SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11083-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[NAME REDACTED] First Respondent

and

KEVIN PEARCE Second Respondent

Before:

Mr. A. Ghosh (in the chair)
Mrs E Stanley
Mrs L. Barnett

Date of Hearing: 30th April 2013

Appearances

Daniel Purcell, Solicitor of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London SW19 4DR for the Applicant

Gary Christianson, Solicitor of The Stables, Radford Lane, Lower Penn, Staffordshire WV3 8JT for the First Respondent who appeared, and for the Second Respondent who did not appear.

JUDGMENT

Allegations

Rule 5 Statement dated 31 October 2012

1. The allegations against the First Respondent, , on behalf of the Solicitors Regulation Authority were as follows:

1.1 that he failed to exercise proper supervision of staff in breach of Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code");

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

Rule 7 Statement dated 27 March 2013

2. The further allegations against the First Respondent as amended with the consent of the Tribunal were that:

2.1 while a partner in James Pearce & Co ("the firm") he caused or allowed instructions to be accepted and work to be undertaken under his supervision which gave rise to a conflict of interest contrary to Rule 3.01 of the Code:

2.2 he acted contrary to:

2.2.1 the Law Society's Mortgage Fraud Practice Note of 18 March 2008, which replaced the "green card" and/or

2.2.2 the Law Society's Mortgage Fraud Practice Note of 15 April 2009 (an updated version of the 18 March 2008 Note); and/or

2.2.3 the Law Society's Anti-Money Laundering Practice Note of February 2008 (and revised version dated October 2009); and/or

2.2.4 the SRA warning Card on Property Fraud dated April 2009 ("the Warning Card")

2.3 Withdrawn

Rule 5 Statement dated 31 October 2012

3. The allegation against the Second Respondent, Kevin Pearce, on behalf of the Solicitors Regulation Authority was that he had, in the opinion of the Law Society, occasioned or been a party to an act or default in relation to a legal practice which involved conduct on his part of such a nature that, in the opinion of the Society, it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in Section 43(1)(A) of the Solicitors Act 1974 as amended by the Legal Services Act 2007, in that he:

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

3.2 compromised or impaired or acted in a way which was likely to compromise or impair his independence, contrary to Rule 1.03 of the Code;

3.3 acted in a position of conflict, contrary to Rule 3 of the Code.

Rule 7 Statement dated 27 March 2013

4. The further allegation against the Second Respondent was, with the consent of the Tribunal:

4.1 Withdrawn

Documents

The Tribunal reviewed all the documents including:

Applicant:

- Rule 5/Rule 8 Statement dated 31 October 2012 with exhibit
- Rule 7 Statement dated 27 March 2013 with exhibit
- Schedule of costs dated 25 April 2013 with appended schedule from Field Fisher Waterhouse LLP dated 23 April 2013

First Respondent:

- Letter from Andrews Estate Agency to James Pearce & Co dated 8 October 2008 with attachments
- Report to the statutory meeting of creditors of James Pearce & Co Ltd
- First Respondent's credit card statement to 22 March 2013
- First Respondent's bank statement to 28 March 2013
- Letter GVA to First Respondent dated 21 March 2013
- Letter Lloyds TSB to First Respondent dated 28 February 2013
- Testimonial

Second Respondent:

- Letter in respect of Job Seekers Allowance to the Second Respondent dated 6 March 2013
- Statement of financial affairs of the Second Respondent
- Letter from the Second Respondent to Mr Christianson undated

Preliminary matters

5. For the Applicant, Mr Purcell applied to withdraw allegation 2.3 against the First Respondent and allegation 4.1 against the Second Respondent which were in identical terms and related to the Solicitors Accounts Rules 1998 ("the SAR"). He informed the Tribunal that Mr Christianson had indicated for the First Respondent and the Second Respondent, that each would admit the remaining allegations brought against them and that the Second Respondent did not object to the Tribunal making an order

against him under section 43. The Tribunal agreed to the withdrawal of allegation 2.3 against the First Respondent and allegation 4.1 against the Second Respondent.

Factual background

6. The First Respondent was born in 1966 admitted in 1995. His name remained on the Roll of Solicitors.

7. At all material times, the First Respondent carried on practice under the style of James Pearce &Co, the trading name of James Pearce & Co. Limited ("the firm") of Great Barr Birmingham.

8. The firm had three branch offices located at Walmley Sutton Coldfield, Ward End Birmingham and Erdington Birmingham.

9. The Second Respondent was an unadmitted employee of the firm and brother of the First Respondent.

10. On 1 February 2010, an Investigation Officer ("IO") of the Applicant attended at the Great Barr office of the firm in order to commence an inspection of the firm's books account and other documentation. The IO's Forensic Investigation ("FI") Report prepared consequent upon the inspection was dated 2 February 2011.

11. The IO noted that during the period 29 October 2008 to 8 March 2010, the firm had acted for the vendors in 26 domestic conveyancing transactions. Each of the transactions had been introduced to the firm by BW Ltd ("BW"). The IO found that the vendors of the properties had entered into Option Agreements to sell their properties to BW.

12. The documentation inspected by the IO indicated that all the matters introduced by BW had been conducted by the Second Respondent.

13. The IO conducted a review of six of the 26 client matter files and exemplified one such transaction in his report.

<u>Mrs DMF sale of 386 W Street</u>

14. The firm acted for Mrs DMF in the sale of her above property which completed on 29 October 2008.

15. A telephone attendance note found on the file indicated that Mrs DMF made contact with the Second Respondent on 25 September 2008. The note recorded:

> "T/I [telephone in] from Mrs [DMF]. She has entered into an Option Agreement. She has been rec (sic) to us by the buyer. She would like us to act, but the buyer is paying her legal fees. She does not want us to do anything yet just put on hold."

16. The firm wrote to Mrs DMF on 6 October 2008, requesting amongst other things, a copy of the Option Agreement and proof of her identity. The letter enclosed the firm's

terms of engagement which confirmed that the transaction was to be conducted by the Second Respondent and that the First Respondent had overall responsibility for the matter. The First Respondent confirmed to the Applicant that the Second Respondent was at all times subject to his supervision.

17. The IO noted that the First Respondent worked at the firm's Walmley branch office and that the Second Respondent worked from the office in Great Barr.

18. The matter file was found to contain an agreement dated 4 October 2008 relating to the sale of property. Amongst other matters, the Particulars to the agreement specified:

- Mrs DMF to be the seller and BW to be the buyer
- a completion date of 20 working days after the date of service of the Option Notice
- An option release fee of £19,500 (the figure having originally read £19,000)
- A price of £45,500 (the figure having originally read £46,000)
- An option fee of £1
- An end date of three calendar months from the date of the agreement
- An option period described as the period from the start date to the end date.

The document found on file did not appear to have been executed by either party.

19. The Particulars further recorded the Respondents' firm as being Mrs DMF's solicitors and that A&R were solicitors for the buyer BW.

20. Clause 4 of the terms of the agreement provided that a seller could only be released from the agreement by service of an Option Release Notice (in a format specified by schedule 2) during the option period. Clause 4 further provided that the seller should pay the buyer the option release fee on service of the notice.

21. A typed letter found on file, dated 5 October 2008 (the typed version reading "October 2008") indicated that Mrs DMF no longer wished to sell her property to BW but proposed instead to sell to Mrs JAS, an individual based in London, at a price of £65,000. The letter stated that Mrs DMF understood that she would:

> "have to pay the Option Release fee to [BW] as per the Option Agreement in the sum of £19,500 [the figure having originally read £19,000] and write to instruct you to settle this directly with them from the sale proceeds."

22. No evidence was found on the matter file which indicated that the firm conducted any enquiry of Mrs DMF as to the circumstances in which, over the weekend of 4 and 5 October 2008, she came to sign the Option Agreement and then immediately gave notice requiring to be released from the agreement having found an alternative purchaser.

23. The file was found to contain a handwritten letter from Mrs DMF dated 7 October 2008, enclosing her birth certificate and other identification documents. Examination of the birth certificate showed that Mrs DMF was born on a date in May 1920 and was therefore 88 years of age at the time of this matter. The letter indicated that Mr PJ

was a point of contact and confirmed that the deeds to the property were held by a firm of solicitors based in Cleethorpes.

24. On 9 October 2008, the firm's employee Ms RH wrote to Mrs DMF acknowledging receipt of her letter of 7 October 2008 and asking her to provide further identification documentation. The letter referred to Mrs DMF's letter of 5 October 2008 and her intention to sell the property to another party within the option period. The letter noted Mrs DMF's understanding that a fee would be payable to BW should the sale complete within the option period and that the fee of £19,500 was to be settled out of the sale proceeds. The letter continued:

> "I wish to advise you that if you did not settle this Option Release fee and the matter was litigated over, it is unlikely that the Option would succeed through Court action. That said, there is never any definitive answer with such litigious matters and the cost of defending such action could prove to be very expensive. If you wish to take further advice in relation to this then please do not hesitate to give either myself or a member of our litigation department a call."

25. Mrs DMF was asked to return a signed copy of the letter to confirm that she wished to proceed to sell within the option period and that she wanted the option release fee to be paid by the firm direct to BW. The duplicate copy letter was endorsed with Mrs DMF's signature and dated 16 October 2008.

26. On 15 October 2008, Mrs DMF wrote to the firm advising that she was content for the firm to deal with her son-in-law PJ on a day-to-day basis.

27. The firm wrote to BW on 27 October 2008, serving notice in relation to the Option Agreement and enclosing an Option Release Form dated 5 October 2008 bearing Mrs DMF's signature.

28. The transaction completed on 29 October 2008. The sale contract showed the purchase price to have been £65,000. The sale contract indicated that RH had conducted the transaction.

29. The client ledger account recorded the following transactions:

- Receipt of £65,599.25 on 29 October 2008, an amount which included £599.25 in respect of the firm's costs and disbursements. The completion funds were received from A&R
- Payment of £45,500 to Mrs DMF on 29 October 2008
- Payment of £19,500 to BW on 29 October 2008
- Transfer of £599.25 to office account on 29 October 2008

A form TR1 found on file recorded the sale consideration at £65,000.

Review of five further transactions

30. The IO conducted a review of a further five of the 26 client matter files. The IO summarised his findings in a table within the FI Report showing the manner in which the transactions progressed and illustrating their notably similar characteristics.

- A&R were referred to in each of the Option Agreements as acting for the buyer, BW, and in each instance they then proceeded to act for the ultimate third-party purchaser.

- There was a striking similarity in the letters by which the firm's clients advised the firm of their intention to sell to purchasers other than BW.

- The firm's letter to clients in respect of the option release fee had been amended for use in the later transactions and the IO annexed an example of one such letter to his report.

Interview 3 March 2010

31. On 3 March 2010, IOs of the Applicant met with Mr J a partner in the firm and the Second Respondent. During the meeting, the Second Respondent confirmed that:

- He had spoken to BW who said they would recommend the firm to potential vendors
- He did not provide clients with the opportunity to instruct solicitors of their own choice
- He did not think that there was any pressure on the vendors to use the firm
- It was not common for purchasers to pay vendors' legal costs; the Second Respondent suggested that it could be part of an incentive;
- He did not know how BW found the vendors to enter into Option Agreements.

32. The Second Respondent informed the IO that he was not aware of how the option release fee was calculated.

33. When referred to a transaction in which the option release fee was £46,500 in respect of a sale price of £120,000, (38.75%), and asked why the client would want to pay that much of the sale proceeds to BW, the Second Respondent replied that he did not know why clients agreed to such amounts.

34. The Second Respondent informed the IO that the firm's letter to clients advising that the Option Agreement might be unenforceable had been sent to all the clients on the matters that he had had conduct of. When asked why he had so advised clients, the Second Respondent said:

> "The more you look at it, you think it won't stand up."

In answer to further questions regarding the enforceability of the Option Agreement, the Second Respondent commented that in his experience he felt that:

> "The figures may be frowned upon in court."

35. When asked whether he had acted in the best interests of clients, the Second Respondent said that he had very regular communication with clients and had spoken to them frankly and honestly. He said that he believed that he had provided them with the information that they needed and it appeared that everyone was happy. He had not received any complaints about these matters.

BW- short term bridging loans

36. The firm was found to have acted for BW in matters relating to short-term bridging loans to BW customers. On 3 March 2010, the Second Respondent informed the IOsthat his first dealings with BW had been in connection with these short-term bridging loans. The IO noted that the firm's relation with BW in these matters had commenced in July 2008 and during the period to February 2012, the firm had acted in 10 such matters.

Final interview 14 January 2011

37. On 14 January 2011, the IO met with Mr J and the First Respondent. The FI Report contained a summary of the interview. During the meeting, the First Respondent expressed his belief that the firm had acted in their clients' best interests in these matters. Stating that the firm's advice was that the clients had an existing contract but that its enforceability was dubious, the First Respondent commented:

> "We thought they may not be valid but we told them "It's your decision.""

He said that some clients then backed out of their sales but added that most instructed the firm to complete the sale.

38. The First Respondent said that the vendors had entered into the Option Agreements before they came to the firm and it was the vendors' decision to take the litigation risk if they breached their contracts; and that it was not the firm's responsibility to investigate the enforceability of the agreements without instructions from the clients.

39. The First Respondent expressed his feeling that the agreements were not right, but on the face of it they were valid. The FI Report recorded that he commented:

> "We could not say "don't do it" because they could have been sued. So we tried to cut a middle road."

40. When asked for his comments on the typed letter from Mrs DMF dated 5 October 2008 and the circumstances of the transaction, the First Respondent said that although he shared the IO's concerns and did not like the scenario, the firm had responded in the most appropriate way by addressing matters in their letter of 9 October 2008 to Mrs DMF. The First Respondent was of the view that the firm's letter of advice to clients was written in terms which could be understood by clients.

41. The First Respondent informed the IO that the Second Respondent had approached him at the outset of these matters and between them they had worked out what to advise clients. Thereafter the Second Respondent had followed the agreed procedure. The First Respondent informed the IO that he had not been involved in the individual matters as each had followed the same procedure or "accepted pattern".

42. By letter dated 24 January 2011, the First Respondent provided the IO with eight of the Second Respondent's telephone attendance notes recording that clients had decided not to sell their properties having previously signed Option Agreements with BW. Following an examination of these documents, the IO noted that the firm had only commenced retainers with two of the eight potential vendors (Mrs B and Mrs C) and in all cases, it appeared to the IO that the potential vendors had decided to withdraw their properties from the BW Option Agreement sale before contacting the firm and in no case was this decision taken after the firm had advised them in writing.

Section 44B Notice

43. On or about 20 January 2012, the Applicant served on the firm a notice pursuant to section 44B of the Solicitors Act 1974 requiring the production of various documents. On or about 5 November 2012, the Applicant served on the firm a second such notice requiring the production of additional documents. Documents were produced by the firm in answer to both notices including the files for 26 client matters undertaken by the firm in which the Second Respondent acted under the supervision of the First Respondent. A schedule ("Schedule 1") was prepared recording key details of the 26 transactions and exhibited to the Rule 7 Statement.

Common features of the transactions

44. The following features were present in the 26 transactions referred to above:

- An Option Agreement was signed by the vendor, prior to the firm's instruction, on terms which were, other than the purchase price and option release fee, very similar or identical
- The Option Agreement named the firm as the vendor's solicitors; in 22 of the 26 options transactions, the Option Agreement with the firm as the named solicitor, predated the initial contact between the client and the firm
- The Option Agreement named A&R as BW's solicitor
- A short period of time elapsed between the Option Agreement being signed and the client deciding to sell to an ostensibly unrelated third party
- The clients decided to sell to third parties notwithstanding that this would give rise to a liability to pay an option release fee to BW which could have been avoided by waiting until the expiry of the option period of three months
- The option release fees represented substantial proportions of the purchase prices

45. In 16 of the transactions, the option release fee equated, precisely, to the difference between the sale price under the Option Agreement and the sale price to the third

party, creating no financial benefit to the client in selling to the third party rather than to BW.

46. In the other 10 transactions, the sale price under the Option Agreement and the sale price to the third party were identical; the client receiving a smaller figure by way of sale proceeds after the option release fee was paid, than had the client sold to BW.

47. Instructions were sent to the firm in letters from clients, which were very similar or identical in wording and format on key issues, including the acknowledgement of, and confirmation of willingness to pay, option release fees.

48. In 22 of the transactions, letters of advice were sent by the firm to the client under the Second Respondent's signature purporting to advise on the Option Agreements by use of the following wording:

> "However, I wish to advise you that if you did not settle this Option Release fee and the matter were litigated over, it is unlikely that the Option would succeed through court action. That said, there is never any definitive answer with such litigious matters and the cost of defending such action could prove to be very expensive. If you wish to take further advice in relation to this then please do not hesitate to give either myself or a member of our litigation department a call."

49. In 25 of the transactions, an option release fee was paid, ranging from £15,000 to £65,000 and from 16% of the sale price to 43% of the final sale price.

50. In all the transactions, apparently involving unrelated sellers and buyers, the buyers were all represented by the same firm of solicitors.

51. The series of transactions included instances of the same buyers being involved in more than one transaction; for example, the following transactions on Schedule 1 involved the same, or an ostensibly unrelated buyer, the numbers refer to numbers used in the schedule of the 26 transactions referred to in the FI Report:

- Clients 1, 4, 10 and 16 to buyer JAS
- Client 8 to buyer MI and client 12 to buyer PI
- Client 19 to buyer DS and client 22 to buyer MS
- Clients 15, 21 and 26 to buyer BSM
- Clients 18, 23 and 24 to joint buyers DRM and SM

52. There was, in one matter, evidence of involvement on the part of the buyer with the Option Agreement, in that the copy of the client care letter signed by the client contained a handwritten note stating that a person with the buyer's distinctive name had both copies of the Option Agreement.

53. In one instance, that of transaction number 19, the vendor client claimed not to have signed the Option Agreement, and instructed alternative solicitors; this was the transaction involving client Ms PH described below.

54. In total, the firm caused the sum of £802,441.20 to be paid by clients to BW in respect of 25 transactions pursuant to Option Agreements and in circumstances where BW had paid in total consideration of £25.

55. The Rule 7 Statement recorded by way of example, item 3 on Schedule 1, a transaction in which client Ms VD and Ms AW sold a property to a third party. Instructions were received by the firm from the clients on 16 November 2008 and the clients provided a copy of an Option Agreement in identical terms as in the other transactions referred to, save for the sale price and option release fee being £90,000 and £25,000 respectively.

56. On 10 November 2008, the firm received a letter (containing a mixture of singular and plural pronouns) but signed by both clients, stating:

> "We write to inform you that we no longer wish to sell my house to [BW] as I have secured a sale to [MGW, address stated] Buyer for the higher sum of £90,000.
>
> I understand that I will pay the Option Release Fee to [BW] as per the Option Agreement in the sum of £25,000 and write to instruct you to settle this directly with them from the sale proceeds."

57. On 12 November 2008, the Second Respondent wrote to the clients providing client information and including the wording advising on the enforceability of the Option Release Fee recited above.

58. The firm's ledger for the matter recorded that on 10 December 2008, the firm received sale proceeds and legal fees from A&R in the sum of £90,654. On 11 December payment was made to BW for £25,000 in respect of the option release fee. On the same day the firm redeemed the mortgage against the property in the sum of £65,000. The remaining balance was transferred to office account in respect of the firm's fees and disbursements and the clients received no monies by way of sale proceeds.

Payment of Option Release Fee after expiry of Option Agreement

Mr and Mrs JDS

59. In the transaction identified as number 5 (Mr and Mrs JDS) on Schedule 1, the Option Agreement dated 23 December 2008 had an end date of "Three Calendar Months from the date hereof" so that the option expired on 23 March 2009. There was an option release fee of £52,500. The Option Agreement provided in the Termination Clause that:

> "This Agreement will end if the Buyer has not received a valid Option Notice by 4 pm on the End Date."

60. Completion of the sale took place on 3 April 2009. The file included a letter to the clients Mr and Mrs JDS dated 11 February 2009 from the Second Respondent, stating:

> "I thank you for your recent letter and I note that it is your intention to dispose of the property to another party within the Option period. I note that you understand there to be a fee paid to [BW] should the sale complete within the period of the Option and this is in the sum of £52,500.00 which you have instructed me to settle from the sale proceeds, which I am happy to do."

The file contained no record of any advice on the consequences of completion occurring after the expiry of the Option Agreement and the apparent avoidance by the client of liability for an option release fee.

61. The ledger recorded that a payment was made by way of option release fee of £23,000 from the proceeds of sale despite the previous advice to the effect that it would only be payable on completion within the period of the option.

MS PW

62. Similarly in the transaction identified as number 11 (Ms PW) on Schedule 1, the Option Agreement was dated 1 June 2009 with an end date of "Three Calendar Months from the date hereof", an option release fee of £23,000 and a purchase price of £95,000 should BW elect to exercise the option. The Termination Clause of the Option Agreement had the same statement about expiry as that for Mr and Mrs JDS above. Completion did not take place until 15 September 2009.

63. The client file for transaction number 11 contained the pro-forma letter of instruction dated 3 June 2009, to which the Second Respondent replied on 4 June 2009 incorrectly stating the purchase price in the Option Agreement to be £80,000. The Second Respondent's letter contained no advice regarding the Option Agreement. The Second Respondent wrote again to the client on 12 June 2009 stating:

> "Further to my letter or 4 June 2009 I understand that you have now agreed to sell your property to an alternative purchaser rather than proceed with the Option Agreement that you have previously entered into, please confirm that this is your intention and that you understand the potential risks and forfeitures involved in doing so."

The letter was returned signed 27 July 2009.

64. On 7 September 2009 and after the Option Agreement had expired, A&R wrote to the Second Respondent to enquire as to whether the client could complete that Friday. The Second Respondent confirmed that the client was ready to complete and a handwritten telephone attendance note indicated that the Second Respondent spoke to the client who confirmed she was happy to complete and was happy with the final statement. There was no indication that the Second Respondent advised the client that the option period had already lapsed.

65. Whilst the option had expired on 1 September 2009, exchange and completion took place on 15 September 2009 and the ledger recorded that a payment was made the same day to BW by way of Option Release Fee from the proceeds of sale.

Payment of Option Release Fee in the absence of a contract for sale or signed Option Agreement

Ms PH

66. Item 19 on Schedule 1 referred to a transaction dealt with by the firm in which client Ms PH, instructed the firm to sell her property but had not signed an Option Agreement, contract for sale or TR1 form.

67. In her statement dated 12 March 2013, PH explained that around October 2009 she decided to sell her home to a Mr S for £135,000, having met S after she responded to an advertisement he placed in the local newspaper. PH accepted S's offer to buy her home on the basis that the mortgage would be paid off and she would receive around £70,000 on completion in respect of the balance of sale proceeds. PH stated that she had been made redundant and was not in very good health.

68. S contacted the firm on PH's behalf and provided documents for her to sign, to be sent to the firm including the pro-forma initial client's letter of instruction to the firm. PH confirmed that nearly all communications with the firm were made by or to S and on only one occasion did she speak with anyone at the firm as recorded in a telephone attendance note of that call made on 26 November 2009.

69. PH further confirmed in her statement that she did not make initial contact with the Second Respondent, contrary to what the telephone attendance note of 12 October 2009 suggested.

70. After PH had agreed to instruct the firm, S presented her with an Option Agreement, however she refused to sign it. A copy of the Option Agreement appeared on PH's client file held by the firm and obtained by the Applicant pursuant to the second section 44B Notice. The Option Agreement set out a sale price of £64,000 with an option release fee of £71,000. The Option Agreement on file was unsigned.

71. PH was uncomfortable with how the transaction was progressing, recognising that she would obtain little, if anything, from the proceeds of sale were she to pay the option release fee. She therefore called the firm on 26 November 2009 to express her concerns and then instructed other solicitors, H Solicitors, by whom the sale was finally completed. PH wrote to the firm on 8 December 2009 to request that her file be sent to H Solicitors.

72. PH was adamant that she did not sign a TR1 form to transfer the title of her property to a Mrs S nor did she sign a contract for sale or any Option Agreement. A copy of her client file obtained by the Applicant did not contain a contract for sale, in draft or otherwise.

73. The firm's ledger for the matter recorded that on 23 October 2009:

- the firm received sale proceeds and legal fees from A&R in the sum of £135,750
- the firm redeemed the mortgage against the property in the sum of £59,070.84

- payment was made to BW for £71,000 in respect of "OL fee"
- payment was made to PH in the sum of £4,929.16

The remaining balance was transferred to office account in respect of the firm's fees and disbursements.

74. The Statement of Accounts prepared for PH's account also indicated a payment was made to BW for an option release fee in the sum of £71,000.

75. On 15 February 2010, H Solicitors wrote to the firm highlighting concern that fraudulent activity might have occurred and the matter had been referred to the police.

76. The sale completed through H Solicitors and eventually title was transferred properly to Mrs S. PH received the balance of sale proceeds in the region of £65,000 to £70,000. She paid no option release fee.

Witnesses

77. There were no witnesses

Findings of fact and law

78. 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.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

79. **Allegation 1: The allegations against the First Respondent, , on behalf of the Solicitors Regulation Authority were as follows:**

Allegation 1.1: that he failed to exercise proper supervision of staff in breach of Rule 5.01 of the Solicitors Code of Conduct 2007 ("the Code");

79.1 For the Applicant, it was submitted that the First Respondent accepted in his letter to the Applicant of 14 February 2011 that:

> "…the process for dealing with these arrangements was in fact designed and authorised by myself and that [the Second Respondent], as Conveyancing Executive was at all times subject to my supervision… as the supervisor I am then responsible for that procedure."

and to the extent that failures were found to have occurred in the conduct client matters referred to in the Rule 5 and Rule 7 Statement, the First Respondent had accepted responsibility for them.

79.2 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegation 1.1 proved on the evidence, indeed it had been admitted.

80. Allegation 1.2 that he failed to act in clients' best interests or to provide a good standard of service to his clients, contrary to Rules 1.04 and 1.05 of the Code;

(The submissions for the Applicant in respect of allegation 1.2 against the First Respondent are also relevant to allegation 3.1 against the Second Respondent below)

80.1 For the Applicant, it was submitted that the transactions described in the Rule 5 and Rule 7 Statements demonstrated a clear pattern of unusual features. In particular, there was a clear pattern of similarities between matters, identical correspondence from unrelated clients, and a large volume of apparently unsolicited recommendations by the counterparty to the clients' Option Agreements. In addition, clients in these matters were consistently incurring liabilities representing substantial proportions of sale proceeds during the currency of Option Agreements. The First Respondent acknowledged that he was concerned about these liabilities in his letter to the Applicant of 14 February 2011. He acknowledged that the Respondents had:

> "a feeling…that the payments are too high in relation to the transactions and that the value for money which the clients receive in relation to these payments, simply doesn't exist…"

Notwithstanding these issues, having been consulted by the Second Respondent at the outset of taking referrals of the Option Agreement matters, the First Respondent failed to cause proper steps to be taken to establish whether the transactions were consistent with clients' best interests. In particular the First Respondent failed to cause clients to be asked as to the circumstances in which the Option Agreements had been entered into, and the reasons why clients had decided to enter into Option Agreements under which substantial liabilities would be incurred in the event of sale to a third party, in order that clients could be advised as to whether, notwithstanding the unusual features (described in the background to this judgment), the transactions were in the clients' best interests. Further the First Respondent failed to ensure clients were advised that, if the Option Agreements were unenforceable, the liability to make payment of the option release fee could be avoided by completion of the transactions after the expiry of the Option Agreements, or to seek clients' express instructions to proceed notwithstanding. Advising in such terms appeared to have been within the contemplation of the First Respondent given the recital in his letter to the Applicant of 14 February 2011, recited in further detail in the Second Respondent's letter of the same date of a matter (Mrs JB) in which the client was advised to wait until the expiry of the option before completing a sale. Further, the First Respondent appeared to accept in his letter of 14 February 2011, that there was an obligation to "advise the clients of their right to challenge these agreements". However, having apparently formed the view that the Option Agreements were "unlikely" to be enforceable, (a view repeated in the letter to the Applicant "we did not feel that this payment should of necessity be made"), the First Respondent failed properly to explain to clients: the basis for this opinion, the basis for the description of the Option Agreement liability as "such litigious matters", the effect of this opinion, if correct, on clients' liability to pay an option release fee and the likely cost of litigation. Mr Purcell took the Tribunal through the case of Ms VD and Ms AW by way of example. He also referred to the case of Mr K as an example of the firm receiving pro-forma instructions from unrelated clients in identical wording and the firm giving back pro-forma advice.

80.2 In the case of the transactions involving payment of the option release fee after expiry of the Option Agreement, no advice appeared to have been given to the clients to the effect that the timing of the sale appeared to have negated any obligation to pay an option release fee, but which was paid in any event. Mr Purcell took the Tribunal through the case of Mr and Mrs JDS and submitted that this was also an example of the firm receiving pro-forma instructions from unrelated clients in identical wording and the firm giving back pro-forma advice. Mr Purcell also went through the case of Ms PW. (Details of both cases are set out in the background to this judgment.)

80.3 It was submitted that by reason of these failures, the First Respondent failed to act in clients' best interests, or failed to cause the firm to act in clients' best interests, and failed to provide a good standard of service, in that he failed to ensure that clients were properly advised on their liability to make payments under the Option Agreements, and so were able to make informed decisions on the making of such payments.

80.4 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegation 1.2 proved on the evidence, indeed it had been admitted.

81. Allegation 2.1: while a partner in James Pearce & Co ("the firm") he [the First Respondent] caused or allowed instructions to be accepted and work to be undertaken under his supervision which gave rise to a conflict of interest contrary to Rule 3.01 of the Code:

(The submissions for the Applicant in respect of allegation 2.1 against the First Respondent are also relevant to allegations 3.2 and 3.3 against the Second Respondent below)

81.1 For the Applicant, Mr Purcell submitted that by letter dated 18 October 2011, the First Respondent produced as an enclosure a list of matters in which the firm had acted for BW in 32 transactions involving bridging finance in the total sum of £3,118,020 in respect of which the firm received fee income, as set out in the First Respondent's letter to the Applicant of 31 January 2012:

> "The income was minimal amounting to £2,982.38 over one and a half years. I enclose ledgers. The firm's turnover at that time was approximately £2 million per annum."

The Respondents were aware that BW were making recommendations to potential clients to instruct the firm, and causing the firm to be recited in Option Agreements as acting for clients prior to any contact between the clients and the firm. The Respondents were therefore in a position where their interests and those of the firm, in continuing to receive instructions and recommendations from BW, came into conflict with the interests of clients who had entered into agreements to make substantial payments to BW but which the Respondents believed to be probably "not enforceable".

81.2 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegation 2.1 proved on the evidence, indeed it had been admitted.

82. Allegation 2.2: he acted contrary to:

Allegation 2.2.1: the Law Society's Mortgage Fraud Practice Note of 18 March 2008, which replaced the "green card" and/or

Allegation 2.2.2: the Law Society's Mortgage Fraud Practice Note of 15 April 2009 (an updated version of the 18 March 2008 Note); and/or

Allegation 2.2.3: the Law Society's Anti-Money Laundering Practice Note of February 2008 (and revised version dated October 2009); and/or

Allegation 2.2.4: the SRA warning Card on Property Fraud dated April 2009 ("the Warning Card")

82.1 For the Applicant, Mr Purcell emphasised that there was no allegation of collusion in fraud by the First Respondent or that he had taken part in fraud or indeed that any fraud had occurred but his actions gave rise to the possibility of fraud on the lenders because the true value of the transactions was disguised. It was submitted that the features of the transactions described in the documents should have alerted the Respondents or either of them to the possibility that these were transactions engaging the guidance recited in allegation 2. In particular they were transactions which gave rise to the possibility of fraud being perpetrated against lenders if funds were being provided to buyers by a third party, by way of loans for deposit or otherwise, which were not being disclosed to lenders, and which were then being returned to the third party by way of the option release fee. As to the detail of the guidance:

- The Warning Card stated that a solicitor must refuse to act if the propriety of the transaction was in doubt and directed solicitors to:

  > "Ensure you verify and question instructions to satisfy yourself that you are not facilitating a dubious transaction".

  It listed some warning signs of property fraud which included "Unusual or suspicious transactions such as transactions controlled or funded by a third party;… parties using the same legal adviser; a request that net sale proceeds be sent to a third party." Solicitors must also:

  > "Be aware that variations of these warning signs exist and fraudsters change their methods. You do not need to act for the lender to become implicated. If you are not satisfied of the propriety of the transaction you should refuse to act."

- The Law Society Mortgage Fraud Practice Note of 18 March 2008 at 2.3.5 also alerted solicitors to the types of fraud that could be committed regarding property transactions, highlighting the common steps involved in large-scale mortgage fraud. That Practice Note applied to transactions carried out on behalf of clients numbered 1 to 8 on Schedule 1. The Note warned solicitors that they might be recruited into the fraud, especially if they had unwittingly assisted previously, or had developed an especially close relationship with other participants in the scheme.

- The Law Society Mortgage Fraud Practice Note of 15 April 2009 applied to transactions carried out on behalf of clients numbered 8 to 26 on Schedule 1. Except as stated otherwise below, the two Law Society Mortgage Fraud Practice Notes contained the same provisions. They set out a non exhaustive list of relevant warning signs of which solicitors should be aware. That list included the following at 3.1:

  > "The client or the property involved is located a long distance from your firm. If bulk long distance instructions are not in your normal work, you may ask why they chose your firm, especially if they are a new client."

  and

  > "There is a County Court judgment against the property."

- In accordance with 4.1 of the Practice Notes, a solicitor should ask questions if unusual instructions were received from the client, if any of the warning signs were present or there were inconsistencies in the retainer. The Practice Notes emphasised that:

  > "Criminal methodologies change constantly, so you should remain alert to transactions that are unusual for a normal residential or commercial conveyance."

- The Law Society's Anti-Money Laundering Notes of February 2008 and October 2009 reiterated the importance of being alert to unusual retainers, urging solicitors to:

  > "Be wary of …unusual patterns of transactions which have no apparent economic purpose".

82.2 It was submitted that most, if not all, of the transactions set out in Schedule 1 involved properties located a long distance from the firm. County Court judgments appeared in the Land Registry entries of the properties of the following clients: client 11 – two charges; client 12, client 16, and client 18 – two charges. Every transaction in which a payment was made to BW involved a substantial proportion of the sale proceeds being sent to a third party. By reason of the volume of instructions being received, the firm and the First and Second Respondents developed an especially close relationship with BW, a party to the Option Agreement. It was submitted that having received signed client care letters and in some instances ostensibly making a telephone call to ascertain the client was happy to complete, neither Respondent took ostensible steps to establish the propriety of the transactions. The transactions followed the same pattern post 26 November 2009 when client PH had expressed her concerns about the sale of her property, but after which the firm accepted a further five new instructions involving payments of an option release fee to BW. In the final transaction, the firm continued to act for client 26 (Mr B and Mrs ME) without questioning the nature of the transaction, despite having received H Solicitors' letter alerting the firm to the potential fraud involved in the sale of client PH's property.

82.3 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegation 2.2.1, 2.2.2, 2.2.3 and 2.2.4 proved on the evidence; indeed it had been admitted.

83. Allegation 3: The allegation against the Second Respondent, Kevin Pearce, on behalf of the Solicitors Regulation Authority was that he had:

Allegation 3.1: failed to act in clients' best interests or to provide a good standard of service to his clients, contrary to Rules 1.04 and 1.05 of the Code;

(See also submissions in respect of allegation 1.2 against the First Respondent above.)

83.1 For the Applicant, it was submitted that the Second Respondent stated in his letter to the Applicant of 14 February 2011 that he had:

> "approximately twelve years of experience in dealing with conveyancing matters…"

The Applicant relied upon the matters set out in the Rule 5 and Rule 7 Statements in respect of the Second Respondent's failure properly to seek information from, and provide advice to clients on the Option Agreements. By way of illustration, the Second Respondent recited in his letter to the Applicant of 14 February 2011 his opinion that the Option Agreements were "probably not enforceable" without explaining the basis for this. Mr Purcell then referred to the case of Mrs DMF, described in the Rule 5 Statement and submitted that the Second Respondent did not, however, indicate that she was advised, during his telephone conversation with her, that by waiting until the expiry of the three month option she could avoid liability for the option release fee. For the same reasons as set out in respect of the First Respondent above, it was submitted that the Second Respondent failed to act in his clients' best interests or to provide a good standard of service.

83.2 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegation 3.1 proved on the evidence indeed it had been admitted.

84. **Allegation 3.2: The Second Respondent compromised or impaired or acted in a way which was likely to compromise or impair his independence, contrary to Rule 1.03 of the Code;**

Allegation 3.3: The Second Respondent acted in a position of conflict, contrary to Rule 3 the Code.

(These allegations were considered together as they arose out the same facts.)

84.1 For the Applicant, Mr Purcell relied on the submissions in respect of allegation 2.1 against First Respondent above. He submitted that the Second Respondent was aware of the issues as he was instructed in the bridging transactions by BW and was the recipient of a stream of recommendations to the firm in which the firm was named in the Option Agreements before any contact with the firm was made by the client. His independence was compromised or impaired because this stream of work from BW

gave rise to a situation where the Second Respondent would not act contrary to the interests of BW and he did nothing to stop the flow of referrals.

84.2 The Tribunal considered the evidence and the submissions for the Applicant. The Tribunal found allegations 3.2 and 3.3 proved on the evidence; indeed they had been admitted.

Previous disciplinary matters

85. None against the First Respondent or Second Respondent

Mitigation

86. Mr Christianson was grateful for Mr Purcell's confirmation that there were no allegations of fraud. In respect of both Respondents, he submitted that there was not a massive financial interest for the firm in work from BW; the firm had a turnover of £1.8 million at the relevant time. It was accepted that BW had used the firm for remortgage cases, the list of cases was not a very long one and the total fees earned were just short of £3,000. The fee per file in respect of the Option Agreement cases as in the case of Ms VD and Ms AW was £500 plus VAT. The firm was not wholly or majorly dependent on BW or an offshoot of it. BW approached the Second Respondent to undertake the remortgage work; it had become aware of the Second Respondent because he had been involved in a transaction in which they were the other party. Their speciality was to deal with partially completed building projects where the lenders had pulled out. It was a wholly unexceptional arrangement. When the first matter came in the Second Respondent approached the First Respondent as his supervisor. They had concerns but were not wilfully blind to this as an odd or unusual transaction, something they appreciated from the wording of the money-laundering warning. After deliberating they had come up with the paragraph which they included in the letter to clients about the validity of the option. There were some changes in the wording of the letter at one point but Mr Christianson submitted that this was of no significance at all. The Respondents concluded that none of the clients lacked capacity. The clients were given advice and if they wished to take it further, they could. Mr Christianson accepted that this was a rather old-fashioned approach. The clients did not challenge the Respondents' advice that litigation was expensive and uncertain – this was common knowledge to all. The First Respondent's position was that this was the end of his dealing with the matter until the Applicant approached the firm. His brother, the Second Respondent ran the Option Agreement matters as a process; they were dealt with as routine conveyancing matters. The Second Respondent ran the work as an experienced conveyancing executive. Mr Christianson submitted that in respect of the 10 transactions referred to in the Rule 7 Statement where the sale price under the Option Agreement and the sale price to the third party were identical, the client receiving a smaller figure by way of sale proceeds after the option release fee was paid; part of the incentive to the client could have been the existence of an available buyer. The First Respondent was unaware that these cases were going through the system. Having regard to the Tribunal's Guidance Note on Sanctions, Mr Christianson submitted that there were no aggravating factors, no criminal conduct or dishonesty. The clients obtained roughly what they were entitled to. If they had been substantially disadvantaged and given the number of clients, one would expect there to have been complaints. The Respondents were aware that

something unusual was going on but unclear what it was and should have asked questions. The sale and lease back issue which was apparent in one of the cases was not pursued. This was a small number of files in the context of the firm's work load.

87. For the First Respondent, Mr Christianson submitted that when the Applicant came to the firm the First Respondent became seized of the matter as supervising partner. Clearly there were suspicions hence the First Respondent admitting allegation 2 but this was the extent of his culpability. The First Respondent made his admission on the basis that where there were unusual features he should have gone further to find out whether or not there was an innocent explanation and in respect of his lack of supervision, this was admitted on the basis that he had failed to give a secondary directive to the Second Respondent that if anything else turned up at that stage he should revert to the First Respondent. He accepted that he did not make enquiries of clients and so could not give proper advice because he did not know what that would be. There was no evidence that the First Respondent was aware at the time of Mrs B's telephone call calling into question the validity of the scheme, which did not then proceed. Mr Christianson referred to the case of one client which was not included in the bundle, where the contract sale price was £95,000, the option release fee was £17,000 and the flat was on the market for £79,950 so that the option release fee took the sale price to £78,000. He submitted that the clients received broadly market value which was what they hoped for on the sale. Mr Christianson submitted that the First Respondent had viewed the enforceability of options as a specialist area of law in which he was not an expert. The First Respondent's involvement after initially drafting the letter was negligible. He knew sufficient to say that he did not like the option and he had replicated that view in correspondence with the Applicant. As to the issue of conflict of interest, Mr Christianson submitted that it was not uncommon for a firm to undertake work for a claimant and defendant and conflict was not automatic. The firm's knowledge of BW's working practices was not relevant here. It had no knowledge of BW's pricing structure and did not feel that its ability to provide independent legal advice to the vendor clients was overborne by its prior links to BW. Mr Christianson accepted that it would be optimistic to ask that the First Respondent only be reprimanded but he submitted that for the Tribunal to go beyond imposing a fine would be too severe. The Tribunal having indicated that it regarded the misconduct as very serious, Mr Christianson submitted that no allegation of dishonesty or criminal conduct, collusion in fraud or awareness of fraud had been brought against the First Respondent. He submitted that a sanction such as suspension should only be considered if the Tribunal felt that there was a need to protect the public and he submitted that was not the case here. The events had occurred sometime ago; there had been no indication of repetition; this was an isolated incident and the First Respondent had not previously been before the Tribunal. Mr Christianson accepted that the First Respondent had supervised the conveyancing in the practice. The First Respondent was a former barrister – he had never practised as a barrister - and was a specialist childcare advocate with many years experience. He was now working as a freelance childcare advocate for another well-established firm. He was no longer a partner in a firm. He did not handle clients' money and did not supervise conveyancing or other types of work. If the Applicant was so minded, it could seek the imposition of conditions that would prevent him from being a partner which he had no wish to be, the demise of the firm having been a salutary experience. Mr Christianson further submitted that the First Respondent's dealings with the regulator had been argumentative but open and there was no indication of wholesale

ignoring professional obligations. There had been no attempt at concealment when the Applicant came. Mr Christianson further submitted that the First Respondent had dealt properly with the IOs; he had not been disrespectful of his regulator. Files had been provided. As to the impact of the First Respondent's conduct on clients, no complaints had been made and there had been no shortfall. Mr Christianson submitted that for misconduct to merit striking off, the seriousness must be of the highest level. The First Respondent had supervised one person and no concerns had been referred back to him; this was not a case where they had and he had ignored them or had turned a blind eye. There were no aggravating factors in respect of his conduct of that kind. Mr Christianson submitted for the Tribunal to go beyond a financial penalty in the circumstances would be extreme and would not be justified.

88. In respect of the First Respondent's financial position, Mr Christianson informed the Tribunal that when the firm had ceased trading, it had considerable debts totalling more than £3 million. There was a 12-month-old valuation of one of the firm's properties £1.9 million. The First Respondent had given a personal guarantee of £800,000. Overall there was a potential surplus in respect of his financial position but it was not a large one and would take some time to crystallise. His bank statements showed the monthly payment received from the firm for which he was presently working in the amount of £3,000 which was due to rise to £6,000 this month. The First Respondent accepted that an order for costs would be made against him and that he should bear an appropriate proportion of costs. He would seek to negotiate payment by instalments with the Applicant.

89. Mr Christianson apologised for the Second Respondent's absence and emphasised that no discourtesy was intended; it was a question of economics. Mr Christianson referred the Tribunal to the documents provided in respect of the financial position of the Second Respondent. He was in receipt of Job Seekers Allowance and after 12 years as a conveyancing clerk it would be extremely difficult for him to seek a job following the imposition of the section 43 order to which he had agreed. He was therefore seeking alternative employment. His property was in negative equity. Mr Christianson asked the Tribunal to take into account his poor financial circumstances in determining what proportion of the costs should be borne by him.

Sanction

90. The Tribunal had regard to its own Guidance Note on Sanctions and the mitigation made for the First Respondent and the Second Respondent.

First Respondent

91. The Tribunal considered that the behaviour of the First Respondent fell far short of the standards expected of a solicitor. It was particularly concerned that as an experienced solicitor the First Respondent had failed to recognise immediately the conflict of interest created by acting for vendors referred by BW for whom it had undertaken work previously. The Tribunal considered that the First Respondent's judgement was seriously flawed in this respect and the consequences could have been disastrous. The Tribunal considered that the clients were vulnerable in that it appeared from the evidence that they were in urgent need of selling their properties. The Tribunal was also concerned at the way the First Respondent had chosen to deal with

the variety of indicators of mortgage fraud which had been readily apparent from the structure of the option arrangements and which the Second Respondent had brought to his attention at the beginning of the work. A substantial amount of money had been passed to BW. The First Respondent admitted that he had taken no active interest in the work as it proceeded. There had been no attempt to give clients specific advice other than by the insertion of a brief paragraph in correspondence as to the possible unenforceability of the options, without any explanation as to the basis on which that advice had been given. The First Respondent's solicitor was unable at the hearing to explain the legal basis for that advice. After careful consideration the Tribunal determined that in the absence of dishonesty and no clients apparently having claimed against First Respondent, it would not be appropriate to impose the most severe sanction of striking off but that it was appropriate for the protection of the public and to uphold the reputation of the profession to suspend the First Respondent from practice for a fixed period of four months. The Tribunal also considered it appropriate to impose conditions in respect of how the First Respondent could practice upon the expiry of the suspension. Following representations from Mr Christianson that the First Respondent was involved in a publicly funded childcare matter which was part heard and due to recommence later in the week and that the imposition of an immediate suspension would be disadvantageous to the client and cause an unreasonable burden to the public purse, the Tribunal agreed to suspend the implementation of the suspension order until 7 May 2013.

Second Respondent

92. The Tribunal considered that the Second Respondent's misconduct had been serious and while he bore a lesser degree of responsibility than the First Respondent who had been the supervising solicitor, the Tribunal agreed that he had been a party to an act or default in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be involved in legal practice in one or more of the ways mentioned in section 43 as amended. The Second Respondent had agreed to the imposition of an order under section 43 and the Tribunal considered it appropriate to impose that order.

Costs

93. For the First and Second Respondents, Mr Christianson submitted that costs were a significant element of the case and subject to the Tribunal's consent, the amount of costs for the Applicant overall had been agreed at £40,000. For the Applicant, Mr Purcell submitted that in taking into account the First Respondent's financial position, the Tribunal should be aware that while the liabilities of the firm were £3.5 million, the firm was a limited company and these were not the personal liabilities of the First Respondent. Mr Purcell accepted that the First Respondent had given personal guarantees but pointed out that he owned the three sets of business premises from which the firm had operated and there was substantial equity. Mr Christianson explained that receivers had only just been appointed and the business premises were not yet on the market and so it could not be known what price they would fetch but he accepted that it was not appropriate to make an application that any costs order against the First Respondent should not be enforceable without leave of the Tribunal.

94. The Tribunal took into account the respective culpability of the First and Second Respondents for the misconduct which had been admitted; liability for costs would be weighted towards the First Respondent as the supervising solicitor. It determined that he should be responsible for approximately two thirds of the agreed costs. The Tribunal had taken appropriate note of the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) in that it was removing the First Respondent's livelihood for a period of four months but it had heard that he had capital and no application for anything other than an immediately enforceable costs order had been made. Accordingly the Tribunal awarded costs in the sum of £26,000 against the First Respondent. In respect of the Second Respondent, the Tribunal considered that the impact of its order on his financial position was likely to be more serious and that while he should be ordered to pay approximately one third of the Applicant's costs in the sum of £14,000, the order should not be enforced without leave of the Tribunal.

Statement of full orders

First Respondent

95. 1. The Tribunal Ordered that the Respondent, [NAME REDACTED], solicitor, be suspended from practice as a solicitor for the period of four months to commence on the 7th day of May 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £26,000.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent should be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

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

2.1.2 Practice as a conveyancer.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out in paragraph 2 above.

Second Respondent

96. The Tribunal Ordered that as 30th April 2013, except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Kevin Pearce

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Kevin Pearce

(iii) no recognised body shall employ or remunerate the said Kevin Pearce

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

(v) no recognised body or manager or employee of such a body shall permit the said Kevin Pearce to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Kevin Pearce to have an interest in the body;

And the Tribunal further Orders that the said Kevin Pearce do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00 such costs not to be enforced without leave of the Tribunal.

Dated this 12th day of June 2013
on behalf of the Tribunal

A. Ghosh
In the Chair