm contended that all office credit balances were in the midst of being addressed and rectified, and that the majority of such monies were legitimately transferred to office account in respect of profit costs, VAT and disbursements. The letter also stated that Bishops, the successors to the Firm's former accountants EBC "indicated that there may be in fact no discrepancy at all" in respect of the £161,000 difference on reconciliation. However, the Applicant had not been provided with evidence in support of this by the time these proceedings were issued.

Third Respondent's response

38. In the July letter, the Third Respondent said she had started working at the Firm on 5 April 2008 and her month end reconciliations had been behind by "seven to eight weeks" for most of her time at the Firm. This backlog was due to the fact that she had been over eight weeks late in doing the month end reconciliations for April 2008 because a file on the Firm's computer system against which to record the receipt of £1.1 million on 1 April 2008 was not opened for over eight weeks.

Action taken in respect of the cash shortages

39. As set out at paragraphs 14 to 18 above, a cash shortage of £100,000 arose on 11 November 2008 when £120,000 was paid out to Ms FAP. There was no evidence that action to replace these funds was taken until over a year later. On 24 December 2009 £79,000 was received from Ms SR, a third party. However, on 22 March 2010 £20,000 was paid from those funds to a Mr AC.

40. Between 3 June and 16 July 2010 more than 18 months after the erroneous payment to Ms FAP the First and Second Respondents introduced sums totalling £41,560 into client bank account to address the cash shortage.

41. A further £15,000 was received from Mrs SP, a family member of Ms FAP, on 18 August 2010, bringing the total introduced by the First and Second Respondents and third parties to £115,560.

42. The First and Second Respondents informed the SIO that as soon as they received B&S' report they took action to replace funds and made adjustments through their books of account. They also confirmed that they were happy that Ms BH had been paid all she was owed. The minimum cash shortage of £5,720.64 was addressed by paying out two cheques on 23 June 2011 in respect of disbursements and delivering bills to clients.

13 R Road transfer

43. As set out at paragraph 14 above, in the transfer of 13 R Road, the First Respondent acted for the purchaser, Mr SR and the vendor, Mrs FR, who are mother and son. He also acted for BOS in respect of its loan to Mr SR for the purchase of the property. The instructions from the lender were expressed to be in accordance with the CMLH.

44. 13 R Road was mortgaged to B&W, who had started possession proceedings against Mrs FR in respect of the property.

45. On 29 May 2008 the First Respondent sent a client care letter to Mrs FR under cover of a letter addressed to Mr AR, who was the brother of the purchaser and son of the vendor. The file contained no authority from either Mr SR or Mrs FR for the First Respondent to discuss the matter with Mr AR or act on his instructions. There was no record on the file of any instructions from Mr SR or Mrs FR. In an interview with the FIO on 3 September 2010 ("the September interview") the First Respondent confirmed that Mr AR was not acting under a power of attorney for his mother and there was no reason why she could not provide instructions on her own behalf.

46. On 5 August 2008 BOS sent a mortgage offer to Mr SR which showed a purchase price of £180,000, a property value of £145,000 and a loan amount of £116,000. On 8 September 2008 the First Respondent signed a Certificate of Title ("COT") giving "the price stated in transfer" as £180,000 and a completion date of 12 September 2008.

47. On 12 September 2008 the mortgage advance of £116,000 was received from BOS and posted to a client account ledger entitled "Mr AR Transfer 13 R Road". On the same date the property was transferred from Mrs FR to Mr SR for no money or no monetary value.

48. On 25 September 2008, in the course of a telephone conversation, Mr AR instructed the First Respondent to retain the BOS mortgage funds as he, Mr AR, had negotiated a lower figure to redeem the B&W mortgage and hoped to negotiate the figure down further.

49. On 7 November 2008 the mortgage advance of £116,000 was paid to Dowson Billington Solicitors. The file contained no instructions in respect of this payment, but it was made on the instructions of Mr AR for the purchase by his wife of another property. The transfer was made on the basis of an undertaking from Dowson Billington that the sum of £128,000 would be paid back within 48 hours.

50. On 11 November 2008 the sum of £128,000 was returned by Dowson Billington and £120,000 was paid out of those funds to Ms FAP on the instructions of Mr AR

(although according to the First Respondent the Firm was instructed to pay out only £20,000). Ms FAP was not a client of the Firm and the payment was made for reasons which were unrelated to the 13 R Road transaction. Those funds were not returned.

51. On 18 November 2008 the First Respondent wrote to Countrywide Legal Indemnities to request an "indemnity insolvency policy" in respect of the deed of gift (i.e. the transfer) dated 12 September 2008. The policy, which was for the benefit of BOS took effect on 24 November 2008 and was expressed to cover the following defect: "The insured apprehends that the title to 13 R Road...may be subject to the provisions of sections 339-342 of the Insolvency Act 1986". These provisions deal with the powers of the courts to reverse "transactions at an undervalue" and "preferences" undertaken by bankrupt individuals shortly before they are declared bankrupt.

52. On 27 November 2008 Mrs FR signed a document entitled "Acknowledgement by Borrower of Mortgage Shortfall" in which she undertook to pay the shortfall arising out of the sale of the property, which at that stage was anticipated to be £19,656.92.

53. The redemption figure for the B&W mortgage was £127,678.02 as at 15 May 2009 and the sum paid to B&W on 18 May was £106,000 leaving a balance of £21,678.02 for which Mrs FR was personally liable. In the July interview the First Respondent said that no legal advice had been sought from him in this regard and the "Acknowledgement of Mortgage Shortfall" document was produced to him after the event. The First Respondent also said that he had not known of the negotiations with B&W with respect to the mortgage redemption figure and accordingly could not have advised his client. However: (i) the note of the telephone conversation with Mr AR on 25 September 2008 referred to the negotiations; and (ii) the First Respondent was informed by B&W on 12 May 2009, i.e. six days before £106,000 was sent to B&W to redeem its mortgage that although it was expecting to receive £106,000 "the remaining balance (of the loan) will remain Mrs FR's responsibility and we are relying on the signed Acknowledgement of Debt from Mrs R".

54. In the August letter the Firm stated that:

54.1 any shortfall "would not have probably actually been paid by (Mrs FR) in the first place as the R family would have paid the instalments between them";

54.2 it was debateable whether agreeing to discharge the shortfall separately was not in Mrs FR's best interests, as the transaction had been arranged with her consent, with everyone in the family knowing the full facts.

55. On 9 February, 27 April and 4 June 2009 BOS wrote to the Firm requesting confirmation of the registration of its charge. Whilst the Firm responded on 16 March 2009 the First Respondent did not explain that security documentation could not be forwarded because the B&W mortgage had not been redeemed. On 18 May 2009, the sum of £106,000 was sent to B&W to redeem its mortgage over 13 R Road, using, amongst other funds £99,450 provided to the Firm by the Halifax for the purchase of a different property (373 WN Road) by Ms SN, the wife of Mr AR.

56. The transfer of 13 R Road to Mr SR was registered on 6 July 2009 and the date of BOS' charge was shown on the title to be 12 September 2008.

57. The First Respondent had not informed BOS, his lender client:

57.1 that he was acting for all three parties in the transaction;

57.2 that the intended sale/transfer was from a mother to her son;

57.3 there was no "purchase" at £180,000 and the transfer was by way of gift;

57.4 the only funds received in this matter were the BOS mortgage funds;

57.5 he was unable to discharge the B&W mortgage and register the BOS mortgage because the funds had been lent to an unconnected client;

57.6 that B&W's prior mortgage was eventually discharged at £106,000 approximately eight months after receipt of BOS' advance.

58. In the July interview the First Respondent said that:

58.1 he assumed the bank knew of the connection between the parties and the gift element;

58.2 he had protected his lender client by taking out the indemnity policy and assumed that the mortgagee knew of the position;

58.3 he now knew that he could not assume that the lender knew the details of transactions;

58.4 perhaps he had been "too comfortable" with his clients, who were "straightforward people".

59. In the August letter the Firm said it was legitimate for the First Respondent to assume that BOS would know the identity of the parties and that the bank "would have been fully aware of the nature of the transaction". The letter also stated that the purchase price figure on the mortgage offer would not have been an actual "purchase price" but a valuation figure to give the bank a yardstick as to how much could be borrowed against the property.

60. When asked during the July interview whether, by making and receiving payments in respect of loans to/from third parties on Mr AR's instructions, he was providing banking facilities to a client, the First Respondent replied that he did not see matters in that way. He added that he wished he had returned the funds to BOS and that he should have told the client to do his own deal and have nothing to do with it.

61. In respect of his failure to apply the BOS mortgage advance towards redeeming the existing B&W mortgage over the property, in the September interview the First Respondent said:

61.1 he believed the BOS funds belonged to the R family;

61.2 he had been in no doubt that the B&W mortgage would be paid off;

61.3 had it not been for the accidental overpayment of £100,000 from those funds, that repayment would have happened;

61.4 in hindsight, he should have sent the BOS funds back when he had not used them within one week.

62. In July 2010 the First Respondent instructed counsel to clarify, amongst other matters, the date on which ownership of the BOS monies passed to the borrower, Mr SR. In his (undated) opinion, counsel stated that:

62.1 the Firm had not been authorised to pay out any monies advanced by BOS until such time as Mr SR had executed a first legal charge over the property, i.e. until such time as the B&W mortgage had been redeemed; and

62.2 there had undoubtedly been a breach of duty to a client (BOS) and:

> "a misappropriation of that client's funds from client account at a time before those funds had rightfully transferred...to Mr SR".

373 WN Road

63. In this transaction, the First Respondent acted for Mr YR who was to buy 373 WN Road from the mortgagee in possession, Lloyds TSB, before transferring it to Ms SN, for whom he also acted. Mr YR is the brother of Mr AR and Mr SR. Ms SN is the wife of Mr AR. The First Respondent also acted for the Halifax in respect of its loan to Ms SN and the instructions were given in accordance with the CMLH.

64. The file did not contain the written consent of Mr YR or Ms SN to the First Respondent acting for both of them in the transaction.

65. On 29 January 2009 the Halifax issued a mortgage offer to Ms SN stating that:

65.1 the purchase price was £117,000;

65.2 the valuation of the property was £117,000; and

65.3 the sum to be borrowed was £99,450.

66. On 1 May 2009 the First Respondent signed a COT stating that the purchase price stated in the transfer was £117,000 and that completion would take place on 8 May 2009. On 8 May 2009 the Halifax transferred the mortgage funds of £99,450 to the Firm's client bank account and on the same day the property was transferred for no money or no monetary value from Mr YR to Ms SN.

67. As noted at paragraph 55 above, on 18 May 2009 the Halifax mortgage funds of £99.450 were transferred to the 13 R Road ledger to enable the outstanding B&W mortgage to be redeemed. Following the various inter-ledger transfers noted at

paragraph 19 above, sums totalling £82, 214.42 were credited back to the 373 WN Road ledger on 21 August 2009 to enable completion to take place.

68. On 21 August 2009, more than three months after he had purported to transfer ownership of the property to Ms SN for no monetary value Mr YR purchased the property from Lloyds TSB. The reason for the delay in completion appeared to be that the mortgage funds were applied towards the purchase of 13 R Road on 18 May 2009.

69. On 22 October 2009 registration of the property in the name of Ms SN was completed and the Halifax's charge over the property is shown on the title register to be dated 8 May 2009.

Failure to inform lender client of material facts

70. There was no evidence that the First Respondent had informed the Halifax, his lender client:

70.1 that he was acting for all three parties in the transaction;

70.2 that the purchaser and vendor were related (brother and sister-in-law);

70.3 that no funds had transferred from Ms SN to Mr YR in respect of the purchase and/or that any part of the £117,000 purchase price had been gifted;

70.4 that the price paid for the property by Mr YR was £82,000;

70.5 that the only funds received in this matter were the mortgage funds from the Halifax;

70.6 that he had been unable to complete the purchase and register the Halifax's mortgage immediately because the mortgage funds had been paid out to the client ledger for 13 R Road on 18 May 2009 to enable B&W's mortgage over that property to be redeemed; and

70.7 that the actual purchase and transfer took place some three months after the mortgage advance from the Halifax.

71. At the July meeting the First Respondent said that his comments were the same as those in respect of 13 R Road.

10 P Street transfer

72. The First Respondent acted for the purchaser, Ms SN (wife of Mr AR) and the vendor, Mr YR, in the transfer of 10 P Street. The First Respondent also acted for NatWest, which was lending £337,000 to Ms SN for the stated purpose of purchasing the property.

73. The file did not contain the written consent of the purchaser and the vendor for the First Respondent to act on both sides of the transaction.

74. The mortgage instructions from NatWest dated 10 March 2009 stated that the loan was for the purchase of the property. It gave the purchase price of the property as £515,000 and its value as £515,000. On 20 March 2009 the Firm wrote to NatWest to inform it that the matter was proceedings by way of deed of gift.

75. On 25 March 2009 mortgage funds of £337,000 were paid into the Firm's client account and the property was transferred for no money or monetary value from Mr YR to Ms SR (aka Ms SN). On 25 March 2009, £120,000 of the mortgage funds were transferred to the 13 R Road ledger. On 27 March 2009 £94,186 was returned to the 10 P Street ledger.

76. Following the various inter-ledger transfers set out at paragraph 19 above, on 29 April 2009 the sum of £309,000 was sent to Barclays to redeem its existing mortgage over the property which secured Mr YR's borrowings. On 9 November 2009 the transfer of the property, and NatWest's charge over it, were registered at the Land Registry; the date of the charge was shown as being 25 March 2009.

Failure to inform lender client of material facts

77. There was no evidence that the First Respondent informed NatWest that:

77.1 the buyer and seller were brother and sister-in-law;

77.2 that he was acting for all three parties in the transaction;

77.3 the only funds in the matter were the NatWest mortgage funds;

77.4 the existing (Barclays) mortgage over the property of £309,000 was discharged one month after the purchase funds had been advanced by NatWest.

78. In the August letter the Firm stated that the figure of £515,000 was "not a purchase price as such but a yardstick valuation upon which the lender gauged as to what percentage loan to value the borrower could borrow".

13 L Avenue transfer

79. In the 13 L Avenue transfer the First Respondent acted for the purchaser, Mr NK, and for the vendors, Mr and Mrs S. He also acted for the Halifax in respect of its loan to Mr NK which was stated to be for the purchase of the property. In the July interview the First Respondent said that the purchaser and vendors were part of the same family from Pakistan.

80. The file did not contain written consent from the purchaser and vendors for the First Respondent to act on both sides of the transaction.

81. The mortgage instructions dated 24 January 2011 showed a purchase price of £80,000 and stated that the Firm was instructed under the terms of the CMLH. The COT signed by the First Respondent on 1 March 2011 and the contract for the sale of the property (undated) both showed a purchase price of £80,000.

82. The completion statement prepared by the First Respondent listed a purchase price of £80,000 and noted that "the sum of £19,000 has been paid direct".

83. The Halifax mortgage funds of £59,970 were received on 3 March 2011 and were credited directly to a client ledger of the sellers described as "Sale of 13 L Road".

84. The Land Registry title register recorded that the property was transferred on 7 March 2011 and that the Halifax's charge was granted on the same date. The client account ledger card for this matter dated 15 June 2011 shows no payment out of net sale proceeds to the vendors and as at 15 June 2011 showed a credit balance of £73,904.

Failure to inform lender client of material facts

85. There was no evidence that the First Respondent had informed the Halifax of material facts including that:

85.1 he was acting for all three parties in the transaction;

85.2 the vendors and purchaser were related; and

85.3 the sum of £19,000 had purportedly been paid direct from buyer to sellers.

15 L Avenue transaction

86. In respect of the transfer of 15 L Avenue, the First Respondent acted for the purchaser, Mr JG, and for the vendors, Mr and Mrs S. He also acted for the Halifax in respect of its loan of £67,500 to Mr G, which was stated to be for the purchase of the property. In the July interview the First Respondent said that the purchaser and vendors were part of the same family from Pakistan.

87. The file did not contain the written consent of any of the parties for the First Respondent to act on both sides of the transaction.

88. The mortgage instructions showed a purchase price of £90,000 and stated that the First Respondent was instructed under the terms of the CMLH. The COT signed by the First Respondent on 1 March 2011 and the contract for the transfer both showed a purchase price of £90,000.

89. The mortgage funds were received by the Firm on 4 March 2011 and were credited directly to a ledger in the name of Mr and Mrs S (the sellers) marked "Sale of 15 L Avenue". The date of transfer and the date of the Halifax's charge over the property were shown on the Land Registry title to have been 7 March 2011.

90. A completion statement prepared for the purchaser, Mr G, stated that the sum of £6,400 had been "paid direct". It also credited him with having made a payment of £16,000. However, that payment was credited to the ledger of the 13 L Avenue transaction, which involved the same vendors.

91. On 8 March 2011 a payment of £56,422.93 was paid out of the 15 L Avenue ledger to "GE Money Home Finance Ltd" which appeared to have been in respect of a

mortgage redemption (unrelated to the purchase of 15 L Avenue) and in the course of March 2011 an additional four payments of between £130 and £5,000 were made out of funds on the client ledger. These payments appear to have been unrelated to the 15 L Avenue transaction.

Failure to inform lender client of material facts

92. There was no evidence that the First Respondent had informed the Halifax of material facts, including that:

92.1 he was acting for all three parties in the transaction;

92.2 those parties were related;

92.3 the sum of £6,400 had purportedly been paid direct from buyer to seller.

93. In the September 2010 meeting, approximately six months prior to the 13 and 15 L Avenue transactions, the FIO had discussed with the First Respondent the duty to disclose material facts to lender clients and the obligation to obtain written consent when acting for two parties in conveyancing transactions.

The First Respondent's response

94. In respect of both the 13 and 15 L Avenue transactions the First Respondent stated in the July interview:

94.1 he believed that the lender had been made aware at the outset of the deposits having been paid direct, and that these came about as the sellers owed the purchaser monies;

94.2 his COTs referred to valuation amounts, not purchase monies, and that this was how the "inter-family" deals were set up;

94.3 he believed that the lenders were aware that the full stated purchase price would not be paid over.

95. The August letter indicated that a letter from the relevant Halifax mortgage adviser was enclosed, which made clear that "he (the mortgage adviser) knew exactly what was going on and that he was unaware that the passing over of the full purchase monies did not take place and deposits had been paid direct". The letter referred to was not enclosed. In a letter dated 18 October 2011 to the Applicant's caseworker, the First Respondent stated that it had in fact not been "appropriate or needed" to obtain such a letter. The First Respondent further explained that:

95.1 the sale of 13 and 15 L Avenue had been to enable Mr and Mrs S to purchase a new property;

95.2 after being advised about the gift element in the transaction, the First Respondent had called the Halifax mortgage adviser who confirmed the gift element and promised to send a letter enclosing the "usual Halifax "family gift" certificate";

95.3 when no such letter was forthcoming the First Respondent had chased the mortgage adviser and was told that there was in fact no gift element and that the two purchasers had said they were holding deposits at the bank; and

95.4 following transfer of the two properties there was some delay in Mr and Mrs S locating a property to purchase and at the time of the purchase "one of the buyers of 13/15 L Avenue provided an additional £15,000, representing the alleged family gift element to go towards the purchase of Mr and Mrs S' new property after it was explained to the family members that there were serious consequences in making misrepresentations to the Halifax as regards stating that there was a family gift element when there was not".

Second Respondent's response

96. In a letter to the Applicant's caseworker dated 15 December 2011 the Second Respondent stated that:

96.1 a number of matters raised in the Report related primarily to a time when he was not a partner of the Firm;

96.2 he had no involvement in the individual files discussed;

96.3 the discrepancies as to the Firm's accounts occurred as a result of a "dishonest cashier" and the mishandling of the accounts by the Firm's accountants;

96.4 measures were being put in place to ensure that such errors would not occur again, including the attendance on accounts courses by both partners and staff.

Third Respondent's response

97. At the beginning of the investigation the First Respondent told the FIO that he had dismissed the Third Respondent after discovering that she had made unauthorised transfers of funds from the Firm's office bank account to her own personal account. The First Respondent said that she had failed to repay a sum in excess of £300 which she had withdrawn without authorisation. In the August letter the Firm stated that the sum now thought to have been "stolen" by the Third Respondent was "around £600/£700".

98. The FIO arranged to meet the Third Respondent at her home in 14 July 2010 but the Third Respondent cancelled that meeting and instead provided a letter dated 12 July 2010 i.e. the July letter, referred to previously. In the letter, the Third Respondent confirmed that she had withdrawn £300 from office account because she had been very short of money at the time, but had paid it back by reducing the amount of her salary over two months. In the August letter, the Firm stated that the Third Respondent had no dealings with the settling up and payment of wages and did not request that her wages be reduced in order to repay what she had, in the Firm's words, "stolen".

99. The SIO wrote to the Third Respondent on two occasions but received no reply and a letter from a caseworker on behalf of the Applicant dated 6 October 2011 was also unanswered.

Correspondence with the First and Second Respondents

100. On 19 July 2011 the SIO sent a copy of the Report to the First Respondent for his comments. The Firm's comments were enclosed with a letter dated 4 August 2011. The First and Second Respondents provided further comments by way of letters dated 14 October and 15 December 2011 respectively. On 11 January 2012 an Authorised Officer of the Applicant decided to refer the conduct of the Respondents to the Tribunal.

Witnesses

101. Nicola Kerr, former SRA Senior Forensic Investigation Officer (i.e. the SIO), gave evidence to confirm the contents of her Report dated 19 July 2011 and matters arising from the preparation of that Report.

102. Neither the First nor Second Respondents gave evidence.

Findings of Fact and Law

103. The Tribunal found each allegation made by the Applicant to have been proved beyond reasonable doubt.

First and Second Respondents

104. **Allegation 1.1: They acted in breach of Rules 1(f) and 32 of the Solicitors Accounts Rules 1998 ("SAR") in that they failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust.**

104.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

104.2 The factual background to this allegation is set out at paragraphs 19 to 38 above.

104.3 It was clear that a shortfall of £100,000 had occurred on client account as a result of the transfer of £120,000 to Ms FAP on 18 November 2008. That was before the Second Respondent became a partner. The Tribunal accepted that from November 2008 there had been a "teeming and lading" exercise, which involved inter-ledger transfers on a total of fourteen matters. Whilst six of these matters involved the R family, the remaining eight matters were unconnected with the R family. Even if the First Respondent had been justified in treating the various members of the R family as one client, there could be no justification under the SAR to use money belonging to unconnected clients to conceal the shortfall.

104.4 The Tribunal considered all of the facts and circumstances underlying this allegation. It found the allegation proved, to the highest standard, against the First and Second Respondents, on the admissions and on the evidence. The Tribunal noted that as the First Respondent was the senior partner and, more pertinently, that the SAR breaches occurred largely because of conveyancing transactions of which he had conduct, he bore the greater culpability.

105. **Allegation 1.2: They acted in breach of SAR 6 in that they failed to ensure compliance with the SAR, both in respect of themselves and an employee of their practice.**

105.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

105.2 The facts underlying this allegation are set out at paragraphs 19 to 38 and 97 to 99 above.

105.3 The First Respondent and the Second Respondent, after 1 March 2009, were responsible for ensuring compliance with the SAR. A significant number of breaches of SAR had been admitted and proved, so it was clear that they had failed to ensure compliance with the SAR. This failure included the situation in which the Third Respondent had carried out inter-ledger transfers in breach of SAR, had processed erroneous invoices and had withdrawn £300 from office account without authorisation. The Tribunal noted that in respect of all of the SAR breaches the First and Second Respondents had sought to blame the Third Respondent. For reasons set out more fully below in consideration of sanction, the Tribunal did not accept that the Third Respondent was as culpable as suggested by the First and Second Respondents. Further, the Tribunal noted that as the First Respondent was the senior partner and, more pertinently, that the SAR breaches occurred largely because of conveyancing transactions of which he had conduct, he bore the greater culpability.

105.4 The Tribunal found the allegation proved against both the First and Second Respondents, to the highest standard, on the facts and on the admissions.

106. **Allegation 1.3: They acted in breach of SAR 7 in that they failed to promptly remedy the improper payment out of funds from a client account.**

106.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

106.2 The factual matters underlying this allegation are set out at paragraphs 39 to 42 above.

106.3 The cash shortage, in the sum of £100,000 had occurred in November 2008. Over a year later – and after the Third Respondent had been dismissed by the Firm – various sums were introduced by clients and third parties. It was not until June to July 2010, more than 18 months after the shortage occurred, that the First and Second

Respondents introduced funds of their own (totalling £41,500) to partly replace the shortfall.

106.4 The Tribunal found the allegation proved against both the First and Second Respondents, to the highest standard, on the facts and on the admissions.

107. **Allegation 1.4: They acted in breach of SAR 19(2) in that payments in respect of fees were taken from client account before bills of costs had been provided to clients.**

107.1 This allegation was admitted by the First and Second Respondents, the Second Respondent on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

107.2 The factual matters underlying this allegation are set out at paragraphs 25 to 37 above, in particular at paragraph 34.1.

107.3 The Tribunal found the allegation proved, to the highest standard, on the facts and on the admissions.

108. **Allegation 1.5: They acted in breach of SAR 21(1)(b) in that funds paid to their firm in respect of disbursements incurred were lodged in office account without being applied towards the settlement of those disbursements within 14 days of receipt.**

108.1 This allegation was admitted by the First and Second Respondents, the Second Respondent on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

108.2 The factual matters underlying this allegation are set out at paragraphs 25 to 37 above, in particular at paragraph 34.2. The cash shortage of £5,720.64 which was shown on a reconciliation statement for 30 April 2011 was addressed by paying out two cheques on 23 June 2011 in respect of disbursements and delivering bills to clients.

108.3 The Tribunal found the allegation proved against the First and Second Respondents, to the highest standard, on the facts and on the admissions.

109. **Allegation 1.6: They acted contrary to the guidance at SAR 15 note (ix) in that the First Respondent provided banking facilities to clients through the firm's client account; the Second Respondent as a principal of the practice was by reason of Rule 6 also in breach of this provision.**

109.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

109.2 The factual background to this allegation is set out at paragraphs 14 to 18, 43 to 62 and 91. The Tribunal noted that in relation to both the R family and the S family, in respect of two conveyancing transactions and linked ledger transfers, the First

Respondent had provided banking facilities to clients; the Second Respondent was responsible as a principal of the Firm. The Tribunal was satisfied that the allegation had been proved, to the highest standard, on the facts and on the admissions.

110. **Allegation 1.7: They acted in breach of SAR 22 in that:**

1.7.1 contrary to Rule 22(1)(a) funds were withdrawn from client account by the First Respondent when they were not properly required for a payment on behalf of the relevant client.

110.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

110.2 The factual background to this allegation is set out at paragraphs 14 to 18, 43 to 56, 62 to 69 and 72 to 76 above.

110.3 The Tribunal was satisfied to the highest standard that the First Respondent had, in the manner described, withdrawn funds from client account when they were not properly required for a payment on behalf of the relevant client. The allegation was proved to the highest standard, on the facts and on the admissions, against the First Respondent in that he was the party responsible for causing the withdrawals and against the Second Respondent as a partner in the practice from 1 March 2009 for those withdrawals after that date.

111. **Allegation 1.7: They acted in breach of SAR 22 in that:**

1.7.2 contrary to Rule 22(1)(e) client funds were withdrawn by the First Respondent on the instructions of a person who was not the client and those instructions were not in any event given or confirmed in writing.

111.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

111.2 The factual background to this allegation is set out at paragraphs 49 to 50. The Tribunal was satisfied to the required standard, on the admissions that this allegation had been proved against both the First and Second Respondents. The First Respondent had caused the transfer of money from the client ledger which should have been for the benefit of his client Mr SR to solicitors acting for Mr SR's sister-in-law, on the instructions of Mr SR's brother, without any confirmation of those instructions in writing. The Tribunal was therefore satisfied on the facts as well as on the admission that the allegation had been proved against the First Respondent. In that the transaction in question occurred in November 2008, before the Second Respondent became a partner in the Firm, the allegation should perhaps not have been admitted but it had been admitted by the Second Respondent, who had the benefit of legal representation.

112. **Allegation 1.8: They acted in breach of Rule 5.01 of the Solicitors Code of Conduct 2007 ("SCC") in that they failed to make arrangements for the effective management of the firm as a whole, and failed to make arrangements for the effective supervision of their bookkeeper.**

112.1 This allegation was admitted by the First and Second Respondents, the Second Respondent in respect only of the period after he became a partner on 1 March 2009 and on the basis that he was responsible as a partner but had no direct knowledge of or involvement in the breaches alleged.

112.2 The factual background to this allegation is set out at paragraphs 19 to 41 and 97 to 99 above.

112.3 The fact that there were such wide-ranging, repeated and significant breaches of the SAR – as set out more fully above – showed beyond any doubt that the principals of the Firm had failed to make effective arrangements for the management of the Firm and the supervision of their bookkeeper, the Third Respondent. The Tribunal was satisfied to the required standard that this allegation had been proved, on the facts and on the admissions, although it accepted that the Second Respondent, as the junior partner, bore less culpability than the First Respondent and was responsible only for breaches which occurred after 1 March 2009.

113. **Allegation 2.1: He (the First Respondent) acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:**

2.1.1 contrary to paragraph 5.1.2 of the Council of Mortgage Lenders Handbook (version current between 1 June 2007 and 30 November 2010) ("CMLH") he failed to provide lender clients with information that could reasonably be expected to be important in deciding whether or not to lend to the borrower.

113.1 This allegation was admitted by the First Respondent.

113.2 The factual background underlying this allegation is set out at paragraphs 43 to 95 above. The Report and the Rule 5 Statement had identified five property transactions in which the First Respondent had failed to disclose to his lender client a number of material pieces of information. The particulars of the information he failed to provide are set out in more detail in relation to allegations 2.1.2, 2.1.3, 2.1.4, 2.1.5. In addition to those more specific breaches, the Tribunal noted that the First Respondent had failed to inform lender clients of the family connections between the parties to the transactions in issue.

113.3 The First Respondent's lender clients had instructed him in accordance with the provisions of the CMLH and relied on the First Respondent to carry out his instructions on that basis. In the circumstances of this case, the Tribunal was satisfied to the highest standard on the facts and on the admissions that the First Respondent's actions amounted to breaches of SCC 1.02, 1.03, 1.04, 1.05 and 1.06 and the allegation was thus proved.

114. **Allegation 2.1: He (the First Respondent) acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:**

2.1.2 contrary to paragraph 5.9 of the CMLH he failed to inform his lender clients that borrowers were not providing the balance of purchase funds from their own funds.

114.1 This allegation was admitted by the First Respondent. The factual background underlying this allegation is set out at paragraphs 43 to 95 above. The Tribunal noted that in three of the conveyancing transactions set out it was clear that the only funds provided in the transaction were provided by the lender, with no funds being introduced by the purchaser.

114.2 The Tribunal was satisfied to the highest standard, both on the facts and on the admissions, that this allegation had been proved. The factual matters which had been proved amounted to breaches of the SCC, Rule 1, as set out in the allegation.

115. **Allegation 2.1: He (the First Respondent) acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:**

2.1.3 contrary to paragraph 6.3.1 of the CMLH he failed to inform lender clients that purchase prices for properties were not the same as set out in their instructions.

115.1 This allegation was admitted by the First Respondent.

115.2 Again, the factual background to this allegation is as set out at paragraphs 43 to 95 above. The Tribunal noted in particular the transfer of 13 R Road, where the price was stated to be £180,000 but the transfer showed there had been no consideration. The mortgage advance of £116,000, after a number of inter-ledger transfers and loans to third parties was partly used, some eight months after the advance was made, in the sum of £106,000 to redeem the prior mortgage with B&W.

115.3 The Tribunal was satisfied to the highest standard on the facts and the admissions that this allegation had been proved, including in respect of the SCC breaches which had been alleged.

116. **Allegation 2.1: He (the First Respondent) acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:**

2.1.4 contrary to paragraph 6.3.3 of the CMLH he failed to inform lender clients that he did not have control of all of the purchase moneys.

116.1 This allegation was admitted by the First Respondent. The factual background was as set out at paragraphs 43 to 95 above.

116.2 In two of the five transactions set out in these proceedings, it was suggested that certain sums had been transferred directly between the parties. In any event, it was clear that the Firm did not have control over all of the purchase monies and that the First Respondent had failed to inform his lender clients of this. The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

117. **Allegation 2.1: He (the First Respondent) acted in breach of SCC Rules 1.02, 1.03, 1.04, 1.05 and 1.06 in that he failed to inform lender clients of material facts in respect of mortgage transactions of which he had conduct, and in particular:**

2.1.5 contrary to the certification given at paragraph 2(vii)(c) of the standard form Certificate of Title annexed to SCC Rule 3, he failed to inform lender clients that he was acting for both the purchasers/borrowers as well as the vendors of the properties.

117.1 This allegation was admitted by the First Respondent. Again, the factual background is as set out at paragraphs 43 to 95 above.

117.2 This allegation related to five conveyancing transactions, as set out in the Report. The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard, including the breaches of the SCC which had been alleged.

118. **Allegation 2.2: He (the First Respondent) acted in breach of SCC rules 1.02, 1.04, 1.05, 1.06 and 10.05 in that he failed to comply with the undertaking given at paragraph (h) of the standard form Certificate of Title annexed to SCC Rule 3, that he would inform lender clients of matters which came to his attention prior to completion of property transactions which rendered his Certificates of Title untrue or inaccurate**.

118.1 This allegation was admitted by the First Respondent.

118.2 Again, the factual background related to the five conveyancing transactions set out at paragraphs 43 to 95 above. The Tribunal noted that two of these transactions, relating to 13 and 15 L Avenue, occurred after the first part of the SRA investigation in the course of which the First Respondent had had his duties to lender clients drawn to his attention. The Tribunal was satisfied on the facts and on the admission that this allegation had been proved in its entirety to the highest standard.

119. **Allegation 2.3: He (the First Respondent) acted in breach of SCC Rules 1.03, 1.04 and 1.06 in that he took instructions in respect of a conveyancing matter from a person who was not his client.**

119.1 This allegation was admitted by the First Respondent. The factual background to this allegation is set out above at paragraphs 45 and 48 to 50.

119.2 It was clear to the Tribunal that the First Respondent had sent his client care letter to Mrs FR under cover of a letter to Mr AR, her son, and the mortgage advance to Mr SR was paid into a client account ledger designated as "Mr AR transfer 13 R Road".

It was on Mr AR's instructions that the First Respondent did not apply the BOS mortgage towards redeeming the B&W mortgage whilst negotiations over the redemption sum were ongoing and that he made two substantial payments out of the BOS mortgage funds, firstly to another firm and after repayment to a third party by way of a "loan".

119.3 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the required standard in its entirety.

120. **Allegation 2.4: He (the First Respondent) acted in breach of SCC Rule 3.01 in that he acted for two clients in circumstances where there was a conflict of interest or possible conflict and the two clients had not given their informed written consent to him so acting.**

120.1 This allegation was admitted by the First Respondent. Again, the factual matters underlying this allegation relate to five conveyancing transactions as set out at paragraphs 43 to 95 above. The Tribunal was satisfied that there were clear conflicts of interest and/or potential conflicts in all five of the transactions set out in the Report. On no occasion had informed written consent been given by the parties affected.

120.2 The Tribunal was satisfied on the facts and on the admission that this allegation had been proved to the highest standard.

121. **Allegation 2.5: He (the First Respondent) acted in breach of SCC Rule 3.18(1)(b) in that he failed to inform lender clients that he was acting for the seller, buyer and lender in the same transactions.**

121.1 This allegation was admitted by the First Respondent. As set out at paragraphs 43 to 95 above, the First Respondent had failed to disclose to lender clients that he was acting for all three parties in the transaction in all five of the transactions set out in the Report. The Tribunal was satisfied to the required standard on the facts and on the admission that this allegation had been proved.

122. **Allegation 3: In respect of the Third Respondent it was alleged that she had occasioned and/or engaged in conduct of such a nature that it would be undesirable for her to be involved in a legal practice, without the written permission of the SRA, in that she:**

3.1 Took from the firm's office bank account, without authorisation, the sum of at least £300 for her own personal use.

122.1 The Third Respondent's response to the allegation as pleaded was not known and so the Tribunal proceeded on the basis that the allegation had not been admitted.

122.2 The contents of the Report had been confirmed in oral evidence to the Tribunal. Further, as set out at paragraphs 97 to 99 above, the Third Respondent had confirmed in a letter dated 12 July 2010 that she had withdrawn £300 from the Firm's office account without authorisation, for her own use. The Third Respondent had stated in her letter that she had later repaid that amount, by reducing the salary she had drawn over two months, but this had been denied by the First and Second Respondents.

122.3 The Tribunal was satisfied beyond reasonable doubt that the Third Respondent had withdrawn £300 without authorisation from the Firm's office account. Whether or not she had subsequently repaid that sum, she had breached the trust the Firm ought to have been able to place in her. Her conduct in this regard was such as would make it undesirable for her to be involved in a legal practice without the permission of the SRA.

123. **Allegation 3: In respect of the Third Respondent it was alleged that she had occasioned and/or engaged in conduct of such a nature that it would be undesirable for her to be involved in a legal practice, without the written permission of the SRA, in that she:**

3.2 Knowingly and improperly transferred funds between client account ledgers for the purpose of masking a client account shortfall.

123.1 The Third Respondent's response to the allegation as pleaded was not known and so the Tribunal proceeded on the basis that the allegation had not been admitted.

123.2 The Third Respondent was the Firm's bookkeeper from April 2008 until December 2009. In that period, she had been involved in making the transfers between client account ledgers which had had the effect of masking a client account shortfall, as set out at paragraphs 14 to 38 above. The Tribunal noted that the transfer set out at paragraph 24.1 above had been carried out after the Third Respondent had been dismissed by the Firm. The First and Second Respondents had sought to cast the blame for these improper transfers onto the Third Respondent. The Tribunal considered this suggestion when determining sanction. In considering the allegation, it was sufficient that the Third Respondent had carried out the improper transfers, when she knew that the transfers were improper and would mask a client account shortfall. This had been shown beyond any doubt in the Report, which had been confirmed in oral evidence. For that reason, it was undesirable that she should be involved in legal practice without the permission of the SRA.

124. **Allegation 3: In respect of the Third Respondent it was alleged that she had occasioned and/or engaged in conduct of such a nature that it would be undesirable for her to be involved in a legal practice, without the written permission of the SRA, in that she:**

3.3 Drew up invoices for fees which she knew were not rightfully payable for the purposes of balancing the firm's accounts.

124.1 The Third Respondent's response to the allegation as pleaded was not known and so the Tribunal proceeded on the basis that the allegation had not been admitted.

124.2 The factual background to this allegation is set out at paragraphs 25 to 30 above. Again, the First and Second Respondents sought to cast the blame for the creation of the erroneous invoices onto the Third Respondent, a proposition which will be discussed further below in the section on sanction. For the purposes of determining the allegation, it was sufficient to show that the Third Respondent, as the Firm's bookkeeper had drawn up the invoices in question when she knew that they were not

rightfully payable and where the purpose of the invoices was to balance the Firm's accounts. The Tribunal accepted the contents of the Report, which had been confirmed in oral evidence, and found that this allegation had been proved and so it would be undesirable for the Third Respondent to be engaged in legal practice without the permission of the SRA.

Previous Disciplinary Matters

125. There were no previous disciplinary matters recorded against any of the Respondents in this matter.

Mitigation

First and Second Respondents

126. The First and Second Respondents had submitted position statements, dated 10 October 2012, from which it was clear that all of the allegations were admitted, albeit not necessarily on the same basis as the Applicant had set out in the Rule 5 Statement. In particular, whilst the Applicant submitted that the allegations against the First Respondent were extremely serious and at the upper end of the spectrum of misconduct, this was not accepted for reasons set out in the position statements and expanded upon in oral mitigation by Mr Edwards, who represented both the First and Second Respondents.

127. So far as the Second Respondent was concerned, it was submitted that the Tribunal should have regard to the fact that his joint responsibility with the First Respondent for various breaches could only relate to the period after 1 March 2009, when he became a partner. The Tribunal was invited to have regard to the date of the various incidents and transactions when apportioning culpability. The First and Second Respondents faced eight allegations jointly and whilst the First Respondent faced a number of other allegations alone, no allegations were made against the Second Respondent other than the joint allegations. The First and Second Respondents had chosen to stand together in these proceedings, with joint representation, as there was no mud-slinging or recrimination as between the partners.

128. Mr Edwards invited the Tribunal to give both of his clients full credit for their admissions, their frankness, the fact that they were standing together and had co-operated with the SRA officers during and after the investigation.

129. The First Respondent had been a sole practitioner from 2000 to 2009, when the Second Respondent joined him as a partner. The offer of partnership was made at an early stage in his career, but was based on the Second Respondent's merits. It was submitted that the Second Respondent could only be professionally responsible for matters which had occurred after March 2009, when he became a partner. The Second Respondent had not had conduct of any conveyancing and it should not be expected that he would investigate fully the activities of his partner. It was accepted by both the First and Second Respondents that the First Respondent had a greater degree of responsibility for the SAR breaches which had occurred.

130. It was submitted that the Firm had delegated the day to day responsibility for the Firm's accounts to a cashier, the Third Respondent. It was submitted that most solicitors have only a theoretical knowledge of accounts and so it was not unreasonable to leave many tasks to the cashier. Whilst the cashier should be supervised, it could be the case that a solicitor did not have the skills needed to check the cashier's work in detail. The Third Respondent had appeared to be a suitable person for the role and came to the Firm highly recommended. It was only after her dismissal by the Firm (in December 2009) that the Firm had found out about errors she had made in her previous employment. At the time she was engaged, the Firm accepted her references at face value.

131. Mr Edwards told the Tribunal that his clients had become aware that accounting matters were not dealt with as they should be but the Third Respondent had assured them that there were no problems save for a back-log of work. The Firm had brought in a bookkeeper from the Firm's then accountants to assist and he had confirmed that all was in order. In this regard, Mr Edwards relied on a letter dated 9 July 2009 from the Firm to EBC which referred to an arrangement under which an individual came into the Firm once per month, usually at the end of the month, to see that everything was in order. The letter mentioned that originally the support had been weekly, then fortnightly and was by July 2009 monthly and referred to the concern of the Firm about cashiers. Following the Third Respondent's dismissal, the Firm wrote to EBC on 28 January 2010 to request assistance with accounts functions; by that point, the Firm was aware of certain shortcomings on the part of the Third Respondent.

132. On 19 July 2010 the Firm had instructed B&S, at some expense, to demonstrate that the partners were trying to do the right thing. The report had been forwarded to the Applicant. It was submitted that the Tribunal should take into account the steps the partners had taken to ensure that their bookkeeping was in order.

133. Mr Edwards submitted that so far as the deficiencies in supervision were concerned, there was no definition in the SCC of supervision. It was submitted that indeed the term may have been left vague deliberately as the degree of supervision required was highly subjective and depended on the individuals concerned. It was accepted by the First and Second Respondents that their supervision of the Third Respondent had not been effective. However, the Third Respondent had been responsible for the accounts of the Firm and she bore responsibility for the breaches. It was accepted by the Applicant that the First Respondent's culpability was greater than that of the Second Respondent and it was not submitted that they bore no responsibility for the SAR breaches.

134. Mr Edwards told the Tribunal that his clients had pointed out to the SRA some contradictions in the B&S report. In particular, it was the First and Second Respondents' position that the erroneous invoices – which had been issued and subsequently reversed – had been created at the Third Respondent's instigation to cover up what Mr Edwards described as her incompetence and/or dishonesty. The First and Second Respondents did not accept the assertion in the B&S report that "The reason for the entries appears to be to enable the Firm to demonstrate solvency when it was having a difficult time keeping within bank imposed constraints on office account" and contrasted that statement with the later statement in the report that, "The Firm would still show a solvent position after all the credit note corrections". Mr

Edwards submitted that the B&S report, whilst not complimentary of the First and Second Respondents showed their intention to comply with their professional obligations and also demonstrated the character and activities of the Third Respondent.

135. The Tribunal was referred to the steps taken by the First and Second Respondents to ensure that matters in their Firm were put right. They had obtained the B&S report which had given them a good framework for future compliance. The Firm had gained the Lexcel accreditation in October 2012 and was rightly proud of this, which was evidence of their good practice and also assisted with the cost of their professional indemnity insurance. It was submitted that attaining Lexcel accreditation was significant as the tests which had to be passed were stringent. It was particularly praiseworthy to attain this after a period of muddle and confusion. The accreditation had been granted to 2015, but the organisation would be informed of the outcome of these proceedings. The partners had also applied for the Conveyancing Quality Mark, which again showed that they had made good progress.

136. Neither the First nor Second Respondent had any previous appearances at the Tribunal and both were of previous good character.

137. The length of the SRA investigation, which had been longer than many such investigations and had been carried out in two tranches, had had a financial impact on the Firm. The partners had put in capital to rectify the bookkeeping errors which had occurred. The Respondents would also have to bear at least part of the Applicant's costs of these proceedings, and their own costs of representation, as well as the costs of the B&S report. It could be expected that the cost of the Firm's professional indemnity insurance would increase as a result of the outcome of these proceedings, and there may well be further supervisory visits by the SRA.

<u>First Respondent</u>

138. The First Respondent accepted full responsibility for the matters dealt with under allegations 2.1 to 2.5, which were nothing to do with the Second Respondent. Further, the First Respondent's position was that the Second Respondent had no culpability for the SAR breaches; indeed the First Respondent's responsibility arose because of his position as a principal in the Firm.

139. Mr Edwards told the Tribunal that the First Respondent was an experienced conveyancer who worked in the Blackburn area, where, Mr. Edwards submitted, there was a significant Asian population. It was submitted that the requirements and culture of Asian clients may be different to those of other clients. Mr. Edwards also stated that it was accepted by the First and Second Respondents that all clients should be treated equally and that the same rules applied to all.

140. The First Respondent's position statement had indicated that the state of the property market and/or practices of agents current at the time together with "the cultural considerations involving professional dealings with Asian families should be considered and ought fairly to be taken into account". It was noted that Mr Hudson had submitted that there was no evidence before the Tribunal concerning Asian culture..

141. Mr Edwards submitted that amongst Asian families the concept of the "head of the family" is very important. In this context, it was commonplace for a husband to give instructions on behalf of his wife, or a father to give instructions on behalf of a child. The First Respondent accepted that he had not taken instructions directly from his "client", but in so doing he had been complying with the standards of those clients.

142. The First Respondent had submitted to the Applicant during the investigation that some of the money involved in the transactions should be regarded as "family money" rather than as money belonging to an individual. For example, this had been asserted with regard to the mortgage monies on the 13 R Road transaction. The First Respondent acknowledged now that he had been wrong, and apologised for his naivety and the errors which had arisen from that naivety. The Tribunal was told that all of the matters in issue had been rectified. As a result of these proceedings the First Respondent had reconsidered his assumptions and the matters he had taken for granted. Mr Edwards told the Tribunal that the Second Respondent, who he stated was a British Asian, had confirmed that his submissions on cultural considerations were correct. The First Respondent did not seek to override his professional obligations. The Tribunal was invited to weigh the First Respondent's understanding of cultural considerations when considering his conduct.

143. The First Respondent accepted that what might appear to be his disregard of the instructions of his lender clients would be serious, especially if a lay client had been prejudiced. The First Respondent had believed that the lender clients would know the nature of the various transactions and the links between the parties as he believed that the brokers involved knew these facts. It was submitted that the First Respondent was not trying to excuse what he did, but wished to place his actions in the context of a busy solicitor, trying to complete matters quickly, who believed that certain matters were common knowledge. It was submitted that the First Respondent's defaults in respect of the lender clients arose from oversight and over confidence rather than wickedness. It was submitted that no loss had been suffered by the lenders involved, and that this factor should have a bearing on the degree of seriousness with which the default was regarded.

144. The First Respondent had to accept that it appeared that he had continued to disregard his lender clients after the first part of the SRA inspection, when he had been advised of his duties to lender clients. Mr Edwards referred to a letter dated 4 July 2011 from the First Respondent to the Halifax branch at Blackburn concerning the 13 and 15 L Avenue transactions and the First Respondent's letter to the Applicant dated 14 October 2011, both of which explained his understanding of the transactions. The Tribunal was invited to find that rather than there being flagrant disregard of the lender client, the First Respondent had simply made an error.

145. Mr Edwards submitted that the Third Respondent's culpability should be considered and that she had played a key role. Mr Edwards told the Tribunal that by her own admission, the Third Respondent had fallen short of the standard of honesty expected of someone in her position. The Tribunal was invited to draw conclusions arising from the fact the Third Respondent was not present. Mr Edwards invited the Tribunal to regard the Third Respondent as a liar, both in what she had said about her own role and perhaps on other issues. Her assertions about being instructed by the First Respondent to do various things should be treated with caution as not only had she

been dishonest in taking money from office account but she had sought to shift the blame for the inter-ledger transfers and erroneous invoices to the First Respondent. In short, Mr Edwards submitted that the Tribunal should not rely on the Third Respondent's letter as she was understandably trying to shift the blame for what had happened to her employers, who had trusted her.

146. The First Respondent had not been alleged to have been dishonest. It was submitted that his answers in interview with the FIO and SIO had been open and honest. He had accepted his shortcomings, but disagreed with the Applicant about the Third Respondent's degree of culpability.

147. Mr Edwards submitted that whilst the Third Respondent had alleged that the transfer to Ms FAP had been made in error in the sum of £120,000 because the figure "1" had been inserted on a note of instructions, she had not been able to append a copy of that note because no such note existed. That error had led to difficulties in balancing the client account, and had occurred because of the Third Respondent's mistake.

148. Mr Edwards told the Tribunal that the First Respondent denied any collusion with the Third Respondent or collaboration in her wrongdoing. Whilst the First Respondent accepted that when he considered the Firm's overdraft position he would ask the Third Respondent to transfer money from client to office account to cover the Firm's outgoings, but he had never instructed the Third Respondent to raise false invoices. The First Respondent accepted the importance of regular billing, and there was nothing improper in that whereas fabrication of bills was clearly improper. It was submitted that if the Third Respondent's evidence showed collusion in creating the improper bills, the First Respondent would have faced an allegation of dishonesty.

149. Although all matters before the Tribunal were serious, Mr Edwards told the Tribunal that the SRA had not needed to use its other powers in relation to the Firm. There had been no intervention, and no threat of intervention and no conditions had been imposed on the Practising Certificates of either the First or Second Respondents.

150. It was submitted that whilst any breaches of the SAR and/or SCC should be regarded as serious, public perception suggested that the most serious were those where there was dishonesty, substantial losses had been caused, there was inconvenience and complaints and/or claims on the Compensation Fund. The First Respondent's position was that no client had suffered any loss. Whilst some lender clients had not been adequately protected for a period, there had been no claims arising. The Firm had not received any complaints arising from the subjects of these proceedings, and had received very few overall. The SIO had confirmed in evidence that she had inspected or reviewed a number of files and had not found problems on all of them.

151. Testimonials had been provided for the First Respondent, which were to be considered by the Tribunal. Mr Edwards also referred to two Tribunal decisions on the issue of supervision. Whilst the decisions of one division were not binding on another, it was suggested that in the way in which the cases addressed supervision requirements they should be regarded as persuasive. In particular it was submitted that the Taylor case had some similarities to the present case, whilst the Hindle case helpfully commented that supervision requirements would vary from case to case.

152. It was submitted that a financial penalty would appropriately mark the seriousness of the case and that supervision would be too harsh a sanction. The allegations were now historical and could not be repeated given the steps the Firm had taken such as obtaining Lexcel accreditation.

Second Respondent

153. It was submitted that the Second Respondent fell into a different category of seriousness to the First Respondent, and this appeared to be accepted by the Applicant. The Second Respondent had been a partner for a short time and bore very limited responsibility and very little, if any, culpability. He had been inexperienced at the time of the matters in issue and did not deal at all with conveyancing. It was submitted that whilst a financial penalty might be appropriate for the First Respondent a reprimand of the Second Respondent would meet the justice of the case. This was particularly the case as there would be ongoing financial consequences in costs and the like for the Second Respondent.

Third Respondent

154. The Third Respondent was not present and no mitigation was offered on her behalf.

Applicant's response

155. As Mr Edwards had made submissions on the Hindle and Taylor cases, with no prior notification of the points he would make in relation to those cases, Mr Hudson was given a brief opportunity to address those points.

156. Mr Hudson submitted that the Taylor case concerned an individual who controlled a group of companies and the irregularities in question related to that group. In the present case, there were lenders and others, not part of a family group, whose matters had been involved in the inter-ledger transfers. Also, whilst in the Taylor case the most serious allegation, that of providing a banking facility to clients, had been withdrawn in the present case that allegation had been admitted and was both a central and serious allegation in its own right.

Sanction

157. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

158. The Tribunal also had regard to its Guidance Note on Sanctions (August 2012). This included consideration of the purpose of sanction in the Tribunal as set out in Bolton v Law Society [1994] 1 WLR 512 ("the Bolton case") where it is stated, inter alia that:

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

Whilst sanctions in the Tribunal may include elements of punishment or may be such as to prevent reoffending, it is noted in the Bolton case that the most fundamental purpose of sanction is:

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

First Respondent

159. The First Respondent had admitted, and the Tribunal had found proved, seven breaches of the SAR (jointly with the Second Respondent) and six breaches of the SCC. Any breach of the SAR, the purpose of which was the protection of the public and the proper stewardship of client money, had to be regarded as serious although the degree of seriousness would depend on the circumstances of each case. Similarly, breaches of the SCC and in particular the core duties at Rule 1 of the SCC, would be serious although the circumstances had to be considered fully in determining the appropriate sanction.

160. In this instance, the First Respondent had sought to lay the blame for the SAR breaches on the Third Respondent, his Firm's bookkeeper. Therefore, to determine his degree of culpability the Tribunal had to consider not only the breaches but whether or not they had been caused or contributed to by the Third Respondent to any significant degree. It was undisputed that the Third Respondent had been the person in the office who carried out the inter-ledger transfers in issue by making the necessary entries and records and, in the case of the transfer to Ms FAP, by giving instructions to the bank. It was also undisputed that she had physically created the improper invoices. What appeared to be in dispute was whether these actions were undertaken by the Third Respondent on the instructions or with the agreement of the First Respondent or whether she had been acting on her own initiative, without the First Respondent's knowledge.

161. In assessing how the breaches had occurred and why, the Tribunal was assisted by the Report, which had been confirmed by its maker who had been tendered for cross-examination. The Tribunal found that the contents of the Report were accurate. In giving oral evidence, the SIO had confirmed that she had examined twelve of the Firm's files in relation to the SAR breaches generally and a further eleven in relation to office credit balances; about half of the latter revealed shortages but the remainder revealed no significant problems. The twelve conveyancing files examined had led to the exposition of the five conveyancing transactions in the Report and it was noted that some of the transactions were referred to in two or three files. It had been noted that not all files examined were tainted. The Tribunal was also assisted by the B&W report, which had been commissioned by the Firm.

162. The matters in issue in these proceedings had arisen in large part as a result of the transfer of £120,000 to Ms FAP. The First Respondent's position, as put forward on his behalf (but not in evidence) was that the transfer of £120,000 rather than £20,000 had arisen as a result of the Third Respondent's error. For the purposes of this section only, the issue of whether any such transfer should have been made will be disregarded. The First Respondent had told the Applicant in his response of August 2011 that, "...it was due to the Cashier questioning (the First Respondent) on

three/four occasions about the amount that needed to be sent that eventually led to the error. (The First Respondent) can confirm that he had initially verbally informed the Cashier of the amount that needed to be sent (£20,000) and eventually the Cashier placed an authorisation sheet in front of (the First Respondent) whilst he was attending upon some other clients, which led to the amount of £120,000 being authorised by him and subsequently transferred." In her letter to the Applicant of 12 July 2010 the Third Respondent had stated, "...(the First Respondent) told me to transfer the money to a lady I cannot remember her name and he wrote down on a scrap of paper £120,000 which I mislaid and after a telephone conversation with the lady I went to (the First Respondent) to confirm the amount I had to transfer and he said £120,000 so I did transfer that amount and later found the scrap of paper and stapled it to the Telegraphic Transfer form I had drawn up. So I do not believe that I caused the overpayment it was down to (the First Respondent)".

163. The Tribunal was conscious that it did not have the benefit of hearing evidence from the First or Third Respondent to test the First Respondent's assertions on this point. However, on both accounts presented it was clear that the Third Respondent had checked with the First Respondent what she was supposed to do. This was inconsistent with the First Respondent's position that thereafter the Third Respondent took a number of unauthorised and improper steps, on her own initiative, to cover up the shortfall on client account. In any event, the Tribunal noted that the First Respondent had not taken any steps to dismiss the Third Respondent after the transfer of the incorrect amount was known.

164. In any event, the overpayment occurred on 18 November 2008 and must have been known to the First Respondent by, at the latest, February 2009 when the BOS chased for confirmation of the registration of its charge over 13 R Road (the funding of the £120,000 having largely been derived from the BOS mortgage monies). That charge could not be registered as the Firm did not hold the funds to pay off the previous charge, having transferred monies to Ms FAP which were not returned by her.

165. Rather than taking steps to replace the client account shortage the First Respondent had undertaken what was accurately described in the B&S report as a "teeming and lading" exercise. This exercise had had the effect of disguising the shortage. The First Respondent had confirmed in the July interview with the SIO that he had authorised the transfers between six ledgers on R family matters. The First Respondent had told the SIO that the transfers on the eight unrelated client matters had been undertaken by the Third Respondent without his authorisation. The Tribunal could not accept that these transfers were undertaken without the First Respondent's knowledge and/or on his instruction. He knew that the transfers between members of the R family had not rectified the shortage. Indeed, the schedule to the B&S report showed that a number of unrelated client accounts had been affected before some of the R family transfers, principally in the period December 2008 to March 2009 and thereafter from August 2009 onwards. In order to authorise the R family inter ledger transfers, the First Respondent must have known of the preceding transfers.

166. The B&S report showed, and the Tribunal accepted, that the main funding of the shortfall was from the funds of Ms BH, a client entirely unrelated to the R family, in the sum of over £82,000. Even if the First Respondent's position, that the various

members of the R family operated their finances as a family and not individually was correct, this did not explain or excuse in any way the use of client money belonging to eight unrelated clients, including Ms BH.

167. The First Respondent had not himself taken any steps to rectify the shortage – other than concealing it by undertaking the "teeming and lading" exercise mentioned – until the period June to July 2010, some 18 months after the shortage occurred. At that point the First and Second Respondent had introduced £41,500 to client account. The first payment of any kind to rectify the shortage, rather than conceal it, was made on 24 December 2009, which was after the Third Respondent had left the Firm. The Tribunal noted that part of those sums, paid in by Ms SR, had been paid out in March 2010 to a third party. Again, this was after the Third Respondent had been dismissed. The Tribunal further noted that a payment to Ms BH on 24 December 2009 had not been posted by the time of the B&S report in August 2010; both the payment and the failure to post it occurred after the Third Respondent left the Firm. There were numerous errors on that ledger, but it appeared there were insufficient funds to meet the payment. The Tribunal accepted that in the light of all of the evidence presented the deficiency on Ms BH's account arose from irregular entries and inter-ledger postings which had taken place to mask the original overpayment to Ms FAP.

168. The Tribunal had heard that ultimately no client had suffered loss; Ms BH had received everything to which she was entitled. The Tribunal considered that in all of the circumstances of this case, it was more by luck than good judgment that there had been no loss. However, it was clear that at certain periods the Firm had not held sufficient funds to meet its liabilities to clients. The risk of significant loss to lay clients had been a great risk, and the First Respondent had been fortunate to avoid any loss.

169. In addition to the allegations arising from the overpayment to Ms FAP, there were other serious allegations of SAR breaches which the First Respondent had admitted. In particular, improper bills had been raised – but not sent to clients – to allow for transfers from client to office account. Whilst the First Respondent had drawn attention to what appeared to be a contradiction in the B&S report (see paragraph 133 above) the Tribunal was satisfied that the invoices had been raised to assist the Firm in remaining within its overdraft limit; whether the Firm was solvent was a separate issue. Again, the First Respondent had sought to suggest that the raising of these invoices was undertaken by the Third Respondent without his knowledge. However, it was almost inconceivable that a bookkeeper would take such a step without instruction or authorisation, as there was no benefit for her in doing so. The B&S report, commissioned by the Firm, did not identify any particular wrongdoing by the Third Respondent.

170. The Tribunal also regarded as serious the First Respondent's provision of banking facilities to the R family in particular. It was because of this that the payment of Ms FAP had been made. The First Respondent had sought an advice from counsel on the issue of whether ownership of the mortgage monies used to make the loan to Ms FAP had passed to the R family (or any of its members). It was clear to the Tribunal, and to counsel who advised the Firm, that the monies had been provided by BOS for the sole purpose of assisting Mr SR in the purchase of 13 R Road and should not have been used for any other purpose. As a result of a) the transfer of £116,000 to another

firm on 7 November (and subsequent receipt from that firm of £128,000 on 11 November 2008) and b) the loan to Ms FAP which was not repaid the BOS mortgage could not be registered as the B&W mortgage on 13 R Road could not be redeemed.

171. Not only had the First Respondent taken instructions to make payments from client account which were not in connection with an underlying legal transaction, but he had taken those instructions from Mr AR, who was not his client in that particular matter. Those instructions had not been confirmed in writing. The First Respondent had sought to persuade the Tribunal that it was commonplace amongst Asian families for all money to be treated as "family money", irrespective of in whose name it was nominally held. No evidence had been presented on this point. However, even if the Tribunal accepted this proposition in its entirety it did not excuse any breach of the provisions of the SAR, or the requirements under the SCC to act in the best interests of the client. Further, the money in issue was not that of the R family but had been provided to the client/family for a particular purpose. This situation occurred not only in relation to the 13 R Road matter but also in relation to the 373 WN Road transaction, where the mortgage funds were transferred to the 13 R Road ledger (on Mr AR's instructions) and again in relation to the 10 P Street transaction where £120,000 of the mortgage funds from NatWest were transferred to the 13 R Road ledger.

172. In comparison with the more serious defaults, the office credit balances of £5,720.64 were quite minor although it was of concern that they had existed for a number of months without being rectified. These balances had occurred after the Third Respondent had left the Firm, despite the SRA investigation and the Firm's attempts to put their accounting systems in order; clearly, in the period to about April 2011 those attempts had been unsuccessful.

173. The Tribunal noted that, save for the small office balances noted above, the SAR defaults occurred on a limited number of files. The breaches were not random, as might happen with a chaotic accounts system but rather appeared to be deliberate. Most of the inter-ledger transfers arising after the "loan" to Ms FAP were either on R family files or other files to conceal the shortage. The improper invoices had been larger than normal for the Firm, according to the B&S report.

174. The Tribunal was satisfied that all of the SAR breaches committed within the Firm were at the behest of the First Respondent or at the very least with his knowledge and consent. The breaches were repeated over a period of time and involved serious risks to client money. The Tribunal noted that in the case of Weston v Law Society [1998] Times, 15 July, Lord Bingham LCJ observed:

> "...that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed".

In the present case, the First Respondent's conduct in respect of the repeated and serious breaches of the SAR was such that a sanction at the upper end of the range would be justified.

175. In addition to the SAR breaches, the First Respondent had admitted one breach of the SCC jointly with the Second Respondent, in that he had failed to make arrangements for the effective management of the Firm as a whole and failed to make arrangements for the effective supervision of the bookkeeper. This was clearly the case, given the many and wide-ranging breaches of the SAR which had been identified. As the senior partner, the First Respondent bore a greater degree of responsibility than his junior partner, the Second Respondent, for the failure to manage the Firm properly.

176. The First Respondent alone had been charged with, and had admitted, number of significant breaches of his core duties as a solicitor in respect of the way in which he conducted the conveyancing of 13 R Road, 373 WN Road, 10 P Street and 13 and 15 L Avenue. The first three of these transactions involved various members of the R family whilst the latter two involved members of the S family. The First Respondent's contentions as to the alleged requirements of clients from Asian families were irrelevant. The First Respondent had on a number of occasions failed to tell his lender clients: about the close family relationships between the vendors and purchasers; that he was acting for all parties in the transaction; that the borrower client was not providing the balance of purchase funds; that the purchase prices of the properties were not as stated in the mortgage instructions (in particular in that there was no consideration in several transactions); that the Firm did not have control over all of the purchase money. The First Respondent had in addition taken instructions from an individual who was not his client, most notably in the 13 R Road transaction. The First Respondent had failed to protect the interests of his lender clients in that he had not been able to register their charges for a considerable period after the lender had provided the mortgage funds.

177. During the investigation the First Respondent had initially indicated that he had assumed that the lender knew of the connection between the parties and the gift element. This applied in particular to the 13 R Road, 373 WN Road and 10 P Street transactions. The Tribunal accepted that, as the Applicant had contended, there was no reasonable basis for that assumption. The First Respondent had been described by his own solicitor as an experienced conveyancing solicitor and as such he must have known his duties to report salient facts to lender clients, even if he thought the lender may already have such information. Even if the First Respondent had been unaware of his duties in this regard, he could not have been unaware after his discussions with the FIO in September 2010 where the notes of interview clearly showed that these duties had been discussed. The transactions involving the S family (13 and 15 L Avenue) were carried out in about March 2011, some 6 months after the discussions with the FIO.

178. The Tribunal noted the letters to which Mr Edwards had drawn their attention in respect of the First Respondent's conduct being by way of error in regard to the S family transactions. The letter of 4 July 2011 was to a mortgage adviser who had not been involved in setting up the mortgages for the S family and in any event was written after the event. The Tribunal did not see any response from the Halifax to the letter. In the letter of 14 October 2011 to the SRA, the First Respondent had referred to contacts with the mortgage adviser concerning the "family gift" element to the transactions. However, the Tribunal also noted the specific mortgage instructions in the 15 L Avenue transaction which incorporated the CMLH and required the First Respondent not to release the mortgage advance unless all relevant conditions were

met. An experienced conveyancer such as the First Respondent should have known that he was required to inform the lenders of material facts and not rely on a broker or mortgage adviser. If he did not know before late 2010, he certainly should have done by the time of the S family transactions.

179. The Tribunal also noted with particular concern that in the 13 R Road transaction, the First Respondent had failed to advise his client Mrs FR that if her son, Mr AR, was successful in reducing the sum to be paid to B&W to redeem their mortgage, her personal liability to B&W would increase. The evidence clearly showed that the First Respondent was aware of the negotiations, yet he took no steps to protect the interests of Mrs FR or even to inform her of the position.

180. The Tribunal concluded that the First Respondent's culpability for his misconduct was significant. His motivation was not known and it may have been that he simply relied too much on his regular clients, the various members of the R family and wanted to please them and conform to their expectations and in so doing lost sight of his professional duties. His actions were planned and undertaken with the benefit of forethought, even if in the context of a busy solicitors' practice. Given the delay between receipt of mortgage monies and the completion of the transaction – for example, in the 13 R Road and 373 WN Road transactions – there had been time for the First Respondent to consider fully the nature of the transactions and rectify his defaults but he had not done so. The First Respondent had failed to act in the best interests of his clients and had acted where there was a conflict or risk of conflict of interest between his clients and so had breached the trust his clients placed in him. That trust was broken particularly in the way the First Respondent failed to act in the interests of his lender clients, preferring the interests of his "lay" clients. Whilst the First Respondent had tried to blame the Third Respondent for a number of breaches, particularly the breaches of the SAR, the Tribunal did not accept this contention. The First Respondent had not given evidence and so there had been no opportunity to test his evidence; accordingly, his submissions had limited weight. The same could be said of the Third Respondent, who had not appeared at all. However, the Tribunal considered that her role was much less. She had accepted that she had taken £300 without permission, but that did not make what she said unreliable in its entirety. Indeed, if she had admitted an allegation which the First Respondent had tried to frame as tantamount to theft, she had nothing to lose by admitting if she had been personally at fault in other respects. Further, the First Respondent had more to gain from the conduct which had been the subject of the proceedings. As the senior partner in the Firm, in the circumstances of this case, the First Respondent had had direct control of and responsibility for the SAR breaches and those arising from his personal conduct of the conveyancing transactions. The First Respondent's years of experience in conveyancing, and his experience in running his firm since 2000, confirmed that he carried the overwhelming burden of culpability. Ultimately, it did not appear that any harm had been suffered directly by clients or others but this was due to simple good fortune.

181. Whilst no direct harm had been suffered, there was considerable harm to the reputation of the profession due to his departure from the complete integrity, probity and trustworthiness expected of a solicitor. The potential to harm to both lender clients and lay clients, including Ms BH whose funds of over £80,000 had been used to partly conceal the shortfall arising after the loan to Ms FAP, had been very great.

Had Ms BH required her funds to be sent to her earlier, she would have found that they were not available.

182. This was not a case where dishonesty had been alleged. However, the misconduct was deliberate, calculated and repeated – even after the first stage of the SRA investigation. The first defaults in issue had occurred in November 2008 but there had been continuing breaches until 2011. The First Respondent knew or ought reasonably to have known that his conduct amounted to a material breach of his professional obligations.

183. It was fair to note that the First Respondent's misconduct had ultimately not resulted in loss: the shortfall on client account had been made good and Ms BH had received all the money to which she was entitled. The First Respondent had submitted that his commissioning of the report by B&S showed his co-operation with the SRA investigation and his determination to put matters right. He also relied on the fact his Firm had received the Lexcel accreditation and was applying for the Conveyancing Quality Mark as indications of the improvements he had undertaken in his practice and in his Firm. Whilst these factors were noted, the Tribunal considered that the First Respondent had still not shown genuine insight into his conduct. He had maintained a position whereby he relied on what he called the cultural considerations which may apply with regard to some Asian clients, whilst failing to appreciate that such considerations certainly did not apply to his lender clients. Further, he had tried to blame the Firm's bookkeeper for defaults which were not her responsibility. At its very best, his conduct with regard to the SAR breaches was a complete abnegation of his responsibilities to supervise and manage the Firm properly, including with regard to the stewardship of client money. Such dereliction of duty was in itself serious, as was made clear by the Weston case. However, the Tribunal was satisfied so that it was sure that the First Respondent's role in all of the breaches alleged was as instigator.

184. The Tribunal considered the testimonials presented for the First Respondent. These indicated that the First Respondent was honest and straightforward – a phrase repeated in a number of the testimonials. The First Respondent's honesty had not been questioned in these proceedings, but he had admitted acting without integrity.

185. In all of the circumstances set out above, the Tribunal was satisfied that the First Respondent's conduct was at the most serious end of the spectrum, notwithstanding that dishonesty had not been alleged. The manner in which the First Respondent had conducted himself had fallen far short of the standard of integrity required of a solicitor. With due regard to the First Respondent's rights, but also with regard to the principles set out in the Bolton case, the Tribunal determined that the only proportionate and appropriate sanction in this case was that the First Respondent should be struck off the Roll. His conduct had fallen well below the standard the public expected of solicitors and it was necessary to remove him from the Roll to maintain the confidence of the public in the profession.

186. After announcing its decision on sanction the Tribunal heard an application by Mr Edwards to postpone the date on which the order would come into effect. Mr Edwards asked the Tribunal to postpone the Order until such time as he had sight of the Judgment and had taken advice on an appeal. In response to a question by Mr

Edwards, the Clerk indicated that the target time for provision of the Judgment to the parties is seven weeks, although some Judgments would be prepared more quickly. Mr Edwards told the Tribunal that the Second Respondent had no involvement in running the Firm, so time would be needed to make arrangements for the practice.

187. The Tribunal considered the application. It had determined that the First Respondent was not fit to continue in practice and there was no good reason to delay the implementation of that decision. The First Respondent was not a sole practitioner and steps could be taken by his partner, the Second Respondent, to either run the Firm or make arrangements to transfer files to other firms. Accordingly, the application to postpone the effect of the Order was refused.

Second Respondent

188. The Tribunal accepted that the Second Respondent could not have any responsibility for defaults which occurred before 1 March 2009. It noted in particular that he had not been a principal in the Firm at the time of the first stages of the 13 R Road transaction, the loan to Ms FAP and some of the initial inter-ledger transfers to conceal the overpayment. The Tribunal also accepted that the Second Respondent had been inexperienced and had been very much the junior partner. The First Respondent and the Applicant had acknowledged that the Second Respondent's culpability was very much less than that of the First Respondent.

189. The Second Respondent had undertaken his training contract with the First Respondent and became a partner soon after qualifying. The Tribunal accepted that it would have been hard for the Second Respondent to challenge the First Respondent about the way in which the Firm was run and about various accounts matters, given his relative inexperience and his junior role. It had not been alleged that the Second Respondent knew about the First Respondent's various defaults and/or the SAR breaches. The Tribunal had some sympathy with the Second Respondent's position. He had acted honourably, if perhaps naively, in supporting the First Respondent in these proceedings and not distancing himself. The Second Respondent had not been involved in any of the conveyancing transactions which had been questioned in these proceedings, nor had he caused any of the transfers of funds or drawing up of improper invoices. With regard to the allegation of a breach of SCC Rule 5, the Tribunal accepted that the Second Respondent was less at fault than the First Respondent.

190. Although the Second Respondent had not been personally at fault, in the context of the SAR he was jointly liable with the First Respondent as he was a principal in the Firm. Whilst it was difficult for a junior partner to question the activities of a senior partner with regard to the accounts, in accepting partnership the Second Respondent had become liable for any SAR breaches by the Firm. Given that the breaches occurred over a long period of time and were repeated, the Second Respondent ought to have done more to become aware of the defaults and try to put them right.

191. The Tribunal noted the testimonials produced for the Second Respondent which referred to his professionalism and integrity. Personal mitigation and testimonials such as this had to be considered in the light of the Tribunal's duty to have primary regard to the protection of the reputation of the profession when imposing sanction.

192. Any breaches of the SAR ought to be regarded as serious. Here, those breaches had not in fact caused loss although there had been the risk of significant losses to clients. Whilst acknowledging that the Second Respondent had not shown any lack of integrity or personal fault, the seriousness of the breaches had to be marked by the imposition of a fine. In all of the circumstances of the case, and given that no information had been provided about the Second Respondent's means which suggested he would be unable to meet a fine, the appropriate and proportionate fine was £5,000. Such a fine was necessary to mark the seriousness of the breaches which had occurred.

Third Respondent

193. As the Third Respondent was an unadmitted person, the only power the Tribunal had was to make an Order under s43 of the Solicitors Act 1974, as amended, if satisfied it was appropriate to do so.

194. The Tribunal noted that the Third Respondent had withdrawn £300 from the Firm's office account for her own use without permission. Further, it was clear that in her role as bookkeeper the Third Respondent had been involved in the production of the documents to transfer funds between client account ledgers when she knew those transfers were improper and in the production of invoices when she knew those fees were not rightfully payable.

195. Although it was asserted by the First Respondent in particular that the SAR breaches were caused by the Third Respondent, this could not be accepted by the Tribunal. The Tribunal noted that the Third Respondent had informed the SRA during the investigation that her work had been hampered from the moment she joined the Firm as £1.1 million which had been received on 1 April 2008 could not be posted to a ledger for eight weeks as no file was opened; as a result, her work had been behind as a result. The Tribunal was satisfied that the First Respondent was the instigator of the various transfers and had given instructions concerning transfers from client to office account which led to the Third Respondent drawing up the invoices which later had to be reversed.

196. The Tribunal was satisfied that the Third Respondent's conduct was such that her further employment in the legal profession should be controlled by the SRA and that it was appropriate to make the Order.

Costs

197. The Applicant sought a costs order against the Respondents in the total sum of £30,333.78. The schedule of costs had been sent to Mr Edwards by email on 23 January but had not been seen by Mr Edwards until the morning of the hearing. The schedule had been sent to the Third Respondent by post on 23 January.

198. The costs claimed included approximately £14,000 plus VAT in solicitors' costs and nearly £13,000 in the Applicant's costs of the investigation and case-working costs. Ms Kerr, the SIO, had confirmed in her evidence how the SRA's costs had been calculated. Firstly, it had been confirmed that only the SIO's time had been charged, to avoid any duplication of the work done by the FIO. Secondly, the investigation

had involved considering about 23 files and carrying out a detailed analysis of the Firm's accounts. The solicitors' costs involved time spent in considering over 300 pages of evidence, preparing a long Rule5/Rule 8 Statement and dealing with a large amount of factual material. The papers presented to the Tribunal were a distillation of the work done and the papers considered. There had been five conveyancing transactions relied upon, with a need to understand where there were links and how the client account shortfall had arisen and been concealed. A further complication was that there were three Respondents. In addition, there had been a Case Management Hearing (on 7 August 2012) for which the Applicant had had to prepare and attend. Some time had been spent in liaison with the SIO to go through her Report. The time claimed reflected the time actually taken in correspondence and the like which, it was submitted, was not extravagant. The case had been properly brought.

199. Mr Hudson submitted that apportionment of costs between the Respondents would be a matter for the Tribunal. The Applicant sought summary assessment of costs with the element to be apportioned to the Third Respondent to be identified. The Applicant sought a joint and several order against the First and Second Respondents; as they had a good relationship, it may be possible for them to agree contributions between them.

200. On behalf of the First and Second Respondents, Mr Edwards submitted that the costs claimed were breathtakingly high. That comment was not meant as a reflection on the work done by Mr Hudson and others but concerned the amount which it would be fair and proper for the Respondents to meet. That said, Mr Edwards submitted that the time claimed for perusal was excessive, although the time noted for the hearing in August was the same as recorded by Mr Edwards. The hearing had not lasted as long as estimated. It was submitted that much of the preparatory work had been done by the Applicant SRA. Whilst he accepted that he had not had to prepare the documents in support of the case, Mr Edwards contrasted the perusal, preparation and drafting time claimed by Mr Hudson's firm at in excess of 47 hours with the 10 hours he had spent (although Mr Edwards accepted his travel time was greater).

201. Mr Edwards had no objection to the Tribunal carrying out a summary assessment. Whilst the SIO had given evidence that there had been no duplication in charging, it was possible that some tasks had been duplicated e.g. the interviews with the Respondents.

202. Mr Edwards accepted that his clients would have to bear some costs of the proceedings, and invited the Tribunal to make any order a joint and several order as his clients maintained a united front. Mr Edwards invited the Tribunal to say that the Third Respondent should bear the greatest part of the costs as it was her practices which had caused difficulties for the Firm and it would be wrong to put the burden of costs on the partners.

203. Neither the First nor Second Respondents had submitted any information concerning their means to the Tribunal or Applicant before the hearing. In response to a question from the Tribunal, the Tribunal was told that both the First and Second Respondents would be able to meet a costs obligation if allowed a reasonable amount of time to pay.

204. There were no submissions on costs, or concerning means, by the Third Respondent.

205. The Tribunal considered carefully the costs schedule and the submissions made by the parties.

206. The Tribunal decided to carry out a summary assessment of costs. The Tribunal noted that the time estimated for the hearing was greater than the time actually spent and that whilst the costs overall were broadly proportionate to the issues in the case and the work required it appeared that the time recorded and claimed for perusal and preparation was a little higher than could be clearly justified. The SRA's investigation costs appeared reasonable and the Tribunal was satisfied that those costs did not involve any element of duplication. Overall, and doing its best to assess the costs which ought reasonably to be payable overall, the Tribunal assessed the costs at £28,000 inclusive of VAT and disbursements.

207. The Tribunal noted that it had no information from any of the Respondents concerning means which would cause it to further reduce either the overall costs or the costs payable by any one of the Respondents.

208. The Tribunal went on to consider how the overall costs of £28,000 should be apportioned between the parties and firstly considered the position of the Third Respondent. The Tribunal had made an Order against her under s43 of the Solicitors Act 1974 but noted that such an order was regulatory rather than punitive in nature. It was not apparent that any significant part of the costs arose from the conduct of the Third Respondent; the investigation and proceedings would have been required whether the Third Respondent were involved or not. Further, the Tribunal had to consider the degree of the Third Respondent's culpability. The First and Second Respondents had sought to blame the Third Respondent for their defaults and breaches. As set out more fully in the section on Sanction, the Tribunal did not accept that the Third Respondent was responsible for the SAR breaches. Whilst it was right to make the s43 Order to control the Third Respondent's future employment in the legal profession, that did not mean that she had caused the breaches of the SAR. Indeed, it had been the First Respondent who had been running the Firm and had been responsible for all of the breaches, yet had sought to blame a junior member of staff. In all of the circumstances, it would not be proportionate to order the Third Respondent to pay any of the costs of these proceedings.

209. The Tribunal considered whether to make a "joint and several" order, which it had been asked to do both by the Applicant and by the First and Second Respondents' solicitor. However, the Tribunal was not satisfied that such an order would meet the justice of the case. The Second Respondent should not be faced with having to bear all of the costs if the First Respondent were unable to meet them. The Tribunal was satisfied that to reflect properly the different degrees of culpability of the First and Second Respondents it was appropriate to order each of them to pay part of the costs.

210. The First Respondent's culpability was clearly greater than that of the Second Respondent. Nevertheless, the Second Respondent was responsible as a principal of the Firm for the SAR breaches. The Tribunal determined that, given neither of these Respondents had submitted their means should be considered and their respective

culpability, it was appropriate to order the First Respondent to pay costs of £22,000 and the Second Respondent to pay costs of £6,000.

Statement of Full Order

211. The Tribunal Ordered that the First Respondent, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,000.00.

212. The Tribunal Ordered that the Second Respondent, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,000.00.

213. The Tribunal Ordered that as from 30th day of January 2013 except in accordance with Law Society permission:-
(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Kathleen Chadwick;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Kathleen Chadwick;
(iii) no recognised body shall employ or remunerate the said Kathleen Chadwick;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Kathleen Chadwick in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Kathleen Chadwick to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Kathleen Chadwick to have an interest in the body;

Dated this 25th day of February 2013
On behalf of the Tribunal

A. Ghosh
Chairman