SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11081-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

[NAME REDACTED]
(Former Solicitor) — First Respondent

and

JOHN DOWDESWELL
(Solicitor's Clerk) — Second Respondent

Before:

Ms A. Banks (in the chair)
Mr L Gilford
Mr P. Wyatt

Date of Hearing: 16th April 2013

Daniel Purcell, solicitor, of Capsticks LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

Mr Sunil Jaswal, solicitor, of Jerome Solicitors, Jerome Chambers, 30a Bradford Street, Walsall WS1 1PN for the First Respondent, who was not present.

Mr John Dowdeswell, the Second Respondent, was present and represented himself.

JUDGMENT

Allegations

1. The allegations against the First Respondent were that, whilst practising as a partner and the sole equity partner of Edmunds & Co Solicitors she:

1.1 Acted in breach of Rules 1.04 and 1.05 of the Solicitors Code of Conduct 2007, and, where such conduct pre-dated 1 July 2007, Rules 1(c) and 1(e) of the Solicitors' Practice Rules 1990 in that, when supervising an unadmitted employee in the conduct of property transactions, she failed to cause material facts to be reported to lender clients;

1.2 Acted in breach of Rules 1.04, 1.05 and 5.01(1)(a) of the Solicitors Code of Conduct 2007 and, where such conduct pre-dated 1 July 2007, Rules 1(c) and 1(e) and 13(1) of the Solicitors Practice Rules 1990, in that she failed to provide adequate or appropriate supervision of an unadmitted employee;

2. The allegation against the Second Respondent, John Dowdeswell, unadmitted, was that he, while working as a Conveyancing Manager at Edmunds & Co Solicitors, acted in breach of instructions set out at clause 5.9 of Part 1 of the Council of Mortgage Lenders Handbook ("the CML Handbook") in that he failed to report material facts to lender clients.

Documents

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

Applicant:

- Application dated 24 October 2012;
- Rule 5 Statement, with exhibit s, dated 24 October 2012;
- Copy letters from Applicant to Second Respondent dated 27 November, 28 November and 16 December 2012;
- Copy letters from Applicant to Second Respondent dated 22 January and 1 March 2013;
- Bundle of correspondence from the First Respondent's solicitors dated 19 December 2012 to 27 March 2013;
- Emails between Second Respondent and Applicant 5 and 26 March 2013;
- Schedule of costs dated 24 March 2013.

First Respondent:

- Statement, with exhibits, dated 11 April 2013.

Second Respondent:

- Copy letter Second Respondent to Tribunal/Applicant dated 11 November 2012, with supporting documents.

Preliminary Matter - Proceeding in the absence of the First Respondent

4. The scheduled start time of the hearing was 10am, by which time the Applicant and Second Respondent were present at the Tribunal. The solicitor for the First Respondent was expected to attend but was not present and nor had any messages been relayed to the Tribunal office concerning any delay. The Clerk asked Mr Purcell to make some enquiries. It was not possible to contact the First Respondent's solicitor to ascertain an expected arrival time so the Tribunal decided to begin the hearing to consider whether to proceed in the absence of the First Respondent and her representative. The hearing began at approximately 10.23am.

5. Mr Purcell confirmed to the Tribunal that the Second Respondent was present and represented himself but the solicitor for the First Respondent was not present and his expected arrival time was not known. In his absence, the Tribunal was invited to begin to hear the case; the First Respondent's solicitor could make appropriate representations if he arrived in time to do so.

6. Mr Purcell handed to the Tribunal a small bundle of correspondence from the First Respondent's solicitors. In a letter dated 19 December 2012 it was indicated that the First Respondent did not oppose the making of an Order prohibiting her restoration to the Roll of Solicitors without the permission of the Tribunal. In a letter of 27 March 2013 it was stated that the First Respondent admitted the allegations made against her. In response to a question from the Tribunal, Mr Purcell stated that it had been an error by the SRA which had allowed the First Respondent to be removed from the Roll whilst the investigation and proceedings were pending; normally, a solicitor could not be removed from the Roll whilst any allegations were under investigation.

7. The Tribunal was satisfied that the First Respondent had been served with the proceedings, was aware of the hearing date and had made admissions. There was only one possible order which could be made against the First Respondent and the Tribunal would consider in any event the information on financial means the First Respondent had submitted prior to the hearing when considering costs. The Tribunal was satisfied that it was reasonable and proportionate to proceed with the hearing.

8. The First Respondent's solicitor arrived at about 10.50am, shortly after the Second Respondent began to give evidence, at which point the Chair recapped on the point the proceedings had reached i.e. that the Applicant had presented the case for the prosecution and the Second Respondent was beginning his defence. The Chair confirmed that Mr Jaswal would have the opportunity to make submissions after the Second Respondent had concluded his case.

Factual Background

9. The First Respondent was born in 1945 and was admitted to the Roll of Solicitors in 1998. Her name had been removed voluntarily from the Roll in 2011. The Second Respondent was an unadmitted person.

10. At all material times the First Respondent was the sole equity partner in Edmunds & Co Solicitors at 64, Britannia Way, Lichfield, Staffordshire WS14 9UY ("the Firm").

The Firm had ceased trading. In July 2011 the First Respondent was declared bankrupt and the bankruptcy terminated in July 2012.

11. At all material times the Second Respondent was engaged by the Firm to undertake conveyancing work. The terms of his engagement to undertake such work were disputed.

12. On 18 May 2010 an investigation into the Firm was commenced by an Investigation Officer ("IO") of the SRA. As a result of that investigation a forensic investigation report dated 12 January 2011 was prepared ("the FI Report"). The Applicant relied on the FI Report in the proceedings. The FI Report dealt with a number of matters, but the allegations against the First and Second Respondent arose from two specific conveyancing transactions.

Plot 9, 48 SG

13. In or around September 2007 the Firm was instructed by Mr and Mrs H to act on their behalf in the purchase of a property referred to as Plot 9, 48 SG. On 21 September 2007 a client care letter was sent to Mr and Mrs H concerning this matter; the letter was in the name of the Second Respondent. The letter made it clear that the Second Respondent would deal with the matter, stated that he was a Licensed Conveyancer and that he reported directly to the partner, the First Respondent. Although there was no letter of instruction found on the file from the mortgage lender, DB Mortgages, there was a mortgage offer dated 1 October 2007 which referred to instructing the Firm. The Applicant asserted that the instructions from DB Mortgages were given in accordance with the CML Handbook. The property price stated in the mortgage offer was £168,000. The Certificate of Title, signed by the First Respondent on 22 October 2007 also stated the price was £168,000.

14. The client ledger in this matter showed that on 30 October 2007 £7,156 was received from "Piper Homes". On 31 October 2007, the mortgage advance of £151,200 was received from DB Mortgages and on 9 November 2007 the sum of £12,608.50 was received from "Morris". No payments were received into client account from Mr and Mrs H. On 9 November 2007 the sum of £168,334.50 was paid to the vendor's solicitors.

15. The Lease of the property showed that Mr and Mrs H were to be granted a lease by a company, Stamford, and referred to a premium of £168,000. However, in the Demise section of the Lease it was stated that £131,930 would be paid to Stamford and £26,070 to Gemini Investment Services Limited ("Gemini"). The Firm's file included a copy of "An Agreement relating to a Sub-sale" dated 7 November 2007. The parties were Gemini and Mr and Mrs H. The Agreement was signed by Gemini, but not Mr and Mrs H and was annotated "Formula B" and was initialled "JD". The Land Registry entry concerning this transaction did not record a sub-sale. Under the terms of the Agreement, Gemini agreed to sell the property "under the terms of the lease" to Mr and Mrs H for £168,000.

16. The Mr Morris who had contributed £12,608.50 to the purchase price was connected to Gemini in that Mr Morris was a director or otherwise a controller of Gemini.

17. In a letter from the Firm to Gemini dated 3 December 2007 which bore the Second Respondent's reference, related to this property and began, "Dear Shellie" it was stated:

> "I assure you that unless this matter is dealt with in the next couple of days, I will not act on any other purchase on behalf of Gemini. After all we have been through, I cannot honestly not believe (sic) that I am having to write again on this type of transaction".

18. The Applicant contended that there was no evidence that the lender, DB Mortgages, as informed of the following facts:

- The existence of the Agreement for a sub-sale;
- The sellers (Gemini) had not owned 48 SG for at least 6 months prior to completion;
- The funding of the deposit on 48 SG and disbursements in relation to the purchase was received from third parties (Morris and Piper Homes) and not from Mr and Mrs H;
- Part of the purchase price was to be paid to a third party, not the vendor.

19. In a letter of 17 February 2011, Rosling King, solicitors for DB Mortgages asserted that DB Mortgages had not been informed of the sub-sale, save that they were provided with the front page of a draft contract, without explanation. In a letter from the Firm's solicitors to Rosling King dated 12 November 2010, referred to in the letter of 17 February 2011, it was noted that the Firm admitted that it did not inform DB Mortgages regarding the origins of the deposits payable.

<u>Apartment 7, CG</u>

20. In or around January 2007, the Firm was instructed by Mr and Mrs H (being the same individuals referred to in relation to the Plot 9, 48 SG matter) to act on their behalf in the purchase of property referred to as Apartment 7, CG. A client care letter from the Firm to Mr and Mrs H dated 11 January 2007 was in the Second Respondent's name and described him as a Licensed Conveyancer. It further stated that the Second Respondent reported directly to the partner, the First Respondent, who was responsible for his supervision.

21. A letter of instruction from DB Mortgages to the Firm dated 1 October 2007 incorporated the terms of the CML Handbook. The mortgage offer recorded a loan of £167,400 plus fees of £882 and a purchase price of £186,000.

22. On 1 October 2007 the Second Respondent signed a Certificate of Title incorporating the requirements of Appendix 6(3) of the SPR, stating that the price of the property was £186,000.

23. A Lease for 7 CG dated 3 October 2007 recorded that the premium payable was £186,000 and that Mr and Mrs H were to acquire the property by grant of the lease from the developer, Chase Homes (Eastern) Limited ("Chase"). The lease also showed Gynsill Close Management Company Limited ("Gynsill") and Gemini as

parties. Gynsill was described as the management company in the Lease and Gemini was referred to as the sub-transferor. Clause 2 of the Lease provided that on completion £154,380 was to be paid to Chase by Mr and Mrs H and the sum of £31,620 was to be paid by Mr and Mrs H to Gemini.

24. A copy sub-sale agreement dated 3 October 2007 provided that Gemini agreed to sell the Lease of 7 CG to Mr and Mrs H for the purchase price of £185,000. It further appeared from the sub-sale agreement that Gemini agreed to purchase 7 CG from Chase and then effect a sub-sale to Mr and Mrs H. The agreement was signed by the seller but not the buyer, although the Firm's file also included an incomplete version of the agreement signed by the buyer.

25. The Firm's client ledger showed that on 2 October 2007 the sum of £22,823.62 was received in relation to this transaction from "Piper Homes". The ledger also recorded the receipt of the mortgage advance of £167,400 from DB mortgages on 3 October 2007 and subsequent transfer out of the sum of £187,413.62 to James Pearce & Co, acting for Chase. The ledger also showed a broker's fee of £350 paid on 4 October 2007, payment of Stamp Duty in the sum of £1,860 on 22 October 2007 and the payment of a fee to the Land Registry and the Firm's costs on 10 December 2007 and 30 May 2008 respectively. The client account ledger did not show any contribution towards the purchase price by Mr and/or Mrs H.

26. There was no evidence on the Firm's file that the lender client, DB Mortgages, had been informed of the following facts:

- The existence of an agreement for a sub-sale;
- The funding for the deposit on 7 CG was from a third party, Piper Homes, not from the purchasers Mr and/or Mrs H;
- Part of the purchase price was to be paid to a third party other than the vendor.

General

27. Notification to lenders of material facts was required under the terms of the CML Handbook. Material facts were stated to include the provision of the deposit or other funds by a party other than the purchaser(s) and the existence of a sub-sale, together with any other matters which might affect the decision to lend or the terms of lending DB Mortgages' solicitors, Rosling King, asserted on their behalf in a letter of 17 February 2011 to the Firm's solicitors that DB Mortgages asserted that material information had not been provided to the lender by the Firm and stated that this had been admitted by the Firm in relation to the source of the deposits.

28. The First Respondent replied to the SRA's letter of 5 July 2011 by letter of 14 July 2011. The First Respondent told the SRA that she had investigated certain aspects of the Second Respondent's conduct in relation to mortgage lenders and considered that his conduct was, inter alia, unprofessional. The First Respondent went on to state that she was,"...the unfortunate and unwitting victim of circumstances which were not brought about by (her) but which have conspired to have a devastating effect upon...(her) professional and personal life."

29. In response to the SRA's letter of 9 November 2011, the Second Respondent submitted that he,"...always believed that the Lenders were fully aware of the transaction and that in particular they were aware that the matter was to be a sub-sale and that a gifted deposit was being granted to the buyer". The Second Respondent stated that he believed that the Firm would have sent the lenders information relating to, "...the identity of the initial buyer and the initial consideration and any discounts or incentives being given (to the buyer)". The Second Respondent further stated that he believed that the Firm "sent this information to the lender, although I do not have access to the files to confirm" and that he "supplied information to the lenders by means of telephone calls and letters as to information I believed they did not know.

Witnesses

30. The Second Respondent, who had not made a witness statement, gave oral evidence and was cross-examined by Mr Purcell for the Applicant. There was no cross-examination by Mr Jaswal.

Findings of Fact and Law

31. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

32. **Allegation 1.1: Acted in breach of Rules 1.04 and 1.05 of the Solicitors Code of Conduct 2007, and, where such conduct pre-dated 1 July 2007, Rules 1(c) and 1(e) of the Solicitors' Practice Rules 1990 in that, when supervising an unadmitted employee in the conduct of property transactions, she failed to cause material facts to be reported to lender clients.**

32.1 This allegation, made against the First Respondent, was admitted by her. This was confirmed during the hearing by her solicitor, Mr Jaswal.

32.2 It was clear that the First Respondent had had the responsibility to supervise the Second Respondent. At the material time, she had been the sole equity partner of the Firm. There was no suggestion at any time that anyone else was responsible for supervising the Second Respondent and the client care letters sent to Mr and Mrs H in respect of both the Plot 9, SG and 7 CG matters showed that the matters were to be conducted by the Second Respondent under the First Respondent's supervision. It was also established on the facts of the case that in respect of the two transactions referred to in the proceedings, material facts had not been reported to lender clients.

32.3 In all of the circumstances of the case, the First Respondent's failure to ensure that the Second Respondent disclosed material facts was in breach of her duties to act in the best interests of clients and provide a good standard of service. Accordingly, the allegation was proved on the facts and on the admission to the highest standard.

33. **Allegation 1.2: Acted in breach of Rules 1.04, 1.05 and 5.01(1)(a) of the Solicitors Code of Conduct 2007 and, where such conduct pre-dated 1 July 2007, Rules 1(c)**

and 1(e) and 13(1) of the Solicitors Practice Rules 1990, in that she failed to provide adequate or appropriate supervision of an unadmitted employee.

33.1 This allegation was admitted by the First Respondent and the admission was confirmed during the hearing by her solicitor, Mr Jaswal.

33.2 The allegation arose from the same facts as in allegation 1.1. The failure to provide adequate or appropriate supervision of the unadmitted employee, the Second Respondent, had contributed to the failure to inform lender clients of material facts. In all of the circumstances, the First Respondent's failure to supervise the Second Respondent meant that she had failed to act in the best interests of clients, had failed to provide a good standard of service and had failed to manage the Firm as she should. Accordingly, the allegation was proved to the highest standard on the facts and on the admission.

34. **Allegation 2: The allegation against the Second Respondent, John Dowdeswell, unadmitted, was that he, while working as a Conveyancing Manager at Edmunds & Co Solicitors, acted in breach of instructions set out at clause 5.9 of Part 1 of the Council of Mortgage Lenders Handbook ("the CML Handbook") in that he failed to report material facts to lender clients.**

34.1 The Second Respondent denied the allegation but in the course of his oral evidence made an admission.

34.2 The Applicant's case was brought in relation to the two transactions set out at paragraphs 13 to 27 above. The Second Respondent did not challenge most of the facts set out, but asserted that the lenders had been informed of material matters by the Firm.

34.3 In the course of his oral evidence, the Second Respondent raised a number of matters relating to other transactions or the conduct of others within the Firm. Whilst the Tribunal noted that these points had been raised, it disregarded them as they were not probative of the matters in issue in this case.

34.4 The Second Respondent told the Tribunal in evidence that he had not been a "conveyancing manager" at the Firm, as stated in the Rule 5 Statement. He told the Tribunal that he worked on a self-employed basis and was paid on the basis of the hours he worked for the Firm. The Second Respondent told the Tribunal that the files in issue were files of the Firm and that he did not have the day to day conduct of them. Under cross-examination, the Second Respondent told the Tribunal that he attended the Firm's office most days, that he had signed the client care letters to Mr and Mrs H, that the letter to Gemini referred to at paragraph 18 above and other correspondence had been in his name. However, he also told the Tribunal that whilst his name was given on correspondence as a point of contact, he did not regard the files as being his files as others might deal with the file as well. The Second Respondent had told the Tribunal that the Firm was the only firm for which he worked at the relevant time. He further agreed that his name had appeared on the Firm's letter heading, as "J. Dowdeswell (Licensed Conveyancer)". This was seen in particular on a letter to Gemini dated 3 December 2007, which named only two other people, being the First Respondent and another.

34.5 Whatever the contractual relationship between the Firm and the Second Respondent had been, the Tribunal was satisfied that he worked exclusively for the Firm in the relevant period. The Tribunal was also satisfied, on the Second Respondent's own evidence, that at the relevant time he had had nearly 30 years experience in law, in particular conveyancing. Whether the Second Respondent's job title was "conveyancing manager" or not was immaterial as the Tribunal was satisfied on the evidence presented, including that of the Second Respondent, that he was undertaking a role of equivalent responsibility and scope. There was no doubt that he worked as a senior non-admitted fee-earner in conveyancing. Accordingly, the Tribunal did not accept the Second Respondent's challenge to this part of the Applicant's case.

34.6 The Second Respondent told the Tribunal that the work involving Gemini had been work generated by others in the Firm and not by him. He told the Tribunal that he believed that the arrangements between Gemini, the developers and the lenders had been reported to the lender clients. With hindsight, he accepted that he should have informed the lenders of certain material facts, but had been led to believe that such matters had already been reported before he became involved in either of the files. Whilst he did not state who had informed him, the Second Respondent told the Tribunal that he had been informed that the lender was aware deposits were provided via Gemini or others. The Second Respondent admitted that he should have "gone into more detail", as he put it. He told the Tribunal that he thought he would have sent more than the front sheet of the sub-sale agreement on Plot 9, 48 SG, but noted that the copy fax of 15 October 2007 to DB Mortgages, which bore his reference, stated simply, "...we enclose copy of the front page of the agreement and copies of the plans referred to therein". The Second Respondent accepted in cross examination that, with the benefit of hindsight, the lenders should have been informed of the material facts set out above. His explanation for not doing so was that he believed someone else had informed the lenders, for example about the deposits being paid by third parties.

34.7 The Tribunal was satisfied to the higher standard that in relation to the two transactions described above, the Second Respondent should have informed the lender client that:

- There were sub-sale agreements in both transactions;
- The sellers (Gemini) had not owned 48 SG for at least 6 months prior to completion;
- The funding of the deposits and disbursements in relation to the purchases was received from third parties (Morris and Piper Homes) and not from Mr and Mrs H;
- Part of the purchase price was to be paid to a third party, not the vendor.

34.8 The Tribunal was further satisfied that the Second Respondent had not informed the lenders of the relevant facts himself and that no-one else had done so. It was not good enough for the Second Respondent to say he had assumed that others had informed the lenders, without taking any steps either to check this or inform the lenders, in accordance with his clear duties under the CML Handbook. Indeed, he had acknowledged in the course of his oral evidence that he should have taken more steps to inform his lender clients. The requirements of the CML Handbook were set out to

protect lender clients and compliance with those requirements was important to the proper system of conveyancing. The Second Respondent had acted in breach of the instructions given by the lenders. He was an experienced conveyancer, who must have known the requirements very well. The Tribunal was satisfied that the allegation had been proved to the highest standard.

Previous Disciplinary Matters

34.9 There were no previous disciplinary matters recorded against either Respondent.

Mitigation

First Respondent

35. Mr Jaswal told the Tribunal that the First Respondent meant no disrespect to the Tribunal by her non-attendance. The First Respondent was recovering from major surgery and was in a fragile physical state.

36. The Tribunal was told that the First Respondent had a background in travel law litigation. She had taken over the Firm in 2007 as the sole equity partner, the previous partner having left the Firm because of ill-health. The Second Respondent had been a senior licensed conveyancer at that time whereas the First Respondent was not familiar with conveyancing. The First Respondent's position was that the Second Respondent had created a smoke-screen or otherwise hidden matters from her. As the sole equity partner, the First Respondent accepted that she had been responsible for supervising the Second Respondent. The First Respondent had operated an "open door" policy, and reviewed problem files and complaints. She accepted that her approach had not been as thorough as it should have been, for example she did not carry out random file reviews of the Second Respondent's work. The First Respondent's Firm had been a successful high volume conveyancing practice. The Tribunal was told that the only unsupervised files were those dealt with by the Second Respondent and she would assert that he had hidden matters from her.

37. The Tribunal was told that the matters leading to these proceedings had caused the First Respondent considerable personal sadness and professional embarrassment. She had always worked hard in her clients' best interests and the wrongdoing in question was not of her own making. The SRA had not asserted that the First Respondent had been dishonest.

38. In addition to the oral mitigation, the Tribunal read the First Respondent's statement dated 11 April 2013 and noted the financial and medical evidence submitted with that statement.

Second Respondent

39. The Second Respondent had told the Tribunal in the course of his evidence that he had been self-employed, not employed by the Firm. He had also told the Tribunal that the transactions involving Gemini had been introduced to the Firm by others, not by him, and that he had understood that the lenders were aware of the true nature of the transactions. The Second Respondent had also referred the Tribunal to a letter he

had written to the Tribunal on 11 November 2012 in which he had asserted that the proceedings against him arose from malicious behaviour by others.

40. The Second Respondent submitted that making a s 43 Order against him would be unjust. He told the Tribunal that he had no intention of going into management of a law firm and that to restrict his employment would be unfair given that there had been no financial wrongdoing and he had not made any financial gain from his actions. He had accepted, in hindsight, that he should have informed the lender clients of material facts but did not believe it was necessary to restrict his employment.

41. The Applicant wished to challenge the Second Respondent's assertion that he had no intention of being involved in the management of any law firm. The Second Respondent, under oath, was questioned by Mr Purcell. It was put to the Second Respondent that he was the Practice Manager at C& G Solicitors in Wolverhampton. The Second Respondent told the Tribunal that he worked for that firm, on a self-employed basis, as a conveyancer but did not have a management role.

Sanction

42. The Tribunal had regard to its Guidance Note on Sanctions (August 2012). However, in the particular circumstances of this case there was only one possible order which could be made in respect of each Respondent and the Tribunal simply had to consider whether it was appropriate to make that order.

First Respondent

43. The First Respondent had been removed from the Roll voluntarily before these proceedings had been determined. This should not have happened, and occurred because of an administrative error by the SRA. The only possible sanction available to the Tribunal in this situation was to make an order under s47(2)(g) of the Solicitors Act 1974 that the First Respondent should not be restored to the Roll except by order of the Tribunal.

44. The First Respondent did not oppose the making of such an Order. The Tribunal noted that the admitted and proved allegations related to failure to supervise an unadmitted person and the failure to provide material information to a lender client. Whilst not in themselves at the most serious end of the spectrum of possible breaches of duty, the circumstances of the case were such that it was reasonable and proportionate to make the Order sought by the Applicant. If the First Respondent were to apply for restoration, the Tribunal hearing such an application would take into account the present findings but would not be bound by any indication given by this division.

Second Respondent

45. The Tribunal noted that a s43 Order was not punitive in nature, but merely provided a mechanism for controlling the employment of unadmitted persons where such control was warranted. The Tribunal took into account the representations made by the Second Respondent. However, the Second Respondent's defaults in failing to inform lender clients of material facts in relation to two transactions were sufficient to justify

the making of an order which would regulate his employment, for the protection of the public. The order would not prevent the Second Respondent from working in a legal environment, but would provide that any such employment would require the permission of the Applicant.

46. The Tribunal noted that the Second Respondent currently worked for a firm of solicitors. Whilst the Order would be made on the day of the hearing, the Tribunal indicated to the Applicant that it would not expect any enforcement to take place immediately as the firm for which the Second Respondent worked should be allowed until 30 April 2013 to submit an application for permission to engage him.

Costs

47. The Applicant submitted a claim for costs in the total sum of approximately £30,500. In response to a question from the Tribunal, Mr Purcell reported that the time analysis sheet used in preparing the costs schedule recorded the first work in this matter on 17 May 2010. It was accepted that investigation and other costs in relation to the Firm generally were included in the costs schedule, but it was submitted that it was as a result of the work done that these proceedings had been possible. It was submitted that it had been appropriate to rely on sample transactions in the proceedings although the wider investigation had included other matters. It was submitted that a substantial proportion of the forensic investigation costs ought to be recoverable against the Respondents. It was further submitted that a costs order which was potentially enforceable immediately should be made.

48. On behalf of the First Respondent, it was submitted that no order for costs should be made as the First Respondent lacked the means to pay a costs order. However, the First Respondent accepted that an order that she need not pay costs was unlikely. The Tribunal was told that the First Respondent had been bankrupt from July 2011 until July 2012 and that the trustee in bankruptcy held a charge on her share of her home. The Tribunal noted the ownership arrangements in relation to her home and in particular a trust deed between the First Respondent and her husband dated 30 April 2010. It also noted a schedule of monthly expenditure submitted by the First Respondent. The Tribunal further noted an income payments agreement between the First Respondent and the trustees in bankruptcy. The Tribunal was asked to show leniency to the First Respondent in making any costs order. The schedule of costs was not challenged.

49. The Second Respondent submitted that the majority of work encompassed in the schedule of costs had been incurred from about May 2007 whereas the matters which related to him had only been investigated from about mid-2010. He submitted that most of the costs related to other matters, not the allegations against him.

50. The Second Respondent further submitted that he would struggle to find work if his employment was restricted by the SRA and he asked for leniency. The Second Respondent submitted that he was not financially in the best of health and had debts. In response to questions from the Tribunal, the Second Respondent told the Tribunal that he had an income of about £2,000 per month. He jointly owned a property with his wife, in which he estimated there was total equity of about £100,000, but he had no other savings, investments or other property. His tax and credit card liabilities

were put at about £25,000. The Second Respondent told the Tribunal that he has three children, one of whom is at university whilst the others are of secondary school age.

51. The Tribunal considered carefully the schedule of costs in order to determine the appropriate overall level of costs. Whilst ordering a detailed assessment of costs was always a possibility, the Tribunal considered that it was best placed to assess the reasonable and proper costs of the proceedings, having read the papers and considered the nature of the case.

52. Whilst the Tribunal accepted that an amount of investigation and preparation time had undoubtedly been spent which had not led to any allegations, and that it was proper to investigate such matters, the overall level of costs claimed in this case appeared disproportionate to the issues and complexity of facts actually relied on in the proceedings. In the light of its experience, the Tribunal considered that a more reasonable and proportionate level of costs would be something of the order of £10,000 for the Applicant's solicitors and about £7,500 in respect of the forensic investigation i.e. an overall total of £17,500 (inclusive).

53. Having decided that the appropriate overall level of costs was £17,500 the Tribunal considered what orders, if any, should be made against each Respondent.

54. The Tribunal noted the information given by the First Respondent about her means and considered whether or not this should affect the making of a costs order. The Tribunal noted that the First Respondent had a 20% interest in her home, albeit subject to the trustee in bankruptcy's interest. It further noted that the First Respondent's monthly expenditure, as listed on her schedule, appeared high. Having taken the First Respondent's means into account, the Tribunal determined that it would be reasonable and proportionate to order the First Respondent to pay costs and that it was not necessary to provide for those costs only to be enforceable with the permission of the Tribunal. The Applicant could take into account the First Respondent's means in seeking to pursue costs and could determine, for example, a reasonable payment plan. The Tribunal considered that in this instance, it was reasonable to order the First Respondent to pay half of the overall costs. Whilst the particular defaults alleged had not been carried out by her, the lack of proper supervision had allowed the Second Respondent's breaches on the two occasions detailed in the proceedings. Accordingly, the First Respondent would be ordered to pay the Applicant's costs in the sum of £8,750.

55. The Tribunal noted that the Second Respondent currently had an income and that there was equity in his home. There was no reason to depart from making the usual costs order. In this instance, it was reasonable to order the Second Respondent to pay half of the overall costs which had been assessed. The Second Respondent would be ordered to pay £8,750. Again, the Applicant would be able to take reasonable steps to determine by what means the costs could be paid by the Second Respondent.

Statement of Full Order

56. The Tribunal Ordered that the Respondent, [NAME REDACTED], former solicitor, be prohibited from having her name restored to the Roll of Solicitors except by Order

of the Tribunal and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,750.00

57. The Tribunal Ordered that as from 16 April 2013 except in accordance with Law Society permission:-
(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor John Dowdeswell;
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said John Dowdeswell;
(iii) no recognised body shall employ or remunerate the said John Dowdeswell;
(iv) no manager or employee of a recognised body shall employ or remunerate the said John Dowdeswell in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said John Dowdeswell to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said John Dowdeswell to have an interest in the body;

And the Tribunal further Ordered that the said John Dowdeswell do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,750.00.

Dated this 17th of May 2013
On behalf of the Tribunal

A. Banks
Chairman