

IN THE MATTER OF DAVID SIDNEY JOHNSTON AND ASHOK KUMAR, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. S. N. Jones (in the chair)
Mr. A. G. Ground
Mr G Fisher

Date of Hearing: 12th October 2004

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Applications were duly made on behalf of The Law Society by Robert Simon Roscoe solicitor and partner in the firm of Victor Lissack, SC & Coleman Solicitors of 70 Marylebone Lane, London W1U 2PQ on 3rd December 2003 that David Sidney Johnston of Wednesbury Road, Walsall, West Midlands, and Ashok Kumar of Doe Bank Road, Tipton solicitor might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were that they jointly and severally had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (i) did fail to comply with and/or delayed in complying with undertakings given in various conveyancing transactions in breach of Practice Rule 1 Solicitors Practice Rules 1990
- (ii) did fail to supervise properly, or at all, non-qualified staff engaged on the Respondents' business in relation to conveyancing work in breach of Practice Rule 13 Solicitors Practice Rules 1990

- (iii) did fail to deal promptly and substantively with correspondence from the Office for the Supervision of Solicitors (OSS) in breach of Practice Rule 1 Solicitors Practice Rules 1990.

By a supplementary statement of Robert Simon Roscoe dated 7th May 2004 it was further alleged against the Respondents that they jointly and severally had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (iv) did fail to supervise properly, or at all, non-qualified staff engaged on the Respondents' business in relation to work carried out on behalf of Somerville Leisure Plc in breach of Practice Rule 13 Solicitors Practice Rules 1990;
- (v) did fail to supervise properly, or at all, non-qualified staff engaged on the Respondents' business in relation to work carried out on behalf of Legal & Financial Consultants in breach of Practice Rule 13 Solicitors Practice Rules 1990;
- (vi) did fail to supervise adequately work carried out by the Respondents' business [on] behalf of Somerville Leisure Plc in breach of Practice Rule 13 Solicitors Practice Rules 1990;
- (vii) did fail to supervise adequately work carried out by the Respondents' business [on] behalf of Legal & Financial Consultants in breach of Practice Rule 13 Solicitors Practice Rules 1990;
- (viii) did fail to avoid conflicts of interest in conveyancing, property selling and mortgage related services in breach of Practice Rule 6(2) Solicitors Practice Rules 1990;
- (ix) did fail to avoid conflicts of interest in conveyancing, property selling and mortgage related services in breach of Practice Rule 6(3) Solicitors Practice Rules 1990;
- (x) did fail to supervise properly, or at all, non-qualified staff engaged on the Respondents' business in relation to conveyancing work in breach of Practice Rule 13 Solicitors Practice Rules 1990.

By a second supplementary statement of Robert Simon Roscoe dated 23rd September 2004 it was further alleged against the Respondents that they jointly and severally had been guilty of conduct unbecoming a solicitor in each of the following particulars namely:-

- (xi) did overcharge clients by claiming as a disbursement for bank charges an amount in excess of that charged to the firm by the bank for the provision of telegraphic money transfers in breach of Rules 1 and 15 Solicitors Practice Rules 1990;
- (xii) did fail to avoid conflict of interest in conveyancing, property selling and mortgage related services by requisitioning and using for completion of purchases monies received from mortgagees without being in possession of mortgage documentation signed by the relevant borrower(s) in breach of Practice Rule 6 Solicitors Practice Rules 1990;

- (xiii) did mislead the Birmingham Midshires as to the actual prices of a property, 18 Sandpiper Court, and the date of purchase when having been instructed by them, in breach of Practice Rules 1 and 6 Solicitors Practice Rules 1990.

The application was heard at the Court Room, 3rd Floor Gate House, 1 Farringdon Street, London EC4M 7NS on 12th October 2004 when Robert Simon Roscoe appeared as the Applicant and the Respondents did not appear and were not represented.

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

The Tribunal Order that the Respondent, David Sidney Johnston of Wednesbury Road, Walsall, West Midlands, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 12th day of October 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 being one half of the total costs.

The Tribunal Order that the Respondent Ashok Kumar of Doe Bank Road, Tipton, solicitor be suspended from practice as a solicitor for the period of 1 year to commence on the 19th day of October 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 being one half of the total costs.

The facts are set out in paragraphs 1 to 69 hereunder:-

1. Mr Johnston (the First Respondent) born in 1947 was admitted as a solicitor in 1975 and his name remained on the Roll of Solicitors. Mr Kumar (the Second Respondent) born in 1961 was admitted as a solicitor in 1999 and his name remained on the Roll of Solicitors.
2. The Respondents practised as solicitors in partnership as Foster Johnston Oldfield, solicitors (FJO) and, subsequently as FJO, solicitors, at all times in practice at Exchange House, 28 Wednesbury Road, Walsall, West Midlands, WS1 3QT.

Complaint by Messrs Manby & Steward

3. In October 2001 FJO acted for a Mr B and Miss W in the sale of a property. The purchasers were represented by Manby & Steward, solicitors. The vendors' property was charged to (i) the Walsall Metropolitan Borough Council, under S. 156 Housing Act 1985, (ii) Bristol and West Plc, and (iii) Council Homebuyers (Mortgages) Ltd.
4. By a letter to Manby & Steward dated 15th October 2001, sent on behalf of FJO by an unadmitted conveyancer, FP, FJO wrote:-

"We confirm that on completion we will let you have our undertaking to repay the discount secured by the charge registered in favour of Walsall MBC."
5. Completion took place on 30th November 2001 and on 3rd December 2001 FJO provided a written undertaking to Manby & Steward stating:-

"Please accept this letter as our undertaking to immediately discharge the charges in favour of Council Homebuyers (Mortgages) Ltd and Bristol and West Plc."

6. On 8th April 2002 Manby & Steward advised FJO that the charge in favour of Walsall MBC had not been discharged. On 3rd May 2002 the Second Respondent replied to Manby & Steward indicating that the Council Homebuyers (Mortgages) Ltd had been discharged. In fact Walsall MBC had not at that time been paid and did not agree to the removal of their charge on the property until 28th August 2002.
7. On 24th July 2002 the OSS wrote to the Respondents regarding the complaint made by Manby & Steward asking for an explanation and putting certain specific questions.

FJO were asked to provide a full response and copies of relevant documents within 14 days. The Second Respondent acknowledged the OSS letter on 25th July 2002 and sent a one-page letter on 31st July 2002 which, in summary, acknowledged the failure of FJO to deal properly with the matter and indicated that FJO would resolve the matter. This did not deal with the specific issues raised by the OSS who wrote again to the Respondents on 12th August 2002. The OSS received from FJO a one-page letter dated 28th August 2002 bearing the reference of the Respondent's unadmitted conveyancing manager, PH. This letter, like the Respondents' earlier letter, acknowledged the original failure and indicated that FJO would resolve the matter but again did not answer the questions asked by the OSS in their letters of 24th July and 12th August. This was pointed out in a further letter sent to the Respondents dated 12th September 2002. The Respondents provided a full response on 20th September 2002.

Complaint by Messrs Enoch Evans

8. In April/May 2002 FJO acted for Mr T and Miss P in the sale of a property. The purchasers were represented by Messrs Enoch Evans, solicitors. The vendors' property was charged to (i) the Nationwide Building Society, and (ii) Paragon Finance Limited.
9. In their Requisitions on Title form dated 8th April 2002, Enoch Evans requested an undertaking from FJO that the charges would be redeemed on or after completion. Such undertaking was given by FJO in their Replies to Requisitions dated 2nd May 2002. No information had been provided by the Respondents as to who at FJO gave this undertaking. Completion took place on 3rd May 2002.
10. On 23rd May 2002 and 18th June 2002, Enoch Evans wrote to FJO reminding them that the appropriate evidence of the discharge of the charges was awaited. Notification in respect of the Nationwide Building Society charge was received by Enoch Evans by 4th July 2002. Enoch Evans wrote to FJO pointing out that because of FJO's delay, Enoch Evans' clients' application to the Land Registry had been cancelled and Enoch Evans were obliged to renew the Land Registry search. Correspondence continued between Enoch Evans and FJO until January 2003 when the vendors' charge to Paragon Finance Limited was discharged and Enoch Evans were able to register their clients' title and their clients' mortgagees' charge.

11. In August 2002 Enoch Evans complained to the OSS about the failure of FJO to comply with the undertaking of 2nd May 2002. On 13th September 2002 the OSS wrote to the Respondents asking for an explanation and putting certain specific questions and requesting copies of correspondence.
12. The Respondents sent a two page letter, dated 30th September 2002, to the OSS. The First Respondent indicated that there had been 'an unforeseen difficulty' but that the matter would be resolved 'shortly'. The First Respondent regretted that FJO had not kept Enoch Evan notified. Specific questions raised by the OSS were not answered and no copy correspondence was provided. The OSS wrote again to the Respondents on 2nd December 2002. The Respondents submitted detailed responses on 10th December 2002 and 17th February 2003.

Complaint by Messrs Michael G Wooldridge

13. In May 2002 FJO acted for a Mr and Mrs M in the sale of a property. The purchasers were represented by Messrs Michael G Wooldridge, solicitors. The vendors' property was charged to National Westminster Home Loans Limited.
14. In their Requisition on Title form, Michael G Wooldridge requested an undertaking from FJO that the charge would be redeemed on or after completion. Such undertaking was given by FJO in their Replies to Requisitions (undated). No information had been provided by the Respondents as to who at FJO gave the undertaking although the Respondents advised that the conveyancing matter was conducted on behalf of FJO by an unadmitted member of staff, Mrs M. Completion took place on 27th May 2002.
15. Michael G Wooldridge received no notification that the vendors' charge had been discharged and the undertaking complied with. Michael Wooldridge wrote to FJO on 2nd July, 11th July, 26th July and 8th August 2002 pointing out that the undertaking had not been complied with and that their application for registration was in danger of being cancelled and, ultimately, that it had been cancelled. No response or acknowledgement was received from FJO to any of the letters.
16. Following a complaint to the OSS, the OSS wrote to the Respondent on 4th October 2002. A full response was received from the Respondents dated 8th October. In their response, the Respondents acknowledged that the undertaking had not been complied with and regretted the failure to keep Michael G Wooldridge informed of the reason for the delay in compliance. Compliance did occur on 7th November 2002.
17. The Respondents were asked by the OSS in a letter dated 2nd December 2002 to clarify their supervision of Ms M. A full response was received from the Respondents dated 10th December 2002.

Complaint by Messrs Thursfields

18. In April 2002 FJO acted for a Mr H and Miss K in the sale of a property. The purchasers were represented by Messrs Thursfields, solicitors. The vendors' property was subject to a second charge to the Associates Capital Corporation Plc.

19. Completion took place on 12th April 2002. Prior to completion Messrs Thursfields sought and were given an undertaking by FJO to redeem the above mortgage and to remove the C1 entries.
20. An unadmitted member of staff, Ms F, gave that undertaking. This was confirmed in a letter dated 10th October 2002 sent to the OSS by PH, the Practice Manager at FJO, and also an unadmitted member of staff. PH, a legal executive, had only been employed by the Respondents in a supervisory capacity since 1999 and was therefore not covered by the transitional provisions following the replacement of Practice Rule 13 (1)(b) on 23rd December 1999. For Mr H to be qualified to manage under the transitional provisions he would have had to be employed by the Respondents 'to manage' within the terms of Practice Rule 13(1)(b) immediately prior to 12th December 1996.
21. Following completion FJO and Messrs Thursfields corresponded about the failure of FJO to comply with the above undertaking. In June 2002 Messrs Thursfields threatened to report FJO to the OSS. In a letter to Messrs Thursfields, dated 18th June 2002, PH asked, "Is it really necessary to have reported this matter to the OSS?", and he pointed out that he found it, "most regrettable that you have seen fit to pursue such a matter" and that he considered that Messrs Thursfields were "wasting the time of the OSS", and that they had, "embarked upon a pointless exercise which serves only to take up time that could be better spent elsewhere". The undertaking was ultimately complied with in December 2002/January 2003.
22. On 2nd September 2002 Messrs Thursfields complained to the OSS that the Respondents had not complied with the above undertaking.
23. On 24th September 2002 the OSS wrote to the Respondents, and to the First Respondent in particular, asking for an explanation and putting certain specific questions.
24. The OSS received a letter dated 10th October from PH purporting to respond to the OSS letter. Mr H's response failed to deal substantively or promptly with the matters set out in the OSS letter of 24th September. No reply was received from the Respondents.
25. The OSS wrote to the Respondents and PH on 2nd December 2002 advising that the Respondents had failed to respond promptly or substantively. The First Respondent provided a more detailed response to the OSS on 10th December 2002.

Complaint by Messrs Hadens

26. In June 2002 FJO acted for a Mr P in the sale of a property. The purchasers were represented by Messrs Hadens, solicitors. The vendors' property was subject to a caution registered by Confidential Personal Loans Limited.
27. In their Requisitions on Title form, Hadens requested an undertaking from FJO that the charges and cautions would be redeemed on or after the completion. An undertaking was given by FJO in their Replies to Requisitions dated 21st June 2002 indicating:-

"The relevant application for removal of the caution in favour of Confidential Personal Loans Ltd dated 8th August 2000 will be handed over on completion."

No information had been provided by the Respondents as to who within FJO gave the undertaking. Completion took place on 21st June 2002.

28. Following completion Hadens wrote on 9th July and 16th July asking for the relevant form to confirm the removal of the caution. Confidential Personal Loans Ltd advised both FJO and the Land Registry that they were not prepared to remove the caution.
29. On 22nd August and 2nd September Hadens wrote to the Respondents advising them that because the Respondents had failed both to reply to their letters and to comply with the undertaking that the breach of professional undertaking would be reported to the OSS. The Respondents acknowledged the letter from Hadens.
30. On 5th September 2002 Confidential Personal Loans Ltd signed the appropriate WCT form and it was provided to Hadens on 26th September in compliance with the undertaking.
31. On 26th September 2002 the OSS wrote to the Respondents asking them who had given the undertaking, what the firm's supervision arrangements were and asking for copies of relevant documents.
32. On 3rd October 2002 the Respondents wrote to the OSS acknowledging delay in compliance with the undertaking but failing to provide a full answer to the OSS and failing to enclose any relevant documents.
33. The OSS were obliged to write to the Respondents on 2nd December asking again for the information originally sought on 26th September. A further and more detailed response was sent by the Respondents on 10th December.

First Law Society Inspection

34. In June 2001 the Law Society's Senior Investigation Officer, Mr N, attended the premises of FJO and inspected the books of account and other documents. In his report of 30th September 2002 Mr N set out various breaches of the Solicitors' Practice Rules, as summarised below.

Breaches of Rule 13 (Supervision and Management)

35. Among the client ledgers he reviewed, Mr N discovered ledgers relating to Somerville Leisure Plc and Legal & Finance Consultants. In the course of his inspection Mr N spoke about these clients with the Second Respondent and with two unadmitted employees, PH, the Practice Manager, and JO, the Accounts Manager.

Somerville Leisure Plc

36. On 11th July 2001, PH explained to Mr N that Somerville Leisure Plc (Somerville) was a holiday 'product' company for which the service provided by FJO was the receipt of monies from prospective purchasers of a 'product' that was not a timeshare and that the firm had been asked to devise a scheme to avoid the need for Somerville to comply with the timeshare regulations and that Counsel's advice had been sought. Mr N asked whether compliance with the Financial Services Act had been considered and PH said that it had not.
37. Mr N requested the client matter file from PH. He was subsequently advised that both PH and JO were trying to obtain the file and made a number of attempts to obtain the file from them. No file was forthcoming and, on 18th September 2001 PH stated that there was no file, that he had not realised the significance of the expression 'solicitor to the issue' (see paragraph 42 below) and that he may have misled Mr N as the firm merely acted for Somerville, with a specialist adviser dealing with the shares. Mr N requested at least, a note of the firm's involvement but, in a letter dated 2nd October 2001, the First Respondent advised him that no file existed.
38. In November 2001 Mr N discovered that Somerville had been wound-up on 19th September 2001 in the public interest. A company search showed that PH and JO were directors of Somerville and that PH was also the company secretary.
39. On 4th January 2002 Mr N met with the Second Respondent and with JO. The Second Respondent accepted that he had conducted litigation on behalf of Somerville. Both the Second Respondent and JO denied misleading Mr N.
40. JO told Mr N that all FJO/Somerville files had been sent to the Somerville office and that they were now with the Official Receiver. He and the Second Respondent explained that FJO had not been involved in a share issue but had carried out standard debt, litigation and contract work, relating to non-payment of contractual sums or breach of contract, including enforcing the sale of shares in Somerville Leisure. Files, subsequently obtained from FJO, disclosed copy FJO letters which appeared to show that this work was carried out by PH on behalf of FJO.
41. The Second Respondent confirmed that he and the First Respondent were aware of the involvement of PH and JO in Somerville.
42. Mr N served the Second Respondent with a notice under section 44B of the Solicitors Act 1974, requiring the production of all documents connected with Somerville Leisure Plc in the possession of FJO. The documents provided disclosed, inter alia:-
 - JO's affidavit in the insolvency proceedings of Somerville,
 - Three share prospectuses naming Foster Johnson Oldfield as solicitors to Somerville Leisure Plc and to the issue,
 - Examples of correspondence from FJO to 'investors'.

Legal & Finance Consultants

43. PH explained that Legal & Financial Consultants was his own company and that it provided debt-collecting services. FJO Client Ledger 97003/62 reflected debt-collecting work carried out on behalf of Somerville Leisure Plc, carried out by Legal & Financial Consultants through the auspices of FJO.

Acting for buyer and seller in breach of Practice Rule 6(2)

44. In his investigation Mr N discovered instances where FJO appeared to have acted for both buyer and seller in conveyancing transactions. Five transactions were described in the Report and two are set out below by way of example.

Princes Avenue

45. The executors of Mr T deceased instructed FJO in the sale of this property. FJO were also acting for the buyers, Mr W and Miss T, who were buying with the assistance of a mortgage. The sale file was marked, 'We act for the buyers as well'. The purchase file contained a note, 'Clients are buying at arms length from father acted as personal rep of deceased parent/grandparent'. Neither matter file contained evidence to show that any of the parties were existing clients of the firm nor that any written consent had been obtained by the firm to permit them to act for both seller and buyer.

Forrester Street

46. FJO were instructed in the sale of this property by a Mr P. FJO were also acting for the buyers Mr and Mrs R, who were buying with the assistance of a mortgage. The purchase file was marked on the outside, 'Linked to P vendor – Existing clients'. The quotation sheet on the purchase matter was also marked, 'existing client'. The sale file contained no evidence to show that Mr P was an existing client of the firm and neither file contained any evidence that any written consent had been obtained by the firm to permit them to act for both seller and buyer.
47. In conversation with Mr N and in letters dated 15th February 2002 and 1st April 2003, the Respondents acknowledged and accepted these breaches.

Acting in breach of Practice Rule 6(3) by failing to notify the Mortgagee

48. The Council of Mortgage Lenders' (CML) Handbook sets out requirements for solicitors acting on behalf of a mortgagee in the purchase of residential property where the buyers are buying with a mortgage. In his investigation Mr N discovered a number of breaches of the CML instructions in conveyancing files. These breaches were notified to the Second Respondent. They included:-
- (i) failure to notify the lender that the vendor had owned the property for less than six months;
 - (ii) use of personal searches contrary to the lender's instructions;
 - (iii) failure to notify the lender of cash incentive allowances.

- (iv) failure to notify the lender that the firm did not have control over payment of all the purchase money. Examples of the breaches are set out below.

Bridgewater Place

49. This was a new property which the clients, Mr J and Miss B, were buying from the developer, who took their existing property in part exchange. The completion statement from the developer referred to an incentive allowance of £1,500 from the purchase price.
50. The purchasers purchased with the assistance of a Bank of Scotland mortgage. FJO also acted for the Bank of Scotland. The lender's instructions were that incentives had to be reported. The Certificate of Title, sent to the Bank of Scotland and signed by the First Respondent made no mention of the incentive referred to above. In his letter of 15th February 2002 the Second Respondent accepted that the Mortgagee should have been told.
51. The Report described a further transaction where the same breach of instructions had occurred.

Chapel Lane

52. This property was purchase by a Mr M using, in part, a mortgage advance from the Chelsea Building Society for whom the Respondents' firm also acted. The Building Society's instructions were that it did not accept personal searches. The local search in this matter was carried out by a search agent. In his letter of 15th February 2002 the Second Respondent accepted that the personal search had been carried out in breach of the lender's instructions.
53. The Report set out details of two further transactions where the same breach of instructions had occurred.

South Street

54. This property was purchased by a Mr P and a Miss M using, in part a mortgage advance from the Bank of Scotland for whom the Respondents' firm also acted. The Bank of Scotland's instructions were that the bank must be told if the vendor had owned the property for less than six months. The Respondents' correspondence file contained a letter from the vendor's solicitor indicating that the vendor had only recently purchased the property. A copy of the transfer to the vendor confirmed that it had only been acquired on 4th January 2001.

The Certificate of Title was signed by the First Respondent and dated 17th May 2001. Completion took place on 22nd May 2001. The Respondents' file contained no evidence that the Bank of Scotland had ever been informed that the vendor had owned the property for less than six months, nor that the vendor had purchased the property for £19,000 and sold it for £47,000. In his letter of 21st February 2002 the Second Respondent indicated that the original acquisition by the vendor had been in January 2000, notwithstanding that the documentation on the file indicated that the vendor had acquired the property in January 2001.

Castleton Road

55. This property was purchased by a Mr O using, in part, a mortgage advance from the Halifax plc for whom the Respondents' firm also acted. The Halifax's instructions were that the firm must notify the lender if the firm did not have control over the purchase price. The Certificate of Title was signed by the First Respondent and dated 22nd June 2000 and completion took place on 3rd July 2000. The Respondents' client file matter includes a request sent on 22nd July 2000 to Mr O for the balance of the purchase money of £3,008.25. However neither the file nor the relevant client ledger contained any indication that this sum was received by the Respondents from Mr O. The only sum shown as transferred was the mortgage advance received from the Halifax plc. There was no evidence on the client matter file to show that the Halifax plc was aware of the situation.
56. The Report described a further transaction where the same breach of instructions had occurred.

Second Law Society Inspection

57. On 25th February 2003 the Law Society's Investigation Officer, Mr S, attended the premises of FJO and inspected books of account and other documents. In his report of 30th September 2002 Mr S cited various breaches of the Solicitors' Practice Rules as summarised below.

Breach of Practice Rules 1 and 15 Solicitors Practice Rules 1990

58. Mr S found that FJO operated a direct link to its bankers, Lloyds TSB, for the swift processing of funds transfers.
59. Mr S found that for each such transfer the firm's bankers charged the firm a standard fee of £10 with no added charge for VAT.
60. Mr S found that where such transfer had taken place in respect of a client's instructions, the firm would charge £30.00 plus £5.25 VAT. In quotation letters to clients such charges would be described as 'telegraphic transfer fees'. In bills and completion statements delivered to clients the charge would be described as 'bank charges including VAT'.
61. Mr S spoke about this with the First Respondent on 26th February 2003. The First Respondent advised Mr S that the firm had previously charged clients £25.00 inclusive of VAT but had increased this to £35.25. Mr S asked the First Respondent why clients were charged the higher figure when the cost to the firm of a transfer was only £10.00. The First Respondent informed Mr S that the difference represented an 'admin/handling fee'.
62. Mr S analysed the charges for two successive months, December 2002 and January 2003 and expressed the view in his Report that the firm was, on average, making a secret profit of about £6,500 per month.

Breach of Practice Rule 6

63. In his investigation Mr S discovered a number of matters in which the firm had failed to deal correctly with lenders' requirements. The matters occurred where the firm was not only acting for the purchaser/mortgagor in conveyancing matters but also acting for the lender/mortgagee, normally a bank or building society.
64. In the matters discovered by Mr S, the firm had completed conveyancing purchases using the lenders' advances without being in possession of mortgage documentation signed by the relevant borrower. This occurred despite the firm providing signed reports/certificates on title and written assurances to the lender, confirming compliance with Practice Rule 6a, when requisitioning the monies in anticipation of completion.
65. Paragraph 36 of Mr S's report set out four instances of this occurring. At the meeting with Mr S, the Respondents acknowledged their omission and assured Mr S that their systems had improved.

18 Sandpiper Close

66. In 2001/2002 FJO acted for a Mr L in his purchase of 18 Sandpiper Close. The FJO matter ledger listing showed the fee earner to be the Second Respondent. Completion appeared to have taken place on 1st January 2002 when £47,040.00 was sent by telegraphic transfer to Countrywide Property Lawyers (CPL).
67. Mr L applied for a mortgage in respect of the property. On 21st February 2002, the Birmingham Midshires instructed FJO to act on their behalf.
68. On 15th April 2002, on behalf of Mr L, the First Respondent submitted a certificate of title form to the Birmingham Midshires for a mortgage advance in respect of the property. The certificate signed by the First Respondent advised that the property was to be purchased on 17th April 2002 at a cost of £55,000.00. The requested mortgage advance was £46,750.00.
69. The Land Certificate issued by HM Land Registry dated 25th April 2002 showed the registration on 25th April 2002 of Mr L as proprietor and confirmed that the purchase took place on 2nd January 2002 and that the actual price paid was £47,000.00. There was no charges register entry showing the interest of Birmingham Midshires or any other mortgagee.

The Submissions of the Applicant

70. The Applicant explained to the Tribunal that matters set out in the Reports of the Investigation Accountants but in particular in the Report of Mr S dated 30th September 2003 from paragraphs 18 onwards were provided by way of background and did not form the basis of any allegations against the Respondents. The Tribunal considered these matters were not relevant to the issues before it and disregarded those parts of the Report in the course of its consideration.

71. The Respondents' legal representatives had indicated to the Applicant that the Respondents accepted all the breaches alleged against them.
72. In relation to allegation (i) all the matters which had been the subject of undertakings had now been remedied but in the submission of the Applicant there were in respect of some undertakings implied time limits. A failure or a delay in complying with undertakings in conveyancing transactions put everyone involved to a great deal of trouble.
73. An individual delay or failure in respect of an undertaking might have been a matter of inadequate professional services but the number of complaints which had been received by the Law Society taken as a whole appeared to indicate that undertakings were routinely not being complied with.
74. The Tribunal was asked to note the delay in providing full responses to the OSS and also the involvement in correspondence to the OSS of the unadmitted conveyancer PH which, in the submission of the Applicant, was inappropriate.
75. The Tribunal was also asked to note also the letter from PH to Messrs Thursfields dated 18th June 2002. This was an inappropriate letter from an unadmitted Practice Manager where a proper complaint had been made by another firm of solicitors and went to the heart of the failure by the Respondents to supervise non-qualified staff. The failures and delays in respect of undertakings given by unadmitted staff also reflected a failure to supervise by the Respondents.
76. Allegations (iv) to (vii) referred to the Respondents' failure to supervise staff who were carrying on two businesses.
77. PH had indicated to Mr N that Somerville was not in compliance with the Financial Services Act. There was no file in respect of Somerville and therefore no supervision or review of the file by either of the Respondents.
78. Somerville had been wound up the day after Mr N's discussion with PH and JO and Mr N had considered that he had been misled by them. Both Respondents had been aware of Somerville and had been aware that it was being operated by their employees. Both Respondents bore equal responsibility for supervision.
79. In relation to Legal and Financial Consultants PH had described this as his own company but the Respondents' written reply to the allegations submitted to the Tribunal by their representative indicated that it was PH's wife's company.
80. The Applicant was not suggesting that the unadmitted staff involved were guilty of misconduct but it had been inappropriate for the firm to allow unadmitted employees to run a quasi legal business within the auspices of the firm without supervision. The documents disclosed to Mr N following the notice under Section 44(B) of the Solicitors Act included correspondence sent by PH and the firm to various investors in Somerville and judgment orders obtained by the firm. The Tribunal was invited to take a particularly serious view of these allegations.

81. In relation to allegations (viii) to (x) the Standard Conditions had been breached in various ways. There had been an obligation on the firm to conduct matters properly both for the conveyancing client and the lender client.
82. The comments on the outside of the files clearly showed that the firm was aware of the connection between the parties and that therefore the breaches were clearly known or should have been known to the firm. It was acknowledged that the breaches may have been committed by unadmitted staff but that again demonstrated the lack of supervision and control of staff employed by the Respondents.
83. In relation to allegation (xi) there was a strict regime for the profession regarding charges and disbursements. Disbursements were monies which a solicitor had had to expend on behalf of a client. The Tribunal was asked to note that in the two month period of December 2002 and January 2003 the firm had made a substantial secret profit which had been paid by unwitting clients.
84. In relation to allegation (xii) the firm was acting for the lenders and had a duty to ensure that documents were signed.
85. In relation to allegation (xiii) the Certificate of Title signed by the First Respondent completely misled the Birmingham Midshires as to the true position. The information contained in the Land Certificate was in the Applicant's view confirmation that the misleading had not been accidental. It was also of significance that a Land Certificate not a charge Certificate had been issued. The interest of the building society had not been recorded. The mortgage had not in fact been completed until the following year and it was therefore not surprising that the building society interest could not be registered.
86. The First Respondent had signed the Certificate on Title but the Second Respondent was named as the fee earner in the matter. The Respondents had joint and several liability and both Respondents had corresponded with the OSS on conveyancing matters.
87. The Applicant sought his costs in the sum of £10,000. The Respondent's representative in discussion had indicated that this was a reasonable sum and had further indicated that it was wished that the costs be divided equally between the Respondents.

The Submissions on behalf of the Respondents

88. The Submissions on behalf of the Respondents, set out as points of mitigation, were contained in a document before the Tribunal from Albert Oldfield, Solicitor and Partner in Edmonds & Co of 420 Birmingham Road, Wylde Green, Sutton Coldfield, West Midlands. The document was entitled "Reply of the Respondents" to the Applicants' three statements. These submissions of the Respondents said legal representative are summarised below who asked for them to be read to the Tribunal without the need for either Respondent to attend.
89. The First Respondent had not held a Practising Certificate for some time, and had applied to be removed from the Roll. He was no longer engaged in gainful

employment, and was living off his savings. The Second Respondent was currently an assistant solicitor in private practice and had had some health difficulties. The Second Respondent was described as a litigation solicitor who had never had any detailed dealings in conveyancing matters or responsibility for such matters. At the relevant time he was a salaried partner of the First Respondent and did not participate in the profit of the firm beyond his fixed salary. It was accepted that the Second Respondent as a partner had to be held to account for such breaches that were outside his direct control but the Tribunal was invited to reflect his comparatively minor role in reaching its decision.

90. The Respondents accepted that there had been inadequate supervision of their non-qualified staff in their involvement with Somerville although stated that the staff involvement in the company had been completely unconnected with their employment by the Respondents and had had the Respondents' full approval. The Tribunal was asked to note that no conflicts of interest had ever arisen and that Counsel's opinion on that point had been reassuring.
91. Legal and Financial Consultants had always been a separate company being a family business run by PH's wife for which the firm had carried out occasional legal work. The Respondents accepted that they had allowed non-qualified staff to cloud the clarity of the firm's position of having a merely client/solicitor relationship with Legal and Financial Consultants.
92. In relation to the conveyancing breaches full explanations had been given in correspondence by the Respondents. The Tribunal was told of an explosion of conveyancing matters in 2001 due to the reputation of the firm and of the difficulty of recruiting experienced quality staff. While proper procedures, adequate instructions and training of staff had not been in place at an earlier stage this had later been rectified. The breaches involving failure to comply with undertakings were due to the failure of mortgagees to return completed DS1 forms and not to any failure of the firm to discharge mortgages.
93. The Respondents' conduct in relation to telegraphic transfer fees had been in accordance with what had been understood to be standard practice throughout the profession at the time. The Second Respondent strenuously contended that as litigation partner he had no knowledge or input in relation to the charging of the fees and as a salaried partner received no benefit from the potential secret profit.
94. Both the Respondents felt they had answered enquiries from the OSS as fully and promptly as they were able. It had been felt that PH, Practice Manager, was in the best position to answer the letters and it was not realised by the Respondents that this had not always been done as specifically or as fully as was necessary.
95. The Respondents accepted that they should be ordered to pay the Applicant's costs.
96. The Tribunal was referred to the responses from the Respondents contained in the Applicant's documents.
97. The Tribunal was asked to note that the Respondents co-operated fully with the Investigating Officers throughout all matters.

98. The Respondents expressed their regret for the breaches which they said had arisen out of negligence as opposed to deliberate conduct on their part. There was no suggestion of financial impropriety in any of the allegations.

The Findings of the Tribunal

99. In reaching its decision the Tribunal had dismissed from its mind any matters contained in the documents which were not related to the allegations before the Tribunal.
100. While the Tribunal noted that the Applicant had had discussions with the Respondents' legal representative in which the various breaches had been admitted and while the Respondents' written reply to the allegations set out their response as points of mitigation, in the absence of the Respondents and their legal representative and the absence of clear written admissions to all the allegations the Tribunal, for the avoidance of doubt, had considered each allegation in relation to each Respondent. The Tribunal considered carefully the Reply of the Respondents and also their comments in correspondence with The Law Society.
101. Allegations (i), (viii), (ix) and (xii) were clearly substantiated on the documentation, and no satisfactory explanation was offered by the Respondents.
102. There had been a substantial number of breaches related to conveyancing and the Tribunal was satisfied that these reflected a lack of adequate supervision of the work of non-qualified staff. There had also been inappropriate correspondence by PH in relation to conveyancing matters (allegations (ii) and (x)).
103. The Respondents had acknowledged that they were aware of the activities of their non-admitted staff in relation to Somerville and Legal and Financial Consultants but there was no evidence that the Respondents exercised proper supervision in relation to these matters. The firm held ledgers for the companies and the practice was described as "solicitors to the issue" in the prospectus for Somerville. Compliance with the Financial Services Act had not been considered. Despite the assertion by the Respondents in their reply that PH and JO's involvement in Somerville was unconnected with their employment the Tribunal was satisfied that allegations (iv)-(vii) were substantiated.
104. In relation to allegation (iii) the Respondents in their Reply had felt they had replied to the OSS as fully and promptly as possible although they acknowledged some failings in respect of PH's replies. Having considered the vendor's replies however the Tribunal was satisfied that letters from the Respondents had not been sufficiently prompt and a number of chasing letters from the OSS had been needed to elicit substantive replies.
105. Allegation (xi) was substantiated on the basis of the Report of Mr S and supporting documents.
106. The Tribunal was satisfied from the overwhelming documentary evidence that all the allegations were substantiated against each Respondent.

107. The Tribunal noted that the Applicant had not made any allegations of dishonesty against the Respondents. It was clear however that there had been a pattern of disorganisation, incompetence and a serious lack of supervision.
108. The Tribunal accepted that there were different levels of culpability for each Respondent in this case. The First Respondent was the equity partner, more senior in terms of experience and qualification and bore the greater culpability. There was evidence of serious misconduct on the part of the First Respondent particularly in relation to the misleading of the Birmingham Midshires Building Society and the secret profit. The Second Respondent could not however escape his responsibility as a partner in a two partner practice. While the written reply from his legal representative referred to him as never having had any experience in dealing with conveyancing matters or responsibility for such the Second Respondent had himself written to the Law Society on 17th February 2003 in the following terms:-

"The division of work between residential property and commercial property is subject to a common sense approach in that if a residential transaction is unusually complex or problematic or contentious then David Johnston (or for that matter the supervisors within his Department) would refer the matter to me for review and consideration with a view to determining whether the conveyance was suitable for the Residential Conveyancing Department and on very few occasions certain transactions would be taken over by my Commercial Property Department. In similar vein, if I considered a commercial property matter to be a simple and straightforward transaction, then I would instruct the residential conveyancers through David Johnston to proceed with the transaction in the normal way."

In the same letter the Second Respondent had referred to PH as monitoring performance in the post completion section and reporting to both Respondents.

109. The Tribunal took a very serious view of the way the Respondents had conducted their practice. In all the circumstances the Tribunal considered it right that the First Respondent, who had the greater responsibility for these matters, should be suspended indefinitely from practice. The Tribunal considered that the Second Respondent bore a lesser but still serious responsibility for what had occurred and would reflect that view by the imposition of a period of suspension from practice of one year.
110. The Respondents would each be ordered to pay half of the Applicant's fixed costs.
111. The Tribunal made the following Orders:-

The Tribunal Order that the Respondent, David Sidney Johnston of Wednesbury Road, Walsall, West Midlands, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 12th day of October 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 being one half of the total costs.

The Tribunal Order that the Respondent Ashok Kumar of Doe Bank Road, Tipton, solicitor be suspended from practice as a solicitor for the period of 1 year to

commence on the 19th day of October 2004 and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00 being one half of the total costs.

DATED this 19th day of January 2005

on behalf of the Tribunal

S. N. Jones
Chairman