

IN THE MATTER OF HUGH FRANCIS HARRIS-EVANS & JACQUELINE NATALIE
DELL, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr S N Jones (in the chair)
Mrs H Baucher
Mrs C Pickering

Date of Hearing: 4th December 2003

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Office for the Supervision of Solicitors (“OSS”) by Geoffrey Williams of Queen’s Counsel, solicitor of 2A Churchill Way, Cardiff CF10 2DW on 9th June 2003 that Hugh Francis Harris-Evans of Spring Crescent, Portswood, Southampton and Jacqueline Natalie Dell of Lymington, Hampshire, might be required to answer the allegations contained in the statement which accompanied the application and that such orders might be made as the Tribunal should think right.

The allegations were as follows:-

Against both respondents:-

- a) That they had been guilty of conduct unbecoming solicitors in that they failed to maintain properly written up books of account contrary to Rule 32, Solicitors Accounts Rules 1998.

Against Hugh Francis Harris-Evans (“The First Respondent”) alone:-

That he had been guilty of conduct unbefitting a solicitor in each of the following respects, namely:-

- b) That he utilised professional notepaper which was misleading.
- c) That he compromised or impaired his proper standard of work in property transactions in breach of Rule 1 Solicitors Practice Rules 1990.
- d) That he submitted a Report on Title which was false and misleading.
- e) That he acted improperly in a conflict of interest situation.
- f) That he accepted instructions from a mortgage lender contrary to the stated criteria for so acting.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 4th December 2003 when Geoffrey Williams of Queens’ Counsel, solicitor and partner in the firm of Geoffrey Williams & Christopher Green Solicitor Advocates, of 2A Churchill Way, Cardiff CF10 2DW appeared as the applicant, the First Respondent did not appear and was not represented and Jacqueline Natalie Dell (“the Second Respondent”) was represented by Roger Field, solicitor and consultant to the firm of Higgs and Sons, Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands DY1 1EY.

The evidence before the Tribunal included the Admission of the Second Respondent in respect of allegation a). In correspondence with the Applicant the First Respondent had denied allegations c), e) and f) and had made certain partial admissions in respect of other allegations. During the hearing the Applicant handed in a letter dated 14th August 2001 from Preferred Mortgages to Harris Evans Dell & Co. Mr Johnston and Mr Duerden, Forensic Investigation Officers, gave oral evidence.

At the conclusion of the hearing the Tribunal made the following orders:-

The Tribunal order that the Respondent Hugh Francis Harris-Evans of Spring Crescent, Portswood, Southampton, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal order that the Respondent Jacqueline Natalie Dell of Lymington, Hampshire solicitor, be reprimanded and they further order that she do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £500.

The facts are set out in paragraphs 1 to 66 hereunder:-

1. The First Respondent, born in 1942, was admitted as solicitor in 1965 and his name remained on the Roll of Solicitors. The Second Respondent, born in 1943, was admitted as solicitor in 1978 and her name remained on the Roll of Solicitors.

2. At all material times the First Respondent carried on practice as a solicitor as follows:-
 - a) From about 1st December 1999 in partnership with CF under the style of Harris-Evans & Co at 17/18 The Avenue, Southampton SO17 1XF. Mr F left the partnership in or about October 2000.
 - b) Between the same dates in partnership with Mr F under the style of Hamiltons at Regus House, Southampton International Business Park, George Curl Way, Southampton SO18 2RZ.
 - c) Between 1st March 2001 and 28th February 2002 in partnership with the Second Respondent under the style of Harris-Evans Dell & Co at the address set out in a) above.
 - d) From 1st March 2002 in partnership with another not involved in this Application under the styles and locations referred to in a) and b) above. Such practice ceased in or about July 2002 upon intervention by The Law Society. The First Respondent did not appeal to the court.
3. At all material times the Second Respondent practised as a solicitor as set out at paragraph 2 c) above.
4. Upon notice duly given to the Respondents an inspection of their books of account was carried out by the Forensic Investigation Unit (“FIU”) of the OSS. The Report prepared following the inspection was before the Tribunal. The report noted the matters set out below.
5. At the commencement of the inspection the books of account were not in compliance with the Solicitors Accounts Rules (“the Rules”) for the following reasons:-
 - i) The books were incomplete after 31st March 2001;
 - ii) The reconciliations carried out did not comply with the Rules as the First Respondent was unable to give satisfactory explanations as to what some of the reconciling adjustments represented.
6. After purchasing Dell & Co, the First Respondent continued to maintain the books and records for Hamiltons and what had previously been Harris-Evans & Co. The bookkeeper, who had previously been employed by Dell & Co, continued operating the books for the Dell & Co part of the new firm. The bookkeeper also tried to maintain the Hamiltons and Harris-Evans & Co books but it was found that her records did not accord with those which the First Respondent had continued to maintain and were generally not up to date. In addition, the bookkeeper had not started posting entries for October.
7. On 15th November 2001, due to the lack of properly written-up books of account and reconciliations, Mr Johnston, Forensic Investigation Officer, postponed his inspection to enable the books of account to be properly written-up and reconciled.

8. On his return on Monday 17th December 2001, Mr Johnston established that the First Respondent's software and accounting records had been loaded onto the bookkeeper's computer and that the Dell & Co accounting records had been added to this system. Nevertheless, the First Respondent had continued to maintain his own set of books for both the Hamiltons and Harris-Evans parts of the firm as he had done previously. The reconciliations were found still not to be in compliance with the Solicitors Accounts Rules as they included a number of unexplained reconciling items.
9. On 15th January 2002, Mr Johnston and Mr Duerden, Senior Investigation Officer, returned to the firm and were presented with reconciliations as at 30th November 2001. It was found that the books of account at that date were in compliance with the Solicitors Accounts Rules 1998 in all material respects.

Relationship with mortgage brokers and certain lenders

10. On 2nd November 2001, the First Respondent informed Mr Johnston that a number of lenders and mortgage brokers referred conveyancing work to his firm. He said that he did not have specific agreements with these brokers and lenders but the work was referred to his firm because of a "personal connection" with people he had known for many years.
11. During the course of the inspection, matters in respect of the First Respondent's relationship with certain of these lenders and mortgage brokers, for example, The Mortgage Lender Limited ("TML"), Phoenix Mortgage Company ("Phoenix"), The London Mortgage Exchange, GMAC-RFC Limited ("GMAC") and Southern Pacific Mortgage Limited ("SPML") were considered and formed the basis of the report. Other issues, such as identification of clients and the Second Respondent's position as a partner of the firm were also dealt with.

Relationship with TML

12. The First Respondent informed Mr Johnston that TML carried out "correspondent lending" by issuing mortgages in their own name, but contemporaneously transferring the mortgages on completion to either GMAC or SPML. TML was therefore similar to a mortgage broker.
13. The First Respondent informed Mr Johnston that Hamiltons was a sub-office of Harris-Evans Dell & Co and that the sub-office had been set up solely to deal with work from TML. Furthermore, virtually the whole of the fees of Hamiltons came from work generated by TML. An analysis of the conveyancing transactions completed by Hamiltons during August and September 2001 showed that of the 29 completions for August, 26 (90%) were referred by TML, and that of the 44 completions for September, 39 (89%) originated from TML. On 17th January 2002 Mr Johnston asked The First Respondent what would happen to Hamiltons if TML decided not to give them any more work. The First Respondent replied that "There would be a problem".
14. TML had offices in Regus House situated at Southampton International Business Park, which was also where the office of Hamiltons was situated. The First Respondent said that this was so that Hamiltons could be "close to TML". It was, according to the First Respondent, also at TML's suggestion that the name of the branch office be called

“Hamiltons” because “Harris-Evans” sounded like a “sole practitioner”. The 087 telephone number used by Hamiltons was also chosen by TML because TML themselves had an 087 number.

15. The First Respondent provided a sample of the Hamiltons letterhead to Mr Johnston on 15th November 2001. There was nothing on the letterhead that linked Hamiltons to Harris-Evans Dell & Co and, in addition, the following statement appeared on the bottom of the letterhead:-

“At full list of the partners at this address is available upon request”
16. On 21st November 2001 Mr Johnston asked the First Respondent about the above statement given that there were no partners based at Hamiltons. The First Respondent stated that it was incorrect and that it needed to be sorted out. On 17th January 2002 however, the First Respondent confirmed that the same letterhead was still in use.
17. The First Respondent was further asked if there was any reason why he and the Second Respondent were not noted on the letterhead as partners, to which he replied “not specifically, just the way it was designed”. Mr Johnston then asked the First Respondent if it was in the format TML wanted and the First Respondent replied “probably their suggestion, yes”.
18. On 28th November Mr Johnson visited the offices of Hamiltons and noted that Hamiltons consisted of one office on the first floor of the building within the offices of TML. Next door to Hamiltons was the office of Shamrock Mortgage Services, down the passage on the right was the office of SPML underwriters and next door to them at the end of the passage was the office of GMAC-RFC Limited. Access to the Hamiltons’ office was via a security card giving access to the TML offices.
19. On 17th January 2002, the First Respondent confirmed the details of the set-up noted above save that at the end of December 2001 the layout had changed and Hamiltons now had two offices on the ground floor of Regus House. The First Respondent added that the change was prompted by the fact that both Hamilton and TML needed more space.
20. Prior to moving to Regus House, TML, Shamrock Mortgage Services and Hamiltons all conducted business from one building. Shamrock Mortgage Services was a partnership of two people and one of the partners was the father of the managing director of TML. The First Respondent confirmed to Mr Johnston that the work from TML was referred to Hamiltons because the First Respondent had known the managing director of TML for a long time.

Relationship with Phoenix Mortgage Company

21. An analysis of the conveyancing transactions completed by the First Respondent during August and September 2001 showed that of the 38 completions for August, 21 (55%) were referred to him by Phoenix Mortgage Brokers and that of the 31 completions for September, 16 (52%) were referred by Phoenix Mortgage Brokers. The relevant matter listing at 28th September 2001 showed that the First Respondent had nine client ledger accounts in the name of Phoenix Mortgage Company.

22. On 17th January 2002 Mr Johnston asked the First Respondent a number of questions regarding his relationship with Phoenix Mortgage Company. These questions together with the answers given by the First Respondent were set out in the report.

Relationship with the London Mortgage Exchange

23. During the inspection a number of files relating to Mr D P and his various companies were examined by Mr Duerden where it appeared that the firm had not complied with their mortgagee client's instructions and that they had also failed to act in their client's best interests.
24. At the meeting of 17th January 2002, the First Respondent told Messrs Duerden and Johnston that Mr P was a mortgage broker who referred work to the firm. The First Respondent said that he had been introduced to Mr P by TML. In addition, the First Respondent stated that he was aware of freezing orders, initiated by a firm of solicitors on behalf of their clients, in transactions where substantial sums of money had allegedly been lost in property investment schemes operated by Mr P.
25. Two such matters where Mr P, through various compajnies, introduced clients to the firm are exemplified below:-

Mr and Mrs S

26. Following a referral by Mr P at London Mortgage Exchange, the firm was instructed to act for Mr and Mrs S in their purchase of a property at a purchase price of £165,000. To assist them with their purchase, the mortgage brokers, London Mortgage Exchange, arranged a mortgage in the sum of £142,057.50 with the Southern Pacific Mortgage Limited (SPML) for whom the firm were also instructed to act.
27. From his review of the matter file, Mr Duerden noted that there was no evidence to indicate that the First Respondent had met with his clients and furthermore, there was no evidence that he had spoken directly to his clients. On the latter point, the First Respondent said "I'm afraid I'm very bad at attendance notes but I would have spoken - can't recall specifically". As to the receiving of initial instructions, the First Respondent said that "... usually P writes to me and I write to S".
28. Within the Special Conditions included with the SPML mortgage offer dated 20th July 2000 was the following:-

"2. SOURCE OF PURCHASE MONIES

Solicitor to ensure prior to release of advance that balance of purchase monies is being provided from Applicant(s) own resources without recourse to further borrowing."

29. There was no evidence on the matter file to suggest that the First Respondent had made any attempt to ascertain the source of the balance of purchase monies in the sum of £19,362.58 from his clients. When this matter was put to the First Respondent at the

meeting of 17th January 2002, the First Respondent said that he could not comment without looking at the file.

30. There was no evidence on the client matter file of a copy, or otherwise, of the contract in respect of this transaction. At the meeting on 17th January 2002, the First Respondent was asked why there was no evidence of such a contract to which he replied "Again I can't comment - should normally be [a copy]."
31. Mr Duerden also noted that the matter file did not contain any evidence to suggest that the First Respondent had made any attempt to verify the client's identity as required by the general instructions sent by the mortgagees with the firm's instructions to act. At the meeting on 17th January 2002, Mr Duerden put this to the First Respondent who replied that he could not recollect the matter.
32. Mr Duerden told the First Respondent that the OSS had received correspondence from a firm of solicitors acting for Mr and Mrs S, expressing concerns in respect of the transaction after they had obtained the matter file from the First Respondent. Mr Duerden put those concerns to the First Respondent at their meeting:-
- MPD: Mr and Mrs S were not given a choice as to which firm of solicitors to use?
- H-E: Might have been told that through broker.
- MPD: The clients personally did not instruct your firm, although Mr P did?
- H-E: I'm sure I would have written to them asking for instructions.
- MPD: No complaints or costs information was sent to client?
- H-E: That would be so.
- MPD: The clients were never asked to sign a contract, nor were they asked to authorise anyone else to sign?
- H-E: I'm afraid I don't recall these specific allegations.
- MPD: The clients claim they never received any keys to the property?
- H-E: No comment.
33. Mr Duerden put it to the First Respondent that he had not followed his client's instructions in this matter, but that he had followed the instructions of the introducer to the detriment of Mr and Mrs S and his mortgagee client, SPML. The First Respondent made no comment other than "Again, I would have to go back to the file".
34. In their letter of 19th November 2001 to the OSS, the solicitors acting for Mr and Mrs S indicated that their enquiries showed that Mrs H P, wife of Mr D P, signed the contract that was exchanged on the purchase. They also stated that Possession Proceedings had been issued by SPML.

Mrs M B H - Sale of property at Longstone Road to Mr D G & Mrs M M P HMr D G & Mrs M M P H - Remortgage of the property at Longstone RoadMrs M M P H - Purchase of a property

35. The firm acted in the above transactions following a referral of the clients by London Mortgage Exchange.

Sale of a property at Longstone Road

36. The firm acted in this transaction for the vendor, Mrs M B H and for the purchasers, Mrs H's son and daughter-in-law, and the mortgagee, GMAC-RFC Limited. Completion took place on 28th March 2000.
37. The matter file indicated that Mrs M B H, who was 93 years old at the time of the transaction, was to sell the property at an undervalue in the sum of £115,000 with the deposit being provided by way of gift to her son and daughter-in-law. Mrs M B H provided a Declaration of Solvency in respect of the deposit. Mrs M B H had an existing mortgage with Halifax plc in the sum of £78,672.75, which was discharged on redemption. Mr Duerden asked the First Respondent whether he considered it unusual that Mrs M B H, a 93 year old, should have a large mortgage which happened to be in arrears. In response, the First Respondent said "Again, I'm afraid, I can't recall that point".
38. With regard to Mr and Mrs D G H's purchase, this was completed with the aid of a mortgage from GMAC-RFC Limited in the sum of £115,345.00. The net mortgage advance, which was the only receipt credited to the relevant account in the clients' ledger, was disbursed, in the main, thus:-

Blue Water Home Loans - procuration fee	£1,500.00
Halifax plc - redemption of Mrs M B H's mortgage	78,672.75
Payment into Mr D G H's bank account	30,087.75
D E A	2,476.50
G C S	200.00
Stamp duty and HMLR fee	1,350.00
Firm's costs	<u>683.00</u>

£114,970.00

39. With regard to the payment of £30,087.75 made to the purchaser, the First Respondent stated that he was unable to remember why this had been done.
40. As to the payment of £2,476.50 to D E A, for which there was an authority on the file in the name of C Limited, a company in which Mr P had an interest, the First Respondent told Mr Duerden at their meeting on 17th January 2002 that Mr A was an accountant who had a connection with C Limited, and that "I think money [was] given to him for his accountancy services."

41. It was noted, from a review of the matter file, that correspondence was addressed to Mrs M H on Hamiltons' letterhead, whilst correspondence to her son and daughter-in-law was in the name of Harris-Evans & Co. At the meeting on 17th January 2002, Mr Duerden put it to the First Respondent that this arrangement was put in place so as to give the appearance that both parties were being separately represented. In reply, the First Respondent said "Well yes - to ensure that someone else was dealing with the other side of it".
42. Within the GMAC mortgage offer, Special Condition 10 required that the firm should confirm that the transaction was a true sale and purchase and that the Applicant's mother should seek separate legal advice. In a letter dated 24th March 2000 it was noted that the First Respondent informed GMAC that the Applicant's mother had been given independent legal advice. However, there was no evidence on the relevant matter file to suggest that any independent advice was given and no evidence to suggest that Mrs M B H was ever seen personally.

Mr D G & Mrs M M P H - Remortgage of the property at Longstone Road

43. The firm acted for Mr and Mrs D G H in the above transaction, which completed on 1st November 2000, some eight months after the clients' initial purchase. The new lenders, SPML, instructed the firm to act in the remortgage where Mr and Mrs H were to borrow £200,000. The net advance was disbursed thus:-

GMAC - redemption of existing mortgage	£122,44.36
L P Investment	52,031.39
Mr D G H	25,000.00
Costs etc	<u>524.25</u>
	<u>£200,000.00</u>

44. With regard to the sum paid to GMAC, it was noted that the redemption statement within the client matter file showed that the redemption figure included an early redemption charge of £6,923.39. On 17th January 2002, Mr Duerden asked the First Respondent whether he had given advice to his client regarding the substantial early redemption charge and the First Respondent replied that he could not recall whether he had given advice. No documentary evidence of any such advice was present on the client matter file.
45. With regard to the payment of £52,031.39 to L P Investment, the First Respondent told Mr Duerden that Mr P also controlled that company and Mr H had invested these monies in an investment scheme.

Mrs M M P H - Purchase of a property

46. The firm, the First Respondent, acted in the above transaction for Mrs H in the purchase of the above property.
47. To assist in her purchase, Mrs H received a net mortgage advance in the sum of £101,962, based on a stated purchase price of £135,950, from SPML, for whom the firm also acted. It was noted by Mr Duerden that the client matter file contained a letter

to Mrs H dated 18th January 2001, care of London Mortgage Exchange UK Limited, enclosing the purchase agreement for signature by Mrs H and requesting that the deposit monies be remitted to the firm.

48. Mr Duerden also noted that following the above letter to Mrs H, an amount of £6,797.50 was credited to the relevant account in the clients' ledger as being a receipt of monies from London Mortgage Exchange. With regard to the balance of purchase monies, it was noted that this was financed by way of a loan from Mr I S for which the only documentation available on the client matter file was an unsigned, hand-written promissory note from Mr H (not Mrs H who was purportedly purchasing the property).
49. At their meeting on 17th January 2002, Mr Duerden asked the First Respondent whether he would agree that this was an example of Mr P obtaining a mortgage in a nominee name. In reply, the First Respondent said "... Well no I don't - not my understanding of transactions - H was not a nominee".

Relationship with GMAC-RFC Limited and Southern Pacific Mortgage Limited (SPML)

50. It was noted from the files and client ledger accounts reviewed during the inspection that in a number of instances mortgages previously obtained from GMAC-RFC Limited were redeemed, thereby incurring substantial early redemption charges in favour of that company, and remortgages arranged with SPML, with TML receiving substantial mortgage broker fees. A schedule of these transactions was included as Appendix 2 to the report.

Identification of clients

51. It was apparent from the files reviewed that most clients were not local to the Southampton area and that in the vast majority of cases, clients were not seen personally. On 17th January 2002 the First Respondent was asked if Hamiltons' staff had ever consulted with a client at Regus House, to which he replied "I am not sure, I know that they have occasionally at the previous office."
52. Some files did not contain any copies of identity documents whilst in others it appeared that copies of identity documents supplied by the mortgage brokers had been relied upon, notwithstanding the fact that it was a condition of the various mortgage lenders that the solicitor, independently, verified the identification of the parties. One particular matter was exemplified in the report.

Mr and Mrs M - Remortgage and transfer of equity

53. Following a referral by the brokers, Phoenix Mortgage Company Limited (Phoenix) the firm (the First Respondent, in the name of Harris-Evans & Co) were instructed to act in the remortgage of the above property and in the transfer of equity from the sole name of Mrs M to Mr and Mrs M. The client matter file contained correspondence sent by Phoenix to the firm, which indicated that the property was subject to repossession proceedings. The firm were instructed on 29th November 2000 by the new mortgagees SPML in their net advance of £50,000 which was made up as follows:-

Gross advance	£52,646.60
Arrangement fee	(395.00)
CHAPS fee	(40.00)
Single premium - payment protection plan	(2,061.60)
Title indemnity insurance	<u>(150.00)</u>
Net mortgage advance	<u>£50,000.00</u>

54. With regard to the disbursement of the net mortgage advance of £50,000, which was lodged in the firm's client bank account on 15th December 2000, the accounting records showed that the advance was disbursed by the firm thus:-

Redemption of existing mortgage	£44,148.14
Payment to Mrs M	683.36
Harris-Evans & Co - costs	392.00
Phoenix Mortgage Co Ltd	4,673.00
Other disbursements	<u>63.50</u>
	49,960.00
Balance in hand	<u>40.00</u>
Net mortgage advance	<u>£50,000.00</u>

55. With regard to the payment to "Phoenix" in the sum of £4,673.00, the client matter file contained a "Procurator Fee Agreement" in respect of that company's charges in arranging the SPML mortgage. Both Mr and Mrs M purportedly signed the agreement.
56. Furthermore, the client matter file also contained a hand-written letter, again signed purportedly by both Mr and Mrs M, authorising the payment of the balance of remortgage monies to Mrs M's own bank account.
57. With regard to the mortgagees' requirements as to the verification of the clients' identities, the "Solicitors' General Instructions" included the following:-

"3. IDENTITY OF APPLICANT

The Solicitor must independently verify the identity of each Applicant. In particular, originals of one or more of the following must have been seen:-

- (i) a current full passport
- (ii) a signed employers identity card bearing a photograph
- (iii) an armed forces identity card, or
- (iv) a full UK driving licence

and, in addition, a recent one of the following bearing the applicant's current address:

- (i) Bank statement
- (ii) Credit card statement
- (iii) Utility bill

- (iv) National Insurance card
- (v) Building society passbook
- (vi) Paid Council Tax bill, or
- (vii) Government benefits book

When the Solicitor has difficulty in complying with these requirements SPML must be advised and alternatives agreed. Further, it is the Solicitor's responsibility to ensure that each Applicant is fully and adequately advised of the nature of the transaction (and, in particular, the consequences following any default) into which he or she is entering".

58. As regards the independent verification of identity, the client matter file contained a letter dated 8th November 2000 from Phoenix, enclosing a copy of Mr M's driving licence together with a copy of a DVLA "Statement of Witness - Prosecution from the Record" dated 18th July 2000. No further evidence was found on the matter file of steps taken to independently verify the identification of Mr and Mrs M nor was there any evidence to suggest that the First Respondent had met with the clients.
59. The matter file also included a letter dated 9th April 2001 from solicitors acting for SPML which stated, inter alia:-

"The mortgage subsequently fell into arrears and our client instructed us to initiate repossession proceedings against Mr and Mrs M. However, after proceedings were commenced Mr M informed us through his solicitors that his signature had been forged on the mortgage application form by his wife's partner, Mr P P. He also maintains that at the time of the mortgage being obtained, he did not reside at the mortgaged property".

60. The following is an extract from notes taken by Mr Duerden regarding this matter, at a meeting with the First Respondent on 17th January 2002:-

(MPD = Mr Duerden; H-E = The First Respondent)

MPD: The documentation on the matter files shows an obvious discrepancy in the signature of Mr M (driving licence and Procuration Fee Agreement). Did you express any concerns about this?

H-E: Well I obviously didn't check.

MPD: Given the disparity in the signatures, why were you prepared to accept the signature of Mr M as to the disposition of the balance of the remortgage monies?

H-E: Looking at it afterwards, there are signatures that vary considerably - I don't think you can always say at the time.

MPD: Did you ever meet with the persons said to be Mr and Mrs M?

H-E: Well - no.

MPD: Doesn't this show the importance of seeing clients?

H-E: In hindsight.

MPD: In the Certificate of Title you signed on 5/12/2000, you certified that you checked the identity of the borrowers. Are you satisfied that you took adequate steps to identify the client's identity?

H-E: Well - with the benefit of hindsight, no.

...

MPD: Would you agree that you have not acted in your mortgagee client's best interests?

H-E: No - clearly that hasn't been the case.

MPD: Would you agree that you have not acted in accordance with the instructions to solicitors issued to your firm at the commencement of the matter?

H-E: Well that follows.

MPD: Given that your file contains a court order in respect of repossession proceedings in the name of Mrs M solely, were you not surprised that the property was to be transferred into joint names on the remortgage?

H-E: This is - mostly broker led, depending on the basis they arrange further mortgage.

Preferred Mortgages

61. In a number of matters, the First Respondent acted for a lender, Preferred Mortgages Limited.

62. Preferred Mortgages' letters of instruction contained the following standard condition:-

“Please note that one of Preferred Mortgages Limited's criteria is to accept solicitors' practices with a minimum of three partners or a two partner practice where both solicitors are full equity partners.”

63. On 17th January 2002, Mr Johnston asked the First Respondent a number of questions in this regard, and the questions, together with the First Respondent's replies, are summarised below:-

(DKJ = Mr Johnston; H-E = The First Respondent)

DKJ: Did you enter into a written agreement with Mrs Dell and Mr W to purchase the practice known as Dell and Co?

H-E: Yes.

DKJ: If I had to summarise the essence of your agreement with Mrs Dell, was it that she would sell her practice to you and then work for you for a year during which time you would pay her the agreed monthly instalments?

H-E: Yes.

DKJ: Is Mrs Dell retiring from the practice as at the end of February 2002?

H-E: I believe so, that is her intention.

DKJ: On 6th December 2001 I asked Mrs Dell if she was a full equity partner and her reply was "No, not even salaried". Would you agree with that?

H-E: I think this situation is one where, as far as the outside world is concerned, one is described as a partner, they have full liabilities so [they] would regard her as a partner.

DKJ: I asked her "Do you share in the profits/equity of Harris-Evans Dell and Co?" Her reply was again "No", would you agree with that?

H-E: Yes.

DKJ: I asked her if there was ever any discussion in this regard and again her answer was "No", would you agree with that?

H-E: Yes.

DKJ: I then asked her "Not even contemplated?" to which she replied "No, I took a year's contract and that was the deal", would you agree with that?

H-E: Yes.

64. On 6th December 2001 Mr Johnson asked the Second Respondent if the intention of the indemnity clause in the agreement was so that she would not suffer any financial loss whilst her name was on the letterhead, to which the Second Respondent replied "Definitely so". The Second Respondent also confirmed to Mr Johnston that she was paid a set amount every month and that this was in respect of the payment for the assets and goodwill of Dell and Co.
65. Copies of correspondence from the Respondents commenting on the matters in the report were before the Tribunal.
66. The First Respondent had not practised since the intervention and had been adjudged bankrupt. The Second Respondent had not practised since her retirement in February 2002.

The Submissions of the Applicant

67. The First Respondent had made certain admissions and denials in correspondence to which the Applicant would refer. The Second Respondent had admitted the allegation against her. No Counter Notices had been received to the Applicant's Civil Evidence Act Notice.
68. In relation to allegation a) the Second Respondent was a partner at the time. Her previous partnership had been ending and she had been looking to ease her way out of the profession. She had gone into partnership with the First Respondent and her remuneration was the price of her former practice. This was an unusual and possibly unwise arrangement but was a partnership and the Second Respondent to her credit had accepted her responsibility for the accounts.
69. The Second Respondent had co-operated as well as she possibly could with the investigating accountants and with the OSS.
70. The Tribunal was referred to the Second Respondent's letter to the OSS of 13th May 2002 in which she had written "You are also aware that as I was not an equity partner I had no access to Mr Harris-Evans' accounts or accounting system and further that he never provided me with the accounts for Harris-Evans as at the 28th February 2001 although I did ask for these on more than one occasion. It was apparent that no arrangements had been made to prepare accounts to that date so that the accounts clerk would be able to take over the management of the new firm's accounts as from 1st March 2001.". This was not accepted by the First Respondent. The Second Respondent further wrote:-

"I was aware that the accounts clerk who was originally with Dell & Co was having problems obtaining necessary information from Mr Harris-Evans but not until Mr Johnston appeared at the office did I have any knowledge that there were any problems.

...

In conclusion I would state that the arrangement with Mr Harris-Evans was purely to provide him with an additional name on the notepaper thus creating the firm of Harris-Evans Dell & Co and to enable me to provide a transfer of employment for my staff and a continuation of service for my clients on my retirement, should Mr Harris-Evans wish to take them over which he did not."

71. In a further letter to the OSS received on 12th July 2002 the Second Respondent had written:-

"Indeed I have previously always been a salaried partner never cognisant of the practices' accounts or financial situation

...

I had produced to Mr Harris-Evans my firm's closing accounts and had expected him to do likewise, which as you are aware never happened. It was only after the two offices merged at The Avenue address in June last year that I realised the problems my bookkeeper was having trying to merge the two accounting systems and being expected to include the accounts for Hamiltons and that the situation was becoming untenable. There was just too much work for one part-time member of staff. There was little I could do to assist as the bookkeeper liaised direct with Mr Harris-Evans for the information she needed. There was no reason to suspect that there were any breaches of the Rules merely too great a volume of work."

72. On 9th August 2002 the Second Respondent had written to the OSS:-

"There is implied that the merge of the practice of Dell & Co with Harris-Evans was a sham. This is denied. Mr Harris-Evans did indeed require another partner in order to act for lenders and as my existing premises were being redeveloped I was considering either closing my firm or finding another practice to take over my work and staff on the basis that I would only work for one more year, so after limited discussions it was agreed to merge the practices.

...

Further in merging the two practices I have never denied being a partner ... For the benefit of my client base it was obvious that I should be a partner of the merged practice especially as my name was included as the new practice name."

The Second Respondent's position in that respect was clear.

73. In the absence of the First Respondent the Tribunal was referred to his comments made in correspondence. In a letter of 25th May 2002 to the OSS the First Respondent had written setting out his case. The Tribunal was referred to that letter and in relation to the Second Respondent was referred to the First Respondent's comment as follows:-

"A number of mortgage lenders are only prepared to instruct firms to act for the lender when there are at least two partners and this was the reason that I asked Mrs Dell to be a partner. So far as communications between Mrs Dell and myself were concerned, I would say that there was a normal business relationship. We occupied separate rooms in the office, and she dealt with her clients and I with mine. As far as I was concerned it was a normal friendly relationship."

74. This differed from the view put forward by the Second Respondent. The impression obtained by the Forensic Investigation Officers who had spent a considerable time in the office was that the Second Respondent's view of the professional relationship between the two Respondents was correct.

75. Both partners were responsible for the accounts which had been put right due to the patient approach of the Forensic Investigation Officers. No dishonesty was alleged in relation to the books of account.

76. The First Respondent had admitted allegation b) in correspondence.
77. In the submission of the Applicant, Hamiltons notepaper was inaccurate in that there were no partners resident at the stated address.
78. The First Respondent had contended that Hamiltons was a sub-office of the main practice but the notepaper made no reference to the main practice and clearly implied that Hamiltons was a discrete firm.
79. The First Respondent was the only solicitor who could properly be described as a “partner” of Hamiltons. The Second Respondent had only agreed to be held out as a partner of the main practice and had known nothing of Hamiltons until after she had agreed to such holding out.
80. It had been wholly improper for the First Respondent to hold out Hamiltons as something which it was not. This matter had not been put right when it was brought to his attention.
81. In relation to allegation c) it was submitted that the First Respondent’s failing in this regard arose from the general situation in which he placed himself in relation to his dependency upon a limited number of introducers of work. While that was not of itself an allegation the Tribunal was asked to note that Hamiltons had been set up purely to deal with one introducer, there was no resident partner at the Hamiltons office, the offices of Hamiltons and TML were in the same building and TML was influential with respect to the name and telephone number of Hamiltons and with respect to its notepaper.
82. The First Respondent was also heavily reliant upon Phoenix as an introducer of work. Phoenix allowed the First Respondent to retain the benefit of substantial sums being brokerage fees owed to Phoenix by the First Respondent’s conveyancing clients. The First Respondent would pay sums out to various third parties at the direction of Phoenix.
83. There was also reliance upon LME.
84. It was submitted that in such circumstances the First Respondent had:-
 - i) Failed in his duty to provide a proper standard of work to clients introduced by the said brokers;
 - ii) In so doing preferred the interests of the introducers to those of his other clients;
 - iii) On occasions contravened specific instructions from clients;
 - iv) Failed on many occasions to make proper attendance notes recording advice allegedly given.
85. The First Respondent had admitted i), iii) and iv) above but denied ii).

86. In relation to Mr and Mrs S, in the submission of the Applicant the First Respondent:-
- i) Either failed to take any or any adequate instructions from his clients or alternatively failed to make proper records of those instructions;
 - ii) Failed to comply with instructions from SPML (the mortgagee) to ensure that Mr and Mrs S were providing funds from their own resources without recourse to further borrowing or alternatively failed to make proper records of such enquiry;
 - iii) Failed to comply with a mortgagee's instructions to verify the identity of his clients or alternatively failed to make proper records of such enquiry;
 - iv) Failed to issue any client care letter to his clients.
87. The First Respondent denied the allegations relating to Mr and Mrs S and had set out his explanation of the matter in his letter of 21st March 2002 to which the Tribunal was referred. In that letter the Respondent had said that it was not clear from the file what steps were taken to ascertain the source of the funds. In the submission of the Applicant no steps were taken.
88. In relation to Mrs M B H's sale it was submitted that the First Respondent:-
- i) Failed to make notes of any attendances upon his client;
 - ii) Failed to comply with the instructions of his mortgage client GMAC that Mrs H should be independently advised (see also paragraph 94 below).
- The First Respondent had admitted i) but denied ii).
89. It was accepted that the First Respondent had disclosed the undervalue to the mortgagee but it was submitted that Mrs H had not been independently advised. The Tribunal was again referred to the First Respondent's written representations.
90. In relation to the remortgage by Mr and Mrs H it was submitted that the First Respondent had either failed to advise his clients as to the very high redemption charge which, it was submitted, was in the nature of a penalty or alternatively had failed to keep records of such advice. This was denied by the First Respondent.
91. In relation to Mr and Mrs M it was submitted that the First Respondent:-
- i) Never met his clients;
 - ii) Contravened instructions from his mortgagee client SPML to independently verify the identity of his clients;
 - iii) Submitted a misleading Report on Title (allegation d);
 - iv) Contravened further instructions from SPML fully and adequately to advise Mr and Mrs M. It seemed that he did not advise them at all;

- v) Permitted the introducer Phoenix to attend upon his clients Mr and Mrs M and obtain their signatures to the Mortgage Deed.

The Respondent had admitted these particulars.

92. The Tribunal was asked to note that Phoenix was to receive a brokerage fee of £4,673 which was paid out of the First Respondent's client account and also that the signature of "Mr M" was forged, apparently by Mrs M's partner.
93. It was submitted that this was a very serious matter. The introducer Phoenix had an interest in the matter proceeding. The First Respondent had not seen his client or obtained identification and the identification he had received was not satisfactory. The forged document had blocked the repossession proceedings. It was submitted that the First Respondent had put Phoenix before his client.
94. The First Respondent denied allegation e). He had said that Mrs H senior was separately represented by Mr F while the First Respondent acted for her son and daughter-in-law and that Mr F was therefore responsible for ensuring that Mrs H senior's instructions were freely given and for considering whether there was a conflict of interest as well as giving independent advice.
95. It was submitted however that advice given at Hamiltons was not independent advice. Further in a letter to the OSS from Mr F dated 23rd July 2002 Mr F had written:-

"I do not have any particular recollection of the file of Mrs M B H. I do not recall the file of Mr & Mrs D G H and if the matter was dealt with at the High Street office I doubt that I would ever have seen that file. I have not been given the opportunity to inspect either file.

At all times I acted under the supervision of Mr Harris-Evans. I understand that on 9th March 2000 Mr Harris-Evans sent a fax to the Law Society in the following terms: "Following our telephone conversation this afternoon I confirm that Mr F is employed to carry out residential conveyancing work including remortgages. He is supervised by myself".

96. The Tribunal was referred to the copy documentation from the file which gave the appearance of two firms acting. It was submitted by the Applicant however that this was mere "window dressing". This was evidenced by a letter from Mr F to Mrs M B H dated 16th March 2000 in which he had written:-

"I will carry out the work for you myself. We aim to offer all our clients an efficient service and I am confident that we will do so in this case. However should there be any aspect of our service with which you are unhappy and which we cannot resolve between ourselves you may raise the matter with the senior partner Mr Harris-Evans."

Mr F could not give independent advice against that background. This was however a situation which cried out for independent advice.

97. In relation to allegation f) it was submitted by the Applicant that at least during the partnership with the Second Respondent the First Respondent had neither two partners nor an equity partner. In such circumstances he had no right to accept a number of instructions from Preferred Mortgages Ltd. On every occasion that he acted for this introducer he was in breach of the conditions on which the instructions were based. This conduct was symptomatic of his attempt to make his practice look bigger. In reality he was the sole equity partner. The First Respondent had denied allegation f).

Oral evidence of Mr D Johnston, Forensic Investigation Officer

98. Mr Johnston confirmed the accuracy of the report jointly prepared with Mr Duerden and that the documents which he had copied from the files of the Respondents' firm were true and accurate as were his contemporaneous interview notes and his fee analysis.

Oral evidence of Mr M Duerden

99. Mr Duerden, the investigation manager at the Forensic Investigation Unit, confirmed that the jointly prepared report was true and accurate. He said that the documents that he had copied from the files were true copies of the originals and that his contemporaneous interview notes were true and accurate.

Further Submissions of the Applicant

100. The Applicant had called the Forensic Investigation Officers to give evidence in the absence of adequate submissions by the First Respondent.
101. It was submitted that the Second Respondent had unwisely accepted a responsibility which she could not discharge but that her misconduct was at the lower end of the scale.
102. The misconduct of the First Respondent however was at the highest end of the scale. He had wrongly held the firm out to be something which it was not, had wrongly accepted instructions which he had no right to accept, had compromised his standard of work and preferred one client to another and had acted in a glaring conflict of interest. He had fallen well below the standards expected of a member of the profession and had brought the profession into grave disrepute.

The Submissions on behalf of the Second Respondent

103. The Second Respondent admitted the allegation against her because she accepted that there was parity of responsibility under the Rules. The Tribunal was however asked to say that her position should be considered very differently from that of the First Respondent.
104. The Tribunal was referred to the Second Respondent's statement and to the references put forward in her support.

105. The Tribunal was told of the dreadful accident suffered by the Second Respondent's husband and his subsequent serious ill health and untimely death.
106. The years from the accident to the death were tragic but the Second Respondent was an example of triumph over adversity. She had been obliged to become the breadwinner and had made her career in the law. Her husband's difficulties had been mirrored by her own physical pain, details of which were set out in her statement. Despite this background she had reached the stage where she had been contemplating the end of her career without any criticism or blame other than the matter before the Tribunal. She had now retired with no intention of returning to work and it was therefore particularly frustrating that her career had ended on this note.
107. The Tribunal was given details of the Respondent's professional career which included a move from practice in London for the benefit of her husband and also a redundancy. The Second Respondent's attitude to these matters had shown her stoicism in the face of adversity.
108. She had in due course set up her own practice even though still involved in litigation as executor of her late husband's estate.
109. Eventually, given her own ill health, she had decided with regret that she needed to close her practice. The First Respondent's name had been put to her by a colleague as a possible saviour. The Second Respondent now regretted that she had not followed her initial intention of finding out more about the First Respondent although further enquiries might not have revealed anything. The First Respondent had been recommended to her as a person of competence, integrity and honour.
110. The merger was to be of mutual benefit in that the First Respondent wanted a partner and the Second Respondent wanted continuity for herself and her staff until she retired.
111. The agreement between the Respondents had contained an indemnity for the Second Respondent but it was accepted that such indemnity could not protect her in matters of conduct.
112. Her status had been rather odd in that she was certainly not an equity partner but was not an orthodox salaried partner. She received only the money for the assets and goodwill of her practice. It was accepted however that she must have been a partner as she was referred to such in the agreement and was held out as such on the letterhead.
113. The Second Respondent's initial impression of the First Respondent matched what she had been told about him but things had changed quickly. There had been no reference at all by the First Respondent to the separate and discrete firm of Hamiltons.
114. The Second Respondent's accounts prior to the merger had all been in order and she had expected the First Respondent to produce his accounts. She pressed him for these but had been "fobbed off". The bringing together of the accounts which should have taken place soon after the merger did not occur.
115. It could be said that the Second Respondent should not have accepted the situation and should have looked at the books but it was submitted that there were many firms where

responsibility for the accounts lay with one partner. This did not come to light unless something went wrong and was a matter of trust. If that trust was not justified then the consequences were horrific.

116. The First Respondent had given reassurances when pressed for copies of the draft merged accounts but the Second Respondent should have gone further. She had found the First Respondent to be a dominant and difficult person who would not let her see the books or the draft working papers. She had not been aware that there were problems. With the benefit of hindsight she should have taken further steps and regretted that she had not done so.
117. She now knew that the First Respondent was a dishonourable man in respect of the matters set out for the Tribunal and she had listened in bewilderment to those matters.
118. The Tribunal was asked to note the comment of the Applicant during discussions prior to the Tribunal in which he had said that while there might be disparity of blame he could not see that there was disparity of responsibility.
119. The Tribunal was asked to consider the references in support of the Second Respondent. She was a decent and trustworthy lady, whereas the breaches of the First Respondent were at the top end of the scale.
120. The Tribunal would have the reputation of the profession uppermost in their minds but it was submitted that this was a case where the Tribunal could look at the personal and professional circumstances of the Second Respondent and the nature of the offences and say that while it was right to bring the matter to the Tribunal there was no need to impose any sentence or any sentence other than a reprimand.

Submissions as to costs

121. It was submitted by the Applicant and also on behalf of the Second Respondent that the appropriate order would be a fixed order for costs in respect of the Second Respondent. The Applicant sought an order for costs to be assessed in respect of the First Respondent. It was submitted on behalf of the Second Respondent that an appropriate sum to be paid by her would be £500.

The Findings of the Tribunal

The First Respondent

122. The Tribunal had considered carefully the documentation including the comments of the First Respondent in correspondence. The Tribunal had been assisted by oral submissions. Allegation a) was clearly made out from the Investigation Accountants' report which had been confirmed in oral evidence. Allegation b) which was admitted was clearly proved by the documentation. Allegation c) was admitted in part and the Applicant had referred to the admitted and denied particulars. The Tribunal considered that allegation c) was substantiated in all particulars as set out in the Rule 4 statement. The First Respondent had denied preferring the interests of introducers to those of his

other clients but this had clearly been substantiated as evidenced in the matter of Mr and Mrs M. The First Respondent had denied the allegations relating to Mr and Mrs S but again the allegations were clearly made out in the documents. The First Respondent had denied acting in a conflict of interest in relation to Mrs M B H and had denied failing to comply with the instructions of his mortgagee client that she be independently advised. The Tribunal did not accept however that Hamiltons could provide independent advice in this matter. The First Respondent was the supervising partner of Hamiltons as confirmed by the letter from Mr F. Allegations d) and e) were made out. The First Respondent had denied allegation e) in relation to the remortgage by Mr and Mrs H but again this was clearly made out from the documents. Allegation f) had been denied by the First Respondent but he had clearly accepted instructions from Preferred Mortgages Limited on a wrongful basis. He had one other partner at the relevant time, namely the Second Respondent and she was not an equity partner.

123. Very serious allegations had been substantiated against the First Respondent. He had misled the public and misled his mortgagee clients. He had preferred the interests of an introducer to those of his clients. He had failed to comply with instructions from a lender client. The Tribunal was particularly concerned to note allegation e). The First Respondent had been acting for a vulnerable member of society who was entitled to expect a solicitor would protect her interests. Instead, despite the specific instruction of the mortgagee, he failed to ensure that Mrs H received true independent advice. The Tribunal did not accept the First Respondent's assertion that independent advice had been provided by Hamiltons. Mr F worked under the supervision of the First Respondent. The First Respondent, working against a background of dependence on a limited number of introducers of work appeared to have lost sight of the fact that a solicitor's duty was first and foremost to his clients. The First Respondent had fallen well short of the standards of honesty and integrity expected of solicitors. It was not appropriate that he be allowed to practise as a member of the profession.

The Second Respondent

124. The Tribunal found allegation a) substantiated against the Second Respondent. Indeed she had not contested the allegation.
125. The Second Respondent had accepted the role of partner to the First Respondent and as such had to share the responsibilities of partnership. To her credit she had accepted that she had fallen short of her duties regarding the maintenance of properly written up books of account. There was no suggestion that the Second Respondent was involved in any way or had any awareness of the matters which were the subject of the other allegations against the First Respondent. Having practised with an unblemished record almost to the end of her professional career despite tragic personal circumstances, it was unfortunate that the Second Respondent now found herself before her professional Tribunal. Her offence was one of omission rather than commission and while the case had been rightly brought before the Tribunal, the Tribunal was satisfied that a reprimand would be a sufficient penalty in the circumstances.
126. In relation to costs the Tribunal accepted the submissions on behalf of the Second Respondent.
127. The Tribunal made the following orders:-

The Tribunal order that the Respondent Hugh Francis Harris-Evans of Spring Crescent, Portswood, Southampton, solicitor, be struck off the Roll of Solicitors and they further order that he do pay the costs of and incidental to this application and enquiry to be subject to detailed assessment unless agreed.

The Tribunal order that the Respondent Jacqueline Natalie Dell of Lymington, Hampshire solicitor, be reprimanded and they further order that she do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £500.

DATED this 23rd day of February 2004
on behalf of the Tribunal

S N Jones
Chairman