SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11307-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SHARELLE CAMELIA HARRIS Respondent

Before:

Mr S. Tinkler (in the chair)
Miss N. Lucking
Mr S. Marquez

Date of Hearing: 15 September 2015

Appearances

Mr Daniel Purcell, solicitor, of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR, instructed by Mr Mark Barnett, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Ms Sharelle Camelia Harris, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Sharelle Camelia Harris, in a Rule 5 Statement dated 20 November 2014, were that:

1.1 She breached the terms of an undertaking or undertakings given on 2 May 2013, contrary to Principles 6 and/or 7 of the SRA Principles 2011 ("the Principles") and Outcome O(11.2) of the SRA Code of Conduct 2011 ("the 2011 Code");

1.2 She gave or caused to be given false and misleading information to solicitors acting for the buyer in a residential conveyancing transaction, leading them to understand that a mortgage had been redeemed on completion and confirmation of discharge would be forthcoming, when neither statement was true, contrary to any/all of Principles 2, 3 and 6 of the Principles;

1.3 She failed to carry out proper customer due diligence as required by the Money Laundering Regulations 2007, contrary to all/any of Principles 1, 6 and 7 of the Principles;

1.4 She made false and misleading statements to a third party during a telephone conversation in July 2013 to the effect that the legal practice in which she was a director and worked had three directors, when at the time it had only two, contrary to any/all of Principles 2, 3 and 6 of the Principles and Outcome O(11.1) of the 2011 Code;

1.5 She failed to respond to a letter from the SRA dated 31 March 2014, contrary to Principles 6 and/or 7 of the Principles and Outcome O(10.6) of the 2011 Code.

2. It was further alleged that in respect of allegations 1.2 and 1.4 the Respondent acted dishonestly, although dishonesty was not an essential ingredient for the allegations to be proved.

Documents

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

Applicant:-

- Application dated 20 November 2014
- Rule 5 Statement, with exhibit "MB1", dated 20 November 2014
- Witness statement of Sara Houchen, with exhibits, dated 29 July 2015
- Witness statement of Lester Kan, with exhibits, dated 29 July 2015
- Witness statement of Steven Alexander Hollis, with exhibits, dated 30 July 2015
- Witness statement of Neil Mace, with exhibits, dated 31 July 2015
- Witness statement of Dana Smith, with exhibits, dated 3 August 2015
- Form A "Customer Due Diligence" Form, undated
- Statement of Thomas Parker (process server) dated 24 February 2015
- Civil Evidence Act Notice dated 3 August 2015
- Applicant's statement of costs as at date of issue
- Applicant's statement of costs to hearing, dated 7 September 2015

- Note on behalf of the Applicant, dated 10 September 2015
- Service bundle
- Copy Tait v Royal College of Veterinary Surgeons [Privy Council Appeal No. 67 of 2002] ("Tait")
- Copy Schools v SRA [2015] EWHC 872 (Admin) ("Schools")

Respondent:-

No documents were submitted by the Respondent, save for the emails referred to under the Preliminary Matter below.

Preliminary Matter – Proceeding in the absence of the Respondent

4. It was noted that the Respondent was not present or represented. However, she had sent an email to the Tribunal on 8 September 2015, which appeared to be an application to adjourn the substantive hearing. The email read:

> "Further to the emails below, I should be grateful if you would consider postponing the hearing listed for next week. As advised earlier, I have been in hospital following the birth of my son who is now 3 months old, and I have further appointments due to an ongoing health matter following the birth, and I have not been able to deal with any of the paperwork emailed through.
>
> I look forward to hearing from you in due course".

5. It was noted that the previous emails from the Respondent were sent in January and March 2015; there had been no communication with the Tribunal between March and September 2015.

6. The Tribunal's officer replied to this email on 8 September, in an email which read:

> "Thank you for your email, the contents which I note. I attach a copy of the Policy and Practice Note on Adjournments for your perusal and I refer you to paragraph 4c.
> Your application will need to be supported by a reasoned opinion of an appropriate medical advisor.
> I look forward to hearing whether you wish to pursue your application or not".

7. On 14 September 2015, the Respondent sent a further email to the Tribunal, which read:

> "Further to the attachment to your email below, unfortunately my medical report will only be ready later today, which I note will be too late for the hearing. It is also noted that my request is not supported by both parties. However, unfortunately it is not possible for me to attend the hearing tomorrow due to the reasons set out in my medical report".

8. The Tribunal officer replied to the Respondent the same day, in an email which read:

> "I acknowledge receipt of your email which will forwarded to the Tribunal members in advance of the hearing tomorrow.

If possible, please attach the medical report to an email before tomorrow morning so that it can be considered by the Tribunal".

9. No medical report was received before the hearing commenced or, indeed, at any point during the hearing.

10. The Tribunal indicated that it would treat the Respondent's emails as an application to adjourn the hearing and would then consider whether to proceed to hear the case in the absence of the Respondent.

11. Mr Purcell for the Applicant submitted that the Respondent had not engaged substantively with these proceedings. At a Case Management Hearing ("CMH") on 22 January 2015 it was noted that there had been difficulties in serving the proceedings on the Respondent. The proceedings were personally served on her at an address in Hertfordshire on 23 February 2015. At a further CMH on 22 April 2015 the Tribunal directed that the Respondent could be served with documents in these proceedings at an email address (which was the email address used for the emails in September 2015). The Tribunal had also given directions to prepare the matter for hearing, including making provision for the Respondent to file and serve her answer to the allegations by 1 June 2015. No Answer had been filed or served by the date of this hearing.

12. Mr Purcell told the Tribunal that his firm had been instructed in this matter in late July 2015. Civil Evidence Act Notices had been served on the Respondent, by email, on 3 August 2015 with regard to all of the Applicant's witness evidence and there had been no counter-notice or response.

13. Mr Purcell submitted that there was a public interest in proceeding with the case promptly. Mr Purcell told the Tribunal that there was nothing in the recent communications from the Respondent which identified the nature of the medical condition to which she referred or the treatment received; there was no indication of the severity of the condition or the prognosis. There was no medical evidence to support the Respondent's assertion that she had been unable to deal with the papers in the case. The Tribunal had provided the Respondent with a copy of the Practice Note on Adjournments, which had led to the Respondent indicating that she had sought a medical report; that had not yet been received.

14. Mr Purcell told the Tribunal that although there had been some initial difficulties in serving the proceedings on the Respondent, she had been served in February 2015 and so had had time to deal with the papers. There had been reference in some emails she sent to the Tribunal on 3 March 2015 to "complications of pregnancy", and had indicated that she was due to give birth in May 2015 but there had been no further communication from the Respondent until 8 September 2015.

15. Mr Purcell submitted that in considering whether to proceed in the absence of the Respondent, the Tribunal should consider matters carefully and exercise caution. Mr Purcell referred the Tribunal to the case of Tait, which made it clear that a Tribunal did not have an absolute discretion. Rather, the factors set out in R v Jones [2001] EWCA Crim 168 should be applied. In the Tait case, those factors included the seriousness of the allegations, the risk of reaching an incorrect conclusion about

the reasons for absence and the disadvantage to the Respondent in not hearing her account of matters.

16. Mr Purcell submitted that the present case was serious, involving allegations of dishonesty which, if proved, would lead to a significant sanction. There was a public interest in hearing serious allegations as promptly as possible. Mr Purcell submitted that the Applicant was not asking the Tribunal to draw any adverse inferences from the Respondent's non-attendance. The Tribunal was not invited to say that the Respondent had no relevant medical condition, but that she had not provided any evidence of this to be considered by the Tribunal. There was a disadvantage to the Respondent in not hearing her explanation, but she had failed to provide any written Answer to the allegations despite being aware of the allegations and the Tribunal's directions for some time. The burden, of course, was on the Applicant to prove the allegations.

17. Mr Purcell referred the Tribunal to the case of Schools. In that case, the Tribunal had rejected the limited medical evidence provided by the Respondent in the Tribunal proceedings, in circumstances where the Respondent had indicated an intention not to attend the hearing in any event. The High Court determined that the Tribunal could have directed there to be better medical evidence. The Applicant's position was that this Tribunal was not bound by that decision as the circumstances were different; in that case there was some medical evidence, the Respondent had provided an Answer to the allegations and the application had been made in advance of the substantive hearing.

18. Mr Purcell submitted that the Tribunal could reject the Respondent's application to adjourn the hearing. There was no doubt that the Respondent was aware of the hearing date. The adjournment had been sought very late. There would be additional costs incurred if the matter were adjourned, together with inconvenience to the witnesses who had attended.

19. Mr Purcell submitted that this would be a finely balanced decision for the Tribunal; it was not a foregone conclusion. However, it was submitted, the public interest outweighed any unfairness to the Respondent.

The Tribunal's Decision

20. The Tribunal considered carefully the Respondent's application to adjourn the hearing, and the submissions of the Applicant. The Tribunal took account of its Practice Note on Adjournments, a copy of which had been provided to the Respondent on 8 September 2015 and which was available on the Tribunal's website.

21. The Practice Note made clear that the claimed medical condition of a party would not generally be regarded as providing justification for an adjournment unless supported by the reasoned opinion of an appropriate medical adviser. In this instance, although the Respondent had referred earlier in the year to a pregnancy (and complications with that pregnancy) and in her email of 8 September 2015 to health issues, there was no medical evidence at all to support that. The Respondent's email of 8 September 2015 suggested that she had been in contact at an earlier stage, but the Tribunal could not trace any email from her after 3 March 2015.

22. Accordingly, the Tribunal was not satisfied that there were sufficient (or any) grounds to adjourn the hearing.

23. The Tribunal then considered whether it was appropriate to proceed with the hearing in the absence of the Respondent; different criteria applied to such considerations. The Tribunal noted in particular the factors listed in the Jones case, including the requirement to proceed with extreme caution.

24. With regard to the nature and circumstances of the Respondent's behaviour in absenting herself from the hearing, the Tribunal noted that the Respondent had consistently failed to engage with the proceedings. In particular, she had given no written Answer to the allegations and not complied with any other directions given by the Tribunal. The Tribunal also took into account the evidence of the process server, who had stated that the Respondent had initially denied who she was when he attempted to serve the proceedings on her. There was no doubt that the Respondent was aware of the hearing date. The Tribunal noted that the proceedings had been delayed already as the Tribunal was not satisfied that the Respondent had properly been served with the proceedings when they were first issued, despite the address to which they were sent being acknowledged as a correct postal address for the Respondent.

25. The Tribunal considered that it was important to the public and the profession for cases involving dishonesty to be concluded promptly; they should not drift for too long. The Tribunal noted that the Respondent had not indicated that she wanted to attend to explain her position, and there was nothing to suggest that if the hearing were adjourned the Respondent would attend. The Respondent had had the opportunity to seek legal representation, but had not done so. She had not provided any explanation or answer to the allegations at any stage in the proceedings.

26. Having weighed all of the circumstances carefully, and in particular the Respondent's consistent failure to engage properly with the proceedings and there being no indication or evidence that if proceedings were adjourned that the Respondent would attend, the Tribunal determined that the Respondent had deliberately absented herself from the hearing and that it was just and proper to proceed in her absence.

27. The Tribunal noted that it was under a duty to ensure that the hearing was fair and must take reasonable steps to expose weaknesses in the prosecution case.

Factual Background

28. The Respondent was born in 1977 and was admitted as a solicitor in 2003. Her name remained on the Roll of Solicitors and at the time the Application was made she held a Practising Certificate which was free from conditions.

29. At all material times until 8 November 2013 the Respondent was a director of Lester Dominic Solicitors Limited, a recognised body, which had offices at Upper Floors, 85-87 Ballards Lane, Finchley, London N3 1XT ("the Firm").

30. On 25 November 2013, a duly authorised officer of the SRA commenced an inspection of the books of account and other documents of the Firm. On 21 January 2014 Ms Sara Houchen, the Investigation Officer ("IO") interviewed the Respondent and the interview was recorded. The inspection and investigation culminated in a report dated 11 March 2014 ("the Report").

31. The Report identified that the Firm had two client and two office bank accounts, both of which could at the relevant times be operated by the Respondent and by Mr Lester Kan, the other director of the Firm. No issues were raised in the Report concerning the Firm's compliance with the SRA Accounts Rules 2011 ("AR 2011").

32. The IO met with Mr Kan at the start of the inspection on 25 November 2013. Mr Kan told the IO that the Respondent had told him on 8 November 2013 that she would no longer be coming into the office because she had found a new job. The Respondent had previously indicated to Mr Kan her intention to leave, but Mr Kan told the IO that her announcement on 8 November 2013 came as a surprise to him. Mr Kan told the IO that the Respondent had joined the Firm in August 2010 as an associate and head of the conveyancing department. She became a director in September 2011. Mr Kan told the IO that he believed the Respondent had not technically left the practice (as at the start of the inspection) as she had not given formal notice of resignation.

Allegation 1.1

33. The Respondent acted for Mr HM in the sale of his leasehold property at 87 B Road, London N17 ("the Property"). The buyer was Mr PC, represented by TW&C Solicitors ("TW&C"). The agreed sale price was £157,500.

34. The Property had a registered charge against it dated 8 September 2006 in favour of Mortgage Express ("ME"). There was also a restriction preventing the registration of any disposal of the Property without the written consent of ME.

35. On 6 February 2013, the Respondent sent a client care letter to Mr HM setting out the terms and conditions on which the Firm would act for him in the sale of the Property. In this letter, the Respondent confirmed that as a solicitor and Head of the Property, Wills and Probate Department she would have the "overall management and day to day conduct" of the matter. The Respondent also advised: "In order to progress your matter speedily, it may sometimes be necessary for other members of staff to assist me". The letter also outlined the Firm's fees and disbursements, which were stated to have been agreed with Mr HM. Mr HM was asked to make a payment on account of costs of £500, which he did not do. The Firm's terms and conditions document contained a section concerning anti money laundering obligations. There was a signed copy of the returned client care letter on the matter file, dated 15 February 2013.

36. The client matter file also contained a Land Registry entry for the Property, dated 6 February 2013 (i.e. the same date as the client care letter) which showed:

36.1 Mr HM as the registered proprietor of the Property since 29 September 2006;

36.2 The registered charge dated 8 September 2006 in favour of ME; and

36.3 The restriction on disposition of the Property without the written consent of ME (or whoever, at the relevant time, was the proprietor of the charge dated 8 September 2006).

37. On 7 March 2013, TW&C sent Preliminary Enquiries to the Firm. Section D dealt with enquiries for the seller's solicitor and included:

37.1 "Question 2: Please confirm that there are sufficient monies from the sale proceeds to discharge any mortgages over the property", against which the answer in manuscript was "Confirmed";

37.2 "Question 4: Please confirm that the replies to these enquiries have been approved by the Seller and that the Seller is aware there is a legal obligation to notify us of any changes prior to exchange of Contracts which may affect the replies given", against which the answer in manuscript was "Confirmed".

38. Contracts were exchanged at 4.18pm on 19 April 2013 by telephone, pursuant to Law Society Formula B. Completion was set for 3 May 2013. In the part of the contract entitled "Incumbrances on the Property", it was stated that:

> "All matters contained in and/or referred to in the Property and Charges Register of the said title, save for any charges of a financial nature".

It was submitted that this meant that the parties had agreed that Mr PS would be buying the Property unencumbered by the ME charge.

39. The deposit of £15,750 was received from TW&C on 23 April 2013, from which the Respondent/the Firm deducted costs of £951.

40. TW&C sent requisitions on title in the Law Society standard form, TA13, to the Firm. The replies were signed and dated on 2 May 2013. The relevant part of the form, with the replies by the Respondent/the Firm are set out below:

	Requisition	**Reply**
	"WARNING: Replies to Requisitions 3.2 and 5.2 are treated as a solicitor's undertaking."	
	"WARNING: A reply to requisition 3.2 is treated as an undertaking. Great care must be taken when answering this requisition."	
3.2	"If we wish to complete through the post, please confirm that:	
	(a) You undertake to adopt the Law Society's Code for Completion by Post, and	"Confirmed"
	(b) The mortgages and charges listed in reply to 5.1 are those specified for the purpose of paragraph 6 of the Code."	"Confirmed"
5.1	"Please list the mortgages or charges secured on the property which you undertake to redeem or discharge to the extent that they relate to the property on or before completion…"	"N/A"

	Requisition	**Reply**
	"WARNING: A reply to requisition 5.2 is treated as an undertaking. Great care must be taken when answering this requisition."	
5.2	"Do you undertake to redeem or discharge the mortgages and charges listed in reply to 5.1 on completion and to send to us Form DS1, DS3, receipted charge(s) or confirmation that notice of release or discharge in electronic form has been given to the Land Registry as soon as you receive them?"	No Reply
5.3	"If you DO NOT agree to adopt the current Law Society's Code for Completion by post, please Confirm that you are the duly authorised agent of the proprietor of every mortgage or charge on the property which you have undertaken, in reply to 5.2, to redeem or discharge."	

41. The Applicant submitted that notwithstanding the reply given to requisition 5.1, and the lack of replies to requisitions 5.2 and 5.3, the Respondent (in reply to requisition 3.2) undertook to adopt the Law Society's Code for Completion by Post.

42. The Law Society's Code for Completion by Post, 2011, provided a voluntary procedure for postal completion of residential transactions, which solicitors and licensed conveyancers could use. A summary of relevant sanctions is set out in table format below:

	"Warning: Use of this code embodies professional undertakings. See SRA Warning Card on Undertakings See also 'Accepting undertakings on completion following the Court of Appeal decision in *Patel v Daybells'* (Appendix IV.6 of the 17th edition *Conveyancing Handbook*)."
	"Introduction and Scope The code provides a voluntary procedure for postal completion of Residential transactions. Solicitors adopting the code must be satisfied that its adoption will not be contrary to the interests of their client. When adopted, the code applies without variation unless otherwise agreed. It is intended to provide a fair balance of obligation between seller's and buyer's solicitors and to facilitate professional co-operation for the benefit of clients.
	"Procedure"
	"General"
1.	"To adopt this code both solicitors must agree, preferably in writing, to use it to complete a specific transaction, except that the use or adoption of the Law Society Conveyancing Protocol automatically implies use of this code unless stated in writing by either solicitor."
2.	"If the seller's solicitor has to withdraw from using the code, the buyer's solicitor should be notified of this not later than 4pm on the working day prior to the completion date. If the seller's solicitors authority to receive the monies is withdrawn later the buyer's solicitor must be notified immediately."

3.	"In complying with the terms of the code, the seller's solicitor acts on completion as the buyer's solicitors agent without fee or disbursement but this obligation…is expressly limited to completion pursuant to paragraphs 10 to 12."
	"Before completion"
5.	"The seller's solicitor should provide to the buyer's solicitor replies to completion information and undertakings in the Law Society's standard form at least five working days before the completion date unless replies have been provided to such other form requesting completion information as may have been submitted by the buyer's solicitor."
6.	"The seller's solicitor will specify in writing to the buyer's solicitor the mortgages, charges or other financial incumbrances secured on the property which on or before completion are to be redeemed or discharged to the extent that they relate to the property, and by what method."
7.	"The seller's solicitor **undertakes:** (i) to have the seller's authority to receive the purchase money on completion; and (ii) on completion, to have the authority of the proprietor of each mortgage, charge or other financial incumbrance which was specified under paragraph 6 but has not then been redeemed or discharged, to receive the sum intended to pay it: **BUT** if the seller's solicitor does not have all the necessary authorities then: (iii) to advise the buyer's solicitor no later than 4pm on the working day before the completion date of the absence of those authorities or immediately if any is withdrawn later; and (iv) not to complete without the buyer's solicitors instructions."
	"Completion"
11.	"When completing, the seller's solicitor **undertakes:** … (ii) to redeem or obtain discharges for every mortgage, charge or other financial incumbrance specified under paragraph 6 so far as it relates to the property which has not already been redeemed or discharged; (iii) that the proprietor of each mortgage, charge or other financial incumbrance specified under paragraph 6 has been identified by the seller's solicitor to the extent necessary for the purpose of the buyer's solicitor's application to HM Land Registry."
	"After completion"
12.	"The seller's solicitor **undertakes:** … (iv) if the discharge of any mortgage, charge or other financial incumbrance specified under paragraph 6 takes place by electronic means, to notify the buyer's solicitor as soon as confirmation of the mortgage, charge or other financial incumbrance has taken or is taking place."
	"Supplementary"
13.	"The rights and obligations of the parties, under the contract or otherwise, are not affected by this code and in the event of a conflict between the contract and this code,

	the contract shall prevail."
	"Notes to the code"
1.	"This code will apply to transactions where the code is adopted after the first day of April 2011."
2.	"The object of this code is to provide solicitors with a convenient means for completion on an agency basis where a representative of the buyer's solicitor is not attending at the office of the seller's solicitor."
5.	"In view of the decision in *Edward Wong Finance Company Limited v Johnson, Stokes and Master* [1984] AC 296, clause 7(ii) of the code requires the seller's solicitor to undertake on completion to have the authority of the proprietor of every mortgage or charge to be redeemed to receive the sum needed to repay such charge. Such an undertaking remains an indispensable component of residential conveyancing. While the seller's solicitor will often not be specifically instructed by the seller's mortgagee, the course of dealings between the solicitor and mortgagee in relation to the monies required to redeem the mortgage should at the very least implicit authority from the mortgagee to the solicitor to receive the sum required to repay the charge (if, for example, the mortgagee has given its bank details to the solicitor for transmission of the redemption funds). On the basis of those dealings (and in the absence of any contrary statements from the mortgagee), the seller's solicitor should be in a position to give the undertaking to discharge (in the Law Society's recommended form, adapted where relevant for electronic discharges) and, for paper discharges (DS1, etc), to undertake that they have identified the seller's mortgagee to the extent necessary for the purpose of the buyer's solicitor's application to the Land Registry, on which the buyer's solicitor should be able to rely. The seller's solicitor should, if at all possible, receive an express confirmation from the seller's mortgagee that the paper discharge, or an acknowledgement of discharge (for electronic discharges) will be supplied to them. If the seller's mortgagee expressly prohibits the seller's solicitor from dealing with the redemption money, the seller's solicitor should notify the buyer's solicitor as soon as possible. The seller's solicitor and buyer's solicitor should consider whether in those circumstances they can adopt the code and, if so, the necessary variations."
6.	"In view of the decision in *Angel Solicitors (a firm)* v. *Jenkins, O'Dowd & Barth* http://www.bailii.org/ew/cases/EWHC/Ch/2009/46.html and *Clark* v. *Lucas LLP* [2009] EWHC 1952 (Ch) the undertaking in clause 11(ii) of this code is to be taken, unless otherwise stated, as including confirmation that a satisfactory redemption statement has been obtained from the lender whose charge is to be redeemed."
8.	"The seller's solicitor is to inform the buyer's solicitor of the mortgages or charges which will be redeemed or discharged (see paragraph 6 of the code). The information may be given in reply to completion information and undertakings (see paragraph 5 of the code). Such a reply may also amount to an undertaking."

43. The Council of Mortgage Lenders' Handbook ("CMLH"), as it related to ME, on the question of redemption provided:

17.	**"Redemption"**
17.1	**"Redemption Statement"**
17.1.1	"When requesting a redemption statement (see part 2) you should quote the expected repayment date and whether you are acting for the borrower or have the borrower's authority to request the redemption statement in addition to the information mentioned in paragraph 2.1. You should request this at least five working days before the expected redemption date. You must quote all the borrower's mortgage account or roll numbers of which you are aware when requesting the repayment figure. You must only request a redemption statement if you are acting for the borrower or have the borrower's written authority to request a redemption statement."
17.1.2	"To guard against fraud please ensure that if payment is made by cheque then the redemption cheque is made payable to us and you quote the mortgage account number or roll number and name of the borrower."
17.2	**"Discharge"**
17.2.1	"On the day of completion you should send the discharge and your remittance for the payment to see (see part "). Check part 2 to see if we discharge via a DS1 form or direct notification to the Land Registry."

Part 2 of the CMLH confirmed that ME discharged mortgages via a DS1 form (or DS3 form for part of a title).

44. Completion took place on 3 May 2013; the client ledger showed that £141,750 was received from TW&C on 3 May 2013.

45. After deduction of the estate agent's fee, the sale proceeds were sent to a bank account in the name of Mr HM by bank transfer, in two separate payments of £100,000 and £53,336 on 3 May 2013. This resulted in a nil balance on the client ledger account. No monies were sent to ME to redeem their charge, nor was it redeemed by any other means.

46. In interview with the IO on 21 January 2014, the Respondent was asked:

> "What happened to the mortgage on this matter?"

The Respondent's initial answer was that she had been on leave at the time of completion as she was getting married and then said,

> "When I came back I was told that he [Mr HM] hadn't given us the mortgage account number so the administrator was chasing the client for this"

The IO asked the Respondent when Mr HM was chased for his mortgage account number, to which the Respondent replied:

> "I know she was chasing him for a few weeks so I think it may have been before and also after. But because I wasn't there I'm not able to say whether it was before or after".

The Respondent was asked when she was away, and she replied, "From the 8 May".

47. Mr Kan informed the IO that the Respondent was on leave from 13 to 24 May 2013, i.e. from 10 days after completion.

48. During the interview on 21 January 2014, the Respondent told the IO that it was normally an administrative function to check that the Firm had details of a mortgage. She told the IO that the client would usually fill out a form to say what mortgages there were; if applicable, the client would provide mortgage account information on the form. The Respondent told the IO that this was done by an "administrator" who would revert to the client if any information was missing. By "administrator", the Respondent was referring to her secretary, Ms Dana Smith ("DS").

49. Given the existence of the Land Registry document on the client matter file – as set out at paragraph 36 above, the Respondent was asked if she was aware that there was a mortgage against the Property. She replied:

> "Yes… I wouldn't be able to remember when it was but yeah we did".

The Respondent was asked at what point she realised there was a mortgage and she responded:

> "The thing is, with things like this, because you do so many at the same time I really can't remember. It would have been picked up when the completion statement was prepared. It would have been picked up at that stage because there is always a space for the mortgage. When there isn't a mortgage on there, that would flag it up.
>
> Now I know my secretary did the completion statement and that's what we discussed at the time. She prepared it but I'm not sure at what stage we discussed it and said look, you didn't put the redemption statement in because that is something that she would every day contact the lenders for. Especially [ME] as they are very quick at coming back to you".

50. The Respondent was asked by the IO if the issue of there being no redemption statement from the lender was something that she would have checked, to which she replied:

> "It's not, because I've never needed to. If you train someone to do something, and that's something she would tick off, and she was very good at doing it, and I'm sure that this is the only one that's fallen through the net out of hundreds we've done, so I would say it's just one of those things".

51. The Respondent told the IO that DS filled in the TA13, completion information and undertakings form and that it was normal for it to be dated the day before completion was due to take place, saying, "Yes, it can be [sent] anytime". The Respondent also indicated to the IO that it was not unusual not to discuss redemption of a mortgage with the client.

52. The Respondent agreed with the IO that the initial error in missing the mortgage over the Property was an administrative one, but that she had then also missed it and then the sale completed. The Respondent agreed with the IO that she bore responsibility for the omissions as the supervisor on the file.

53. In answer to the IO's question: "We consider this a breach of undertaking because it wasn't redeemed. Do you accept it was a breach of undertaking?", the Respondent answered:

> "Yeah, so the undertaking is which one?"

to which the IO replied, "Well, part of the undertaking is the Law Society's completion by post which is an undertaking in itself".

54. On 17 February 2014, DS provided the IO with a written statement concerning her role at the Firm and her duties with regard to client matters. In summary, that statement contained the following:

54.1 The extent of her role was to open client matter files and send out welcome letters;

54.2 Her main role then was as an audio typist for letters and forms;

54.3 She did not deal with lenders or other firms of solicitors unless instructions were fully dictated by the Respondent;

54.4 It was not her role to check whether a mortgage had been redeemed or not, as she had no legal training;

54.5 While she did not have a full recollection of the transaction, there had been no "real discussion" between her and the Respondent about the mortgage over the Property;

54.6 She was not aware of it until she sent correspondence to TW&C about redemption of the ME charge having been done by the client;

54.7 She did this because she was told to by the Respondent;

54.8 All emails and letters that she typed were dictated, and no correspondence was ever prepared or sent out by her without authorisation or prior instructions from the Respondent.

Allegation 1.2

55. In relation to the same transaction, on 25 July 2013 TW&C wrote to the Firm, chasing the END (electronic notice of discharge) in respect of the registered charge dated 8 September 2006 in favour of ME.

56. The Respondent replied the following day. Her letter stated:

> "Further to your telephone message earlier today, we confirm that the mortgage was redeemed on the day of completion. We are chasing [ME] for

> their confirmation when their charge will be released from the Land Registry. We will revert to you shortly".

57. At 15.43 on 26 July 2013 the Respondent sent an email to Mr HM which read:

> "I am just checking through your file and need to contact [ME] again. Are you able to let me have your account number again, as you did not complete the attached Sale Questionnaire Form".

58. The Land Registry raised requisitions with TW&C, who wrote to the Respondent about two of them on 1 August 2013. TW&C stressed that they needed to hear by 2 September 2013, being the date when the Land Registry would cancel their application.

59. The Respondent replied on 12 August 2013 stating,

> "… we confirm that we are chasing for the DS1/END form from the lender and should have this shortly"

and

> "We confirm that we have positively identified [Mr HM] through ID documentation and can also confirm that he is an existing client of the firm".

60. TW&C wrote again on 3 September 2013, noting that they had still not received confirmation of discharge and asking the Respondent to chase again for the DS1/END, it being by then four months from completion. The Respondent replied on 5 September, stating:

> "… We are again chasing our client's lender and will endeavour to revert to you with the DS1/END before the deadline for this application".

61. At 17.21 on 20 September 2013, DS sent an email to Mr GW at TW&C, copied to the Respondent, which stated:

> "As per our telephone call earlier, I have had to again chase our client in regards to the DS1 form as he redeemed his mortgage himself.
> He has been away from the UK for some time and is difficult to get hold of. I have requested his mortgage account number and as soon as I hear back I will let you know".

62. On 24 September 2013 TW&C sent two letters addressed to the senior partner of the Firm. The first advised that the matter had been transferred to TW&C's litigation department and requested evidence of discharge of the charge dated 8 September 2006 in favour of ME within seven days, failing which an action for specific performance of the contract of sale and costs against Mr HM would be commenced. The letter concluded that if proceedings became necessary, and if the Firm did not have instructions to accept service of proceedings, then Mr HM would be served directly. The second letter accused the Firm of failing to honour the undertakings

contained within the Law Society Code for Completion by Post ("the Law Society Code") and that the Firm had;

> "… on numerous occasions advised us that the mortgage was redeemed on completion. By email dated 20 September 2013 you advised us, for the first time, that your client redeemed the mortgage himself".

63. On 25 September 2013 the Respondent sent an email to Mr HM, timed at 10.28, which read:

> "Are you able to give me a call sometime today when you are free? It is quite urgent".

Mr HM responded the next day, giving a contact telephone number and stating that he would call the Respondent if she was unable to call him.

64. In the interview on 21 January 2014, the Respondent was asked by the IO about the letter dated 26 July 2013 (set out at paragraph 56 above). The Respondent told the IO that when the letter came in from TW&C, she asked DS if she had redeemed the mortgage and was told that she had and so had then, "dictated something quickly to say it was redeemed and we were chasing".

65. In her written statement, DS denied informing the Respondent that the mortgage had been redeemed and that she did not know that there was a mortgage until correspondence had been sent to TS&C.

66. The IO asked the Respondent about her email to Mr HM on 26 July 2013, set out at paragraph 57 above. The Respondent told the IO that she was, "chasing for the redemption information but I couldn't find it on the file". The Respondent was asked if the absence of mortgage account information on the file rang alarm bells with her to which she replied, "Yes".

67. The IO asked the Respondent about the letter dated 12 August 2013, set out at paragraph 59 above. The Respondent answered that she thought DS was still dealing with the matter because, "Sometimes lenders do take months to send you the form".

68. The Respondent was asked about the email of 20 September 2013, set out at paragraph 61 above. The Respondent told the IO that she might have seen this email. The IO asked,

> "Do you know anything about him [Mr HM] redeeming his mortgage himself or him telling you that?"

The Respondent replied:

> "Subsequently, I know that he didn't redeem".

69. The Respondent stated that DS had spoken to Mr HM but she had not. The IO asked if, after reading this email she would have wanted to take any action, to which she replied, "Not really".

70. The Respondent told the IO that she did not inform Mr Kan about this matter at the time or subsequently, after the correspondence from TW&C on 24 September 2013 had been received.

71. The IO asked the Respondent if she had any concerns about the identity of Mr HM, to which she replied that she had none. The Respondent told the IO that she had been introduced to Mr HM by a surveyor and had met him on a number of occasions, and dealt with him on commercial matters. The Respondent also stated that she had met Mr HM's two brothers.

Allegation 1.3

72. The Money Laundering Regulations 2007 require that "independent legal professionals" (Regulation 3), which included the Respondent as a director of the Firm, undertake "customer due diligence measures" by:

72.1 Identifying the customer's identity on the basis of documents, date or information obtained from a reliable source and obtaining information on the purpose and intended nature of the business relationship (Regulation 5);

72.2 Where a business relationship is established or there is an occasional transaction (Regulation 7); and

72.3 Keep records as are specified in the Regulations for a period of five years beginning on the date on which the occasional transaction completed or the business relationship ends.

73. The IO found no evidence on the client matter file that the Firm had received and then copied and retained documents identifying Mr HM for anti-money laundering purposes. The file contained a "customer due diligence" form, which had not been completed. That form contained a section for client identification which had tick boxes to indicate either that appropriate documents had been obtained or reasons why they had not, for example the Firm already possessed sufficient and satisfactory evidence of identification. No entries were made on the form.

74. At the beginning of the interview on 21 January 2014, the Respondent stated that the Firm had acted for Mr HM and his two brothers on a commercial deal and that Mr HM had been with the Firm for "two or three years". The Respondent said that she had previously seen identification for him – passport and utility bills – which ought to have been copied onto the file for the B Road transaction but were not. The Respondent told the IO that she was not sure where the documents were.

75. The Firm confirmed to the IO that identification documents were not held on the other matter file referred to either.

76. Later in the interview, the Respondent stated she had no concerns about Mr HM's identity, as set out at paragraph 71 above. The Respondent had stated to TW&C on 12 August 2013 that she had identified Mr HM (see paragraph 59 above). That letter also stated:

"His signature accords with other signatures that we hold for him on the file. The transfer deed was executed while he was away on holiday, but we can confirm that he returned to the UK thereafter".

77. The IO note that the signatures on the client care letter and the property information form were not the same as the signature on the transfer deed. There was nothing on the file to indicate that Mr HM had ever attended the Firm in person in respect of the sale of the property.

Allegation 1.4

78. The Respondent/the Firm acted for Ms SW in her purchase of a property. The first entry on the client matter ledger was dated 31 July 2013 and the transaction completed on 16 August 2013.

79. In the interview on 21 January 2014, the IO provided the Respondent with a transcript of a telephone conversation between the Respondent and Mr Neil Mace ("NM"), a financial broker, arising from Ms SW's purchase matter. The conversation took place on or around 18 July 2013, or in any event during July 2013. The Respondent did not deny that the content of the transcript was an accurate record of her conversation with NM. The conversation concerned the number of partners in the Firm. NM sought confirmation of an earlier statement made by the Respondent that the Firm had three partners, as a check by the lender, Blemain, showed only two partners in the Firm. It was a requirement of the lender that a Firm acting for it as lender had three or more partners.

80. The relevant part of the conversation was noted on the transcript as follows:

"NM I think I asked the other day how many partners you had in the firm and you said three?

Respondent Yep

NM Blemain have just called me to say they've checked on the Law Society and they can find only two and they're basically saying we can't accept anything from yourselves unless you've got three partners.

Respondent We have three, but the Law Society are very bad, they take over a year to update everything.

NM Okay, fine. Do you have anything that would confirm, any headed paper or anything that confirms your partners?

Respondent We don't have anything printed as the person started about a month, six weeks ago.

NM Okay. Um, could I ask you to do me a small favour if you can? If I email you a number for Cantor Law, they're the solicitors

dealing with Blemain, if you can just give them a call and explain the situation.

Respondent Okay.

NM And hopefully they can send everything across to you.

Respondent Okay fine, I can do that".

81. It was understood that another firm dealt with matters at completion as the Firm in fact had only two partners.

82. In June 2013 the Firm had entered into negotiations with a Mr SH to join the Firm as a trust adviser in a consultancy capacity, not as a solicitor and/or partner. It was understood that Mr SH was a non-practising solicitor. Mr SH did not in fact enter into any consultancy arrangement with the Firm.

83. Mr Kan told the IO that a consultancy agreement had been drawn up, which the Respondent had seen, and that a business card had been designed, which indicated Mr SH as a "Trust Adviser", and not as a "Partner". Mr Kan also stated:

> "It is absolutely untrue that Mr SH was due to come in to discuss joining the Firm with a view of becoming a partner".

Mr SH did not accept the offer of a consultancy position, nor any other position at the Firm.

84. The Firm had been a two partner/member Firm since August 2012; the Respondent had become a partner in 2011.

85. In interview with the IO on 21 January 2014, the Respondent said that she was, "jumping the gun", and that it was a "misjudgement on my part".

86. The IO asked the Respondent if she had complied with the Principle requiring her to behave in a way that maintained the trust the public placed in her and in the provision of legal services (Principle 6), to which she responded:

> "If someone's asking a straight question and you don't give the correct answer. I mean, sometimes you're thinking, ok, he's about to sign, I can't remember on what date it was, but it was sometime that week but, and he had had discussions, so I thought he will have signed so, look, it doesn't matter, but that doesn't give the public trust because then they're thinking, well actually is that correct?"

Allegation 1.5

87. On 31 March 2014, a SRA Supervisor wrote a letter to the Respondent seeking her explanation for the matters contained in the Report and the allegations and matters set out arising from the Report, with the reply expected on or before 16 April 2014. The Respondent did not reply to that letter by 16 April 2014 or at all.

Witnesses

88. The Tribunal noted that an appropriate Civil Evidence Act Notice had been served with regard to all of the witness statements on which the Applicant wished to rely, and there had been no response or counter-notice. Those statements could therefore be admitted in evidence. The Applicant called those witnesses who had made statements.

Sara Houchen

89. Ms Sara Houchen, the IO, confirmed that her witness statement and the contents of the Report were true, and that the documents exhibited were mostly obtained from the Firm and TW&C. Ms Houchen told the Tribunal that the note of the recorded interview with the Respondent was accurate. During the interview, the Respondent had accepted she was responsible for the conduct of the sale of the Property, that the mortgage had not been redeemed and that the statements she had made to NM about the number of partners in the Firm were inaccurate. The recording of the telephone conversation between NM and the Respondent had been sent to her and she had transcribed it; the transcript was accurate to the best of her recollection.

Lester Kan

90. Mr Kan confirmed that his witness statement was accurate. He had founded the Firm in 2004 and was the senior partner. Mr Kan confirmed the documents exhibited were obtained from his Firm's records.

91. Mr Kan outlined the Respondent's history with the Firm. When she became a partner in 2011, there were three partners but in 2012 the third partner left, since when there had been two partners. There had been no discussions with Mr SH or anyone else about joining the Firm as a partner; it was not proposed that Mr SH would work in the Firm but would be a consultant.

Steven Hollis

92. Mr Hollis, a partner in TW&C solicitors, confirmed that his witness statement was true. It was based on his review of his firm's file concerning the Property. Mr Hollis had not had conduct of the transaction, but was dealing with the litigation and other matters arising from the transaction. The documents exhibited to his statement were obtained from his firm's files. So far as he was aware, the mortgage on the Property had not been redeemed.

93. Mr Hollis told the Tribunal that he would have expected that the TA13 form, at section 5.2, should have been ticked by the Firm either "yes" or "no", in response to the question "Do you undertake to redeem or discharge the mortgages and charges listed in reply to 5.1 on completion…" Mr Hollis told the Tribunal that the ongoing proceedings related to an alleged breach of trust, on the basis that the completion monies were paid to the Firm as an agent and it could only be released in accordance with the contract; the action was not based on a breach of undertaking.

Dana Smith

94. Ms Smith confirmed that her witness statement was true. Ms Smith had been a secretary at the Firm from late November 2012 until mid-December 2013 and she now worked outside legal practice.

95. Ms Smith told the Tribunal that she had been a legal secretary to the conveyancing department; her job had involved typing and filing. The Respondent was the partner in the department, with four fee earners in all. Ms Smith told the Tribunal that she had little involvement in the sale of the Property; the Respondent was the only fee-earner who dealt with it. Ms Smith told the Tribunal that she had not spoken to Mr HM and had not obtained ID for him, as she had not been asked to do so. Ms Smith told the Tribunal that she had not been asked to redeem the mortgage. Ms Smith told the Tribunal that she had set up the file and typed the letters on it.

96. Ms Smith told the Tribunal that she recognised the letters of 26 July, 12 August and 5 September 2013 as letters she probably typed; no-one else typed letters for the Respondent, although the Respondent sometimes typed her own letters. Ms Smith told the Tribunal that she did not compose letters herself; they were always dictated.

97. Ms Smith told the Tribunal that she sent the email dated 20 September 2013 from her email account; the content of the email was dictated by the Respondent. There was nothing on the references on the letters which would show who typed the letters. Ms Smith told the Tribunal that she worked in the same room as the Respondent and so would hear telephone calls if she was in the room. Ms Smith told the Tribunal that she did not recall the Respondent telephoning ME. Ms Smith told the Tribunal that sometimes the Respondent would ask her to chase a mortgage lender for confirmation of discharge, but she had not been asked to do much on this matter. Ms Smith told the Tribunal that the file for this transaction was always on the Respondent's desk and that she would not necessarily expect to know if the Respondent had been chasing ME for confirmation of redemption. With regard to the email of 20 September 2013, Ms Smith told the Tribunal that it should properly have stated it was "for and on behalf of" the Respondent and that she, Ms Smith, had not spoken to Mr GW at TW&C. The Respondent would sometimes dictate emails as well as letters.

Neil Mace

98. Mr Mace gave evidence by video-link. He confirmed the content of his witness statement was true.

99. Mr Mace told the Tribunal that he had been looking for a solicitor in the London area to deal with a transaction and one of his colleagues mentioned that the Respondent had witnessed some documents on another matter. He had phoned the Firm to see if they could assist. It was a condition of the lender that all the firms involved in the transaction had to have at least 3 partners. He had looked at the Law Society website, which showed there were two partners. His business recorded all calls and he had been able to find the file on which the telephone conversation had been recorded. To the best of his recollection, the transcript of the telephone conversation was accurate. Mr Mace told the Tribunal that before this conversation, the Respondent had said there were three partners, but the lender noted only two on the Law Society website so he queried this. The Respondent had told him there were three partners, but the Law Society had not updated its website. Mr Mace told the Tribunal he had asked the Respondent to send him something to confirm there were three partners.

Findings of Fact and Law

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

101. The Tribunal took into account that it had not had the benefit of hearing from the Respondent, and took care to ensure that it noted any weaknesses in the prosecution case. All of the allegations were treated as denied.

102. The Tribunal found the evidence of the witnesses for the Applicant to be credible, and consistent with the documentation in the case. The Tribunal did not have to go so far as to draw any adverse inferences from the Respondent's failure to offer any explanation for her conduct. It was satisfied, where the allegations were proved, that the evidence was overwhelming and clearly sufficient to prove those allegations which were proved.

103. **Allegation 1.1 - She breached the terms of an undertaking or undertakings given on 2 May 2013, contrary to Principles 6 and/or 7 of the SRA Principles 2011 ("the Principles") and Outcome O(11.2) of the SRA Code of Conduct 2011 ("the 2011 Code")**

103.1 The factual background to this allegation is set out at paragraphs 33 to 54 above.

103.2 The Applicant submitted that in the light of the facts set out at paragraphs 33 to 42 above, the Respondent:

103.2.1 Knew or should have known that there was a registered charge against the Property in favour of ME, and that there could be no disposition of it without their written consent;

103.2.2 Knew that it was a term of the contract for sale that incumbrances on the Property were not to include, "any charges of a financial nature";

103.2.3 Confirmed to TW&C, the buyer's solicitors, that there were sufficient monies from the proceeds of sale to discharge any mortgages over the Property;

103.2.4 Gave a professional undertaking to adopt the Law Society Code;

103.2.5 Therefore, she agreed to specify in writing to TW&C the mortgages, charges or other financial incumbrances secured on the Property which, on or before completion, were to be discharged;

103.2.6 Gave a professional undertaking to (i) have Mr HM's authority to receive the purchase money on completion and (ii) on completion to have ME's authority to receive the sum intended to redeem their charge over the Property;

103.2.7 Gave a professional undertaking (iii) to redeem or obtain discharges for every specified mortgage, charge or other financial incumbrance so far as it relates to the Property which had not already been redeemed or discharged and (iv) that ME had been identified to the extent necessary for the purpose of TW&C's application to the Land Registry;

103.2.8 In the alternative, gave a professional undertaking (v) to advise TW&C no later than 4pm on the working day before completion the completion date of the absence of the authorities mentioned in paragraph 42 (at section 7) or immediately if any was withdrawn and (vi) not to complete without TW&C's instructions.

103.3 It was submitted that the Respondent's answers, recorded at paragraph 50 above, were at odds with her answers recorded at paragraph 49.

103.4 The Tribunal considered the documents and submissions in this matter very carefully. It accepted that the documents presented to it were genuine and properly recorded the transaction as it had occurred. The Tribunal had to consider whether the documents signed by the Respondent/the Firm on 2 May 2013 contained any undertakings and, if so, the terms of those undertakings. This exercise had to be undertaken with care, as there were references to other documents which were said to be, in effect, incorporated into the TA 13 form.

103.5 The Tribunal was satisfied that the Respondent knew, or should have known, that there was a mortgage on the Property, in favour of ME and that there could be no disposition without the consent of ME. The Tribunal was not referred to any particular term of the contract for sale that the Property would be transferred free of financial incumbrances, although it was satisfied this would be a standard term and that, as a matter of contract, the Property should have been transferred free of financial incumbrances. The Respondent had confirmed to TW&C in answer to the preliminary enquiries that there would be sufficient monies from the sale proceeds to discharge any mortgages over the Property; there was no evidence to gainsay that the sale proceeds were sufficient, as the amount of the ME mortgage was not known to the Tribunal. The Tribunal was also satisfied that on completion, the proceeds of sale were sent to Mr HM and that the mortgage was not in fact redeemed, either by the Firm or by Mr HM.

103.6 There was no doubt that the Respondent gave an undertaking, on the TA 13, to adopt the Law Society Code and that "the mortgages and charges listed in reply to 5.1 are those specified for the purposes of paragraph 6 of the Code".

103.7 In answer to question 5.1, which stated: "Please list the mortgages and charges secured on the property which you undertake to redeem or discharge to the extent that they relate to the property on or before completion…" the Respondent inserted "N/A", i.e. "not applicable".

103.8 Paragraph 6 of the Law Society Code provided:

> "The seller's solicitor will specify in writing to the buyer's solicitor the mortgages, charges or other financial incumbrances on the property which on or before completion are to be redeemed or discharged to the extent that they relate to the property , and by what method".

Paragraph 7 of the Law Society Code went on to provide:

> "The seller's solicitor undertakes:
>
> (i) To have the seller's authority to receive the purchase money on completion; and
> (ii) On completion to have the authority of the proprietor of each mortgage, charge or other financial incumbrance which was specified under paragraph 6 but has not then been redeemed or discharged, to receive the sum intended to repay it…"

Further, at paragraph 11 of the Law Society Code, it was stated:

> "When completing, the seller's solicitor undertakes:
> (i)…
> (ii) To redeem or obtain discharges for every mortgage, charge or other financial incumbrance specified under paragraph 6 so far as it relates to the property which has not already been redeemed or discharged…"

103.9 The Tribunal noted that in order to find this allegation proved, it would have to find that the form of undertaking given by the Respondent included an undertaking to identify any and all charges on the Property. Whilst that may have been the intention by those who drafted the TA 13 and/or the Law Society Code, the Tribunal could not be sure that the wording of the forms was sufficiently clear to create an undertaking to that effect. The Respondent had replied "N/A" to the question about the mortgages she was undertaking to redeem on completion. It was unfortunate that the buyer's solicitors had not spotted or queried the absence of information about the ME charge on the TA 13 form.

103.10 The Tribunal found that the way in which the Respondent had completed the conveyancing documents, including the TA 13 signed on 2 May 2013, combined with the wording on the relevant documents created a situation which was, at best, ambiguous. The Tribunal could not be sure that there was an undertaking which the

Respondent had breached. The terms of an undertaking needed to be sufficiently clear and in this case the Tribunal could not be sure that the Respondent had given an undertaking the redeem the ME mortgage.

103.11 The Tribunal was not satisfied that this allegation had been proved to the required standard.

104. **Allegation 1.2 - She gave or caused to be given false and misleading information to solicitors acting for the buyer in a residential conveyancing transaction, leading them to understand that a mortgage had been redeemed on completion and confirmation of discharge would be forthcoming, when neither statement was true, contrary to any/all of Principles 2, 3 and 6 of the Principles**

104.1 The factual background to this allegation is set out at paragraphs 55 to 71 above.

104.2 It was submitted for the Applicant that neither of the substantive statements in the letter of 26 July 2013, set out at paragraph 56 above were true: the mortgage had not been redeemed on completion and the Respondent was not chasing ME for confirmation of when their charge would be released. It was further submitted that the statement that the Firm was chasing ME – in the letter set out at paragraph 59 above - was untrue. The Applicant did not accept that the statement that the Firm had positively identified Mr HM was true.

104.3 The Applicant further submitted that the email on 20 September 2013 at paragraph 61 above was the first indication to TW&C that the Firm's client had, apparently, redeemed the mortgage himself.

104.4 The Applicant submitted that the Respondent's analysis of the situation, as expressed to the IO, was that it was merely a matter of getting Mr HM to remit funds back to her sufficient to redeem the mortgage, whereupon she would do this and obtain confirmation of discharge. However:

- She had had no direct contact with Mr HM, other than the brief exchange of emails on 26 September 2013;
- There had been no communication with ME, and the Respondent held limited information on the file; and
- She had no knowledge or information as to whether Mr HM was in a position, and was willing, to remit funds back sufficient to redeem the mortgage more than four months after completion had taken place.

104.5 It was further submitted that the Respondent should have informed Mr Kan of what had happened as soon as was practicably possible after 26 September 2013 (if not before), and alerted the Firm's insurer of the prospect of a claim being made. In failing to take any adequate or proper steps to remedy or minimise the problem of the non-redemption of the ME charge, the Respondent exposed her client, the Firm and herself to at least the threat of legal action being taken against any or all of them.

104.6 The Tribunal was satisfied so that it was sure that the Respondent had falsely told TW&C on 26 July 2013 that the ME charge had been redeemed and that she was chasing for confirmation of this. This information was repeated on 12 August 2013; it remained untrue. There was no evidence at all that the Respondent had "chased" ME for confirmation of redemption, or instructed Ms Smith to do so; indeed, she could not have done so as the mortgage had not been redeemed. The Respondent had repeated the untruthful and misleading statements on 5 September 2013. The Respondent knew the mortgage had not been redeemed or could, at least, have checked the file and the client ledger to establish the position. The ledger, and file, would have shown that no money was sent to ME, that there were no account details for ME on the file to enable money to be sent to ME and that the sale proceeds, after deduction of costs and expenses, had all been sent to Mr HM. The fact that the Respondent had emailed Mr HM on 26 July 2013 to ask him for details of the ME mortgage – which details were not sent – made it clear that by the time the Respondent wrote to TW&C on 12 August 2013 she could have had no belief the mortgage had been redeemed by her Firm. The first suggestion that the mortgage may have been redeemed by Mr HM – when there was nothing on the file to suggest that possibility – was on 20 September 2013, over 4 months after completion.

104.7 The Tribunal was satisfied so that it was sure that the Respondent's communications with TW&C on 26 July, 12 August 2013 and 5 September 2013 were false and misleading. Further, the email of 20 September 2013 which appeared on its face to have been written by Ms Smith, was an email sent on the direction of the Respondent and, again, its contents were false and misleading. The contents of those communications would lead the reader to understand that the ME mortgage had been redeemed on completion and that the Firm was chasing for confirmation of discharge, which would be forthcoming. These statements were false and misleading and there could be no doubt that in sending or causing those communications to be sent, the Respondent had acted without integrity, had compromised her independence and had acted in a way which would reduce rather than maintain the trust the public would place in the Respondent and the provision of legal services.

104.8 The Tribunal was satisfied to the required standard that this allegation had been proved.

105. **Allegation 1.3 - She failed to carry out proper customer due diligence as required by the Money Laundering Regulations 2007, contrary to all/any of Principles 1, 6 and 7 of the Principles**

105.1 The factual background to this matter is set out at paragraphs 72 to 77 above.

105.2 The Tribunal was satisfied on the evidence presented, including that of Ms Smith, that there was no proper ID evidence on the file and that no evidence had been found on other files that proper due diligence had been carried out with regard to Mr HM. The Money Laundering Regulations 2007 required a Firm to retain documentary evidence, so even if the Respondent had, at some point, seen some documents confirming Mr HM's identity, she had failed to take and/or keep a record.

105.3 Solicitors are required to carry out proper enquiries as to the identity of clients in order to reduce the risk of becoming involved in any fraudulent or improper transactions. In failing to take proper steps to identify her client, the Respondent had failed to uphold the rule of law and the proper administration of justice, had not behaved in a way which would maintain the trust the public would place in her and in the provision of legal services, and had failed to comply with her regulatory obligations. The Tribunal was satisfied to the required standard that this allegation had been proved.

106. **Allegation 1.4 - She made false and misleading statements to a third party during a telephone conversation in July 2013 to the effect that the legal practice in which she was a director and worked had three directors, when at the time it had only two, contrary to any/all of Principles 2, 3 and 6 of the Principles and Outcome O(11.1) of the 2011 Code**

106.1 The factual background to this matter is set out at paragraphs 78 to 86 above.

106.2 The Applicant submitted that the transcript of the telephone conversation between the Respondent and Mr Mace in July 2013 (set out at paragraph 80 above), showed that:

106.2.1 The Respondent confirmed, twice, that the Firm had three partners;

106.2.2 The Respondent blamed the Law Society for the fact that a search did not show three partners;

106.2.3 The Respondent said the Firm did not have anything in printed form to show three partners (technically true) because the third partner had only joined the Firm a few weeks prior to the conversation.

106.3 There could be no doubt, based on the clear evidence of Mr Kan, that the Firm had only two partners/directors at the relevant time (being the Respondent and Mr Kan). There could also be no doubt that the Respondent had told Mr Mace that there were three. Further, there was no reasonable basis for the statements made by the Respondent in the telephone conversation with Mr Mace that the Firm was a three partner practice. She was a partner in the Firm and so would know who her partner or partners were. The Respondent knew that the discussions with Mr SH had not been about him becoming a partner/director and that Mr SH had not in fact entered into any sort of consultancy arrangement with the Firm.

106.4 In making these false and misleading statements to Mr Mace, the Respondent had acted without integrity, had allowed her independence to be compromised (as the statement was made in the context of seeking instructions on a matter) and her conduct would diminish rather than maintain the trust the public would place in her and the provision of legal services. It was not clear how Outcome (O)11.1 related to this allegation. That aside, the Tribunal was satisfied to the required standard that this allegation had been proved.

107. **Allegation 1.5 - She failed to respond to a letter from the SRA dated 31 March 2014, contrary to Principles 6 and/or 7 of the Principles and Outcome O(10.6) of the 2011 Code.**

107.1 The factual background to this allegation is set out at paragraph 87 above.

107.2 The Applicant relied on the Respondent's failure to respond to a single letter, sent on 31 March 2014. It was clear that the Respondent had not responded. However, the Tribunal could not be sure that the Respondent had received the letter. It noted the difficulties there had been in serving these proceedings on the Respondent, but even without those issues it would be difficult for the Applicant to prove that the Respondent had received the letter. Such allegations may be proved if there was clear evidence the letter or a series of letters had been received by a respondent, but in this case the Tribunal could not be sure that this particular letter had been received by the Respondent. Accordingly, this allegation was not proved to the required standard.

108. **Allegation 2 - It was further alleged that in respect of allegations 1.2 and 1.4 the Respondent acted dishonestly, although dishonesty was not an essential ingredient for the allegations to be proved.**

108.1 The factual matters relied on in support of this allegation are set out at paragraphs 55 to 71 and 78 to 86 above.

108.2 The Applicant submitted that the test to be applied in considering the allegations of dishonesty was that set out in in Twinsectra v Yardley and others [2002] UK HL 12 ("Twinsectra"). The combined test laid down in that case required that before a person could be found to be dishonest by the Tribunal, it must be found that the person had acted dishonestly by the ordinary standards of reasonable and honest people and that the person realised that by those standards (s)he was acting dishonestly. The Tribunal accepted that this was the appropriate test.

108.3 With regard to allegation 1.2, the Applicant submitted that in sending a series of written communications to TW&C which contained false and misleading statements, namely that the registered charge dated 8 September 2006 in favour of ME had been redeemed on completion and that she/the Firm were chasing the lender for confirmation of discharge, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. The Tribunal was satisfied that this was the case.

108.4 It was further submitted that not only was the Respondent's conduct in making these statements dishonest by the ordinary standards of reasonable and honest people but she must have been aware that it was dishonest by those standards for the following reasons:

108.4.1 The Respondent was a solicitor with 10 years' experience of conveyancing practice, a partner and head of the Firm's conveyancing department and had overall responsibility for conduct of the sale of the Property;

108.4.2 The Respondent knew of the existence of the ME charge over the Property, which was shown on the Land Registry document dated 6 February 2013 on the client matter file, and she acknowledged in interview that she was aware of it. (When asked "Did you pick up that there was a mortgage?" the Respondent replied "Yes", albeit her later answer was more equivocal).

108.4.3 The lack of redemption information on the completion statement alerted the Respondent to the fact that there was a potential problem prior to completion; the Respondent indicated that there would usually be space on the completion statement for a mortgage redemption figure and that it would have been picked up that there was no figure there in this matter;

108.4.4 The Respondent was not on leave on 3 May 2013, the date of completion.

108.4.5 After deductions for costs and estate agent's fees, the entirety of the sale proceeds were sent to the client, Mr HM, on the date of completion.

108.4.6 When the first letter dated 25 July 2013 from TW&C was received, on 26 July 2013, the Respondent could find no information about redemption of the mortgage on file, hence her email to Mr HM that date;

108.4.7 It was inherently unlikely that DS had any authority to redeem a mortgage on completion;

108.4.8 Furthermore, in the context of this matter, DS was incapable of redeeming the ME charge because of the lack of redemption information on the file, and because the balance of the monies had been paid to Mr HM, the client, on the day of completion;

108.4.9 The Respondent's email to Mr HM on 26 July 2013 cast doubt on whether the Respondent held a genuine belief as to the truth of her reply to TW&C;

108.4.10 The Respondent persisted with her misstatements when faced with requisitions raised by the Land Registry. An honest solicitor would have checked the file and ledger, either of which would have shown her the truth of the situation, before responding;

108.4.11 There was no honest basis for the assertion in the email to TW&C on 20 September 2013 that Mr HM had redeemed the mortgage himself. While the Respondent made attempts to contact Mr HM after completion had taken place and TW&C began writing to her, there was no evidence of any meaningful response from Mr HM. The Applicant also submitted that the Respondent had given undertakings concerning redemption of the mortgage;

108.4.12 There was no honest basis for the Respondent's claim that all she needed to do to rectify the problem was to make contact with Mr HM and get him to remit funds back to the Firm sufficient to redeem the ME charge and then obtain confirmation of discharge. The net sale proceeds had been paid away to Mr HM in May 2013, and questions had been raised about Mr HM's identity. The transfer deed had apparently been executed whilst he was out of the country and was, hand delivered to the Firm's offices by a third party;

108.4.13 The Respondent did not inform Mr Kan about this issue after the two letters dated 24 September 2013 were received, nor did she tell him the truth about what had happened. Indeed, the Respondent perpetuated the lie that she was

waiting for confirmation of discharge from the lender, and that this was in hand.

108.5 As noted above, the Tribunal was not satisfied that the Respondent had given an undertaking to redeem the ME mortgage. However, there could be no doubt that she was aware there was a mortgage or should have been aware of this. The Tribunal noted and found that the Respondent had not been on leave on the date of completion, as she had asserted to the IO in interview, and the overwhelming likelihood was that she carried out completion and arranged for the net sale proceeds to be sent to Mr HM. The Respondent was the fee earner with conduct of this matter, and she was one of only two people who could operate the Firm's bank accounts. The Tribunal also noted that the Respondent had not informed Mr Kan about this issue, even after receipt of the two letters of 24 September 2013; this clearly indicated that she knew that she had behaved in an inappropriate way, and that she wished to conceal it. It did not, however, go to the question of whether she considered her conduct was dishonest as at the date of each of the communications in issue.

108.6 Even if the Respondent did not have at the forefront of her mind the facts that there was a mortgage which had not been redeemed, a simple check of the file and/or client ledger would have shown the correct position. In failing to check the file or ledger, and writing the letter of 26 July 2013, the Respondent was at best grossly reckless. The fact that the Respondent sent an email to Mr MH on the same date asking for mortgage details was clear evidence that she knew, on the date she wrote to TW&C that the mortgage had not been redeemed. However, the Tribunal could not be sure that she had in fact realised, on 26 July 2013, that her letter was dishonest by the ordinary standards of reasonable and honest people.

108.7 However, thereafter there could be no doubt that the Respondent knew that the contents of her communications with TW&C were untrue and dishonest. The Respondent knew that she was being asked to provide answers to requisitions from the Land Registry. The Tribunal accepted the evidence of Ms Smith that she had not been asked by the Respondent to redeem the mortgage or chase ME for confirmation of discharge. By that time, if not before, the Respondent could not possibly have believed that a) the mortgage had been redeemed and b) that she/the Firm were chasing for confirmation of discharge. The Tribunal was satisfied that the Respondent knew when she sent them that the letters of 12 August and 5 September 2013 were untrue, and that sending them was dishonest by the ordinary standards of reasonable and honest people. Further, the Tribunal was satisfied that the email of 20 September 2013 was written on the instruction of the Respondent. Its contents were untrue and the Respondent knew they were untrue. There was nothing on the file, or elsewhere, which suggested that the Respondent had been told by Mr HM or anyone else that Mr HM had redeemed the charge.

108.8 The Tribunal was satisfied that in sending the communications of 12 August, 5 September and 20 September 2013 the Respondent acted dishonestly, as defined in the Twinsectra case. It was highly likely that sending the letter of 26 July 2013 was dishonest by the same definition, but the Tribunal could not be sure if the Respondent had been dishonest or grossly reckless.

108.9 With regard to allegation 1.4, it was submitted by the Applicant that in confirming to NM that the Firm had three partners when it did not, and blaming the Law Society for having out of date or otherwise inaccurate records when it did not, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people.

108.10 It was further submitted that the Respondent was aware that her conduct was dishonest by those standards for the following reasons:

108.10.1 The Respondent was involved in the negotiations with Mr SH concerning the provision of consultancy services to the Firm;

108.10.2 The Respondent approved the intended consultancy agreement with Mr SH, which was sent to her by Mr Kan;

108.10.3 There was no discussion or indication or intention that Mr SH would or might join the Firm as a director/partner in the future;

108.10.4 There was a clear motive in the Respondent confirming to NM that there were three partners in the Firm. This was said in response to a direct question, asked by a representative of a lender in a conveyancing transaction, in which the Respondent was instructed and wanted to remain instructed. The Firm's fees of £895 plus VAT were deducted on 31 July 2013;

108.10.5 The answer which the Respondent gave in interview, as set out at paragraph 85 and 86 above, evidenced her awareness of her misconduct and, it was submitted, her subjective dishonesty.

108.11 The Tribunal accepted the helpful evidence of Mr Mace and that the transcript of his conversation with the Respondent in July 2013 was accurate in all material respects. It also accepted the evidence of Mr Kan that there had been only two partners at the relevant time and that there had not even been discussions about appointing a third partner in summer 2013. The Respondent's statement that the Firm had three partners was clear and unequivocal – and untrue. She had backed up that untrue statement by blaming the Law Society's administration for not noting the change on its website, and indicating that the third partner had joined a short time before, such that there was no headed paper to show three partners. This was not simply a slip of the tongue; the Respondent had given a contrived explanation for the fact there was no evidence of a third partner, in circumstances where it was in her interest to say the Firm had three partners, in order to retain the work on the Ms SW transaction. The reality was that there was no such evidence because there was no third partner and the Respondent had no reason to believe there was.

108.12 The Tribunal was satisfied so that it was sure that in telling Mr Mace there were three partners when there were not the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Further, the Tribunal was satisfied that she realised it was dishonest by those same standards as she knew what she was saying was untrue and embellished the lie with additional untruths.

108.13 The Tribunal found that in the Respondent had been found to be dishonest in the two respects alleged. Further, it noted that in the answers and explanations given to the IO, for example concerning Ms Smith's role, the Respondent had shown that she had only a casual acquaintance with honesty.

108.14 The Tribunal was satisfied to the required standard that this allegation had been proved.

Previous Disciplinary Matters

109. There were no previous disciplinary matters in which allegations had been proved against the Respondent.

Mitigation

110. The Respondent was not present and so no mitigation was offered.

Sanction

111. The Tribunal had regard to its Guidance Note on Sanction (December 2014) and to all of the circumstances of the case.

112. It was clear from the principles laid down in Bolton v Law Society [1994] 2 All ER 486 ("Bolton") that the Tribunal had a duty to protect the reputation of the profession as one in which every member could be trusted to the ends of the earth. The subsequent case law, in particular SRA v Sharma [2010] EWHC 2022 Admin ("Sharma"), made it clear that the usual and proportionate sanction in a case of dishonesty was a striking off order, save where there were exceptional circumstances.

113. In this case, the Respondent had been dishonest on several occasions, in July to September 2013, on two unrelated matters. There had been a degree of self-interest in her dishonesty, in that she had tried to cover up the failure to redeem a mortgage and had tried to secure some work on the Ms SW matter. The Respondent's misconduct had led to harm; the litigation arising from the failure to redeem the mortgage was still ongoing. The Respondent had shown no insight into her misconduct, in particular the fact that she had told lies. There was no evidence to suggest that the Respondent had been unwell or unduly stressed at the time of the dishonesty and her dishonesty could not be characterised as being a "moment of madness".

114. The Tribunal did not find there were any exceptional circumstances in this case. Accordingly, the only appropriate and proportionate sanction was an order striking the Respondent off the Roll.

Costs

115. Mr Purcell made an application for the Respondent to pay the costs of the proceedings and submitted a schedule of costs in the total sum of £28,021.50. This included the Applicant's "internal costs" totalling £9,921, which included the Applicant's caseworking costs of £3,939, forensic investigation costs of £4,982 and disbursements

(such as the enquiry agent's fee for serving the proceedings on the Respondent). The schedule also included legal costs of £9,520 plus VAT from late July to 14 September 2015 and estimated costs of £4,800 plus VAT for the period up to and including the hearing.

116. Mr Purcell noted that the hearing itself would be a little shorter than had been estimated on the schedule. A considerable amount of time had been spent in obtaining witness statements from the various witnesses.

117. The Tribunal noted that it had not received any statement of financial information from the Respondent, so it could not consider her means in considering what costs order, if any, to make.

118. The Tribunal also noted that two of the five allegations made against the Respondent had not been proved. Whilst allegation 1.5 would have taken little time to deal with, allegation 1.1 had occupied a considerable part of the hearing bundle and the time in the hearing and thus, it could be inferred, a considerable part of the preparation and drafting time. The Tribunal determined that the costs allowed should be discounted to reflect the fact that two allegations, including one substantial allegation, had not been proved albeit the most serious allegations had been proved.

119. The Tribunal noted that the costs at the time of issue of these proceedings were £9,717.90. The costs had increased substantially from July 2015, particularly with regard to obtaining and serving witness statements. However, these costs had been incurred reasonably by the Applicant as the Respondent had not engaged with the proceedings or admitted any matters. It was necessary and reasonable for the Applicant to take steps to obtain the evidence which would help it to prove its case where there were no admissions of either the allegations or the facts. The Tribunal was satisfied that the hourly charging rate applied was very reasonable, particularly for a solicitor of the experience in Tribunal proceedings of Mr Purcell, and was well within the guideline rates applied in the civil courts. However, the costs should be reduced to reflect the fact that the hearing had not lasted as long as had been estimated. Further, it was not reasonable to order the Respondent to pay for the attendance of both Mr Purcell and his assistant at this hearing.

120. Doing the best it could to take proper account of the factors noted above, and all of the circumstances of the case, the Tribunal summarily assessed the costs payable by the Respondent at £19,500 inclusive of VAT and disbursements.

Statement of Full Order

121. The Tribunal Ordered that the Respondent, Sharelle Camelia Harris, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,500.00 (inclusive of VAT and disbursements).

Dated this 20th day of October 2015
On behalf of the Tribunal

S. Tinkler
Chairman