SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11811-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SLEIGH SON & BOOTH Respondent

Before:

Mr J. P. Davies (in the chair)
Mr S. Tinkler
Mrs L. McMahon-Hathway

Date of Hearing: 3 October 2018

Appearances

Geoffrey Williams QC, counsel, of Farrar's Building, Temple, London, EC4Y 7BD, Instructed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

Paul Parker, counsel, of 4 New Square, Lincoln's Inn, London, WC2A 3RJ, Instructed by Clyde and Co LLP of The St Botolph Building, 138 Houndsditch, London, EC3A 7AR, for the Respondent

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JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent (a Recognised Body) were set out in a Rule 5 Statement dated 28 March 2018 and were that:

1.1 Between 31 October 2014 and 18 March 2016, it acted on behalf of both the vendor and the purchaser in 26 conveyancing transactions which were conducted at arm's length between unconnected persons. It thereby breached and/or failed to achieve any or all of:

1.1.1 Principle 4 of the SRA Principles 2011 ("the Principles")
1.1.2 Principle 6 of the Principles
1.1.3 Outcome 3.5 of the SRA Code of Conduct 2011 ("the Code").

1.2 Between October 2014 and October 2016, it acted on behalf of both the vendor and the purchaser in 14 conveyancing transactions where it also acted as the selling agent for the vendor. In consequence, its own interests in each of those transactions conflicted with those of both its purchaser clients and, where applicable, its mortgagee clients. It thereby breached and/or failed to achieve any or all of:

1.2.1 Principle 4 of the Principles
1.2.2 Principle 6 of the Principles
1.2.3 Outcome 3.4 of the Code.

1.3 Between 31 October 2014 and 18 November 2016, it acted for both the vendor and the purchaser in 10 property transactions without advising either that it also acted for the other. It thereby breached and/or failed to achieve any or all of:

1.3.1 Principle 4 of the Principles
1.3.2 Principle 5 of the Principles
1.3.3 Principle 6 of the Principles.

1.4 Between 31 October 2014 and 18 March 2016, it acted for both the vendor and purchaser in 15 property transactions without advising its lender client of the position. It thereby breached and/or failed to achieve any or all of:

1.4.1 Principle 4 of the Principles
1.4.2 Principle 5 of the Principles
1.4.3 Principle 6 of the Principles.

Documents

2. The Tribunal considered all of the documents in the case which included:

Applicant

- Application and Rule 5 Statement dated 28 March 2018 with exhibit AJB1
- Witness Statement of Ms LB, Forensic Investigation Officer, dated 13 September 2018
- Applicant's Schedule of Costs dated 28 September 2018

Respondents

- Respondent's Defence Case Statement dated 10 May 2018
- Witness Statement of Mr Simon Sleigh dated 11 September 2018 with exhibits STS1, STS2, STS3 and STS4

Preliminary Matters

Application to amend the Rule 5 Statement

3. At the outset of the hearing Mr Williams, for the Applicant, made an application for permission to make two amendments to the Rule 5 Statement. The amendments were proposed following discussions between the parties and were submitted to provide clarification about two of the allegations such that further admissions could be made by the Respondents. In relation to allegation 1.1, the proposed amendment was that only those conveyancing transactions where the vendor and purchaser did not give their informed written consent would be relied upon by the Applicant. There were 8 such transactions. Mr Williams stated that this amendment was proposed on the basis that it was acknowledged by the Applicant that there was no absolute prohibition on acting for vendors and purchasers in conveyancing transactions; what was necessary was that the conditions set out in Outcome 3.6 had been satisfied. Mr Williams stated that the SRA proposed to rely only on those cases where the conditions had not been met and accordingly did not seek to rely on all of the cases originally cited and caught by the current wording of allegation 1.1. Mr Williams also applied for permission to amend allegation 1.3 so that 9 rather than 10 property transactions were relied upon. Mr Williams stated that the Applicant acknowledged this was the correct figure.

4. Mr Parker confirmed that the Respondent supported both proposed amendments in this application. He stated that the Respondent had consistently denied allegation 1.1 and had been obliged to do so given that an admission to the allegation as drafted would imply that acting for vendors and purchasers in arms' length domestic conveyancing transactions would necessarily involve a breach of the Principles or the Code when this was not accepted or accurate. He confirmed that the Respondent would admit allegation 1.1 if amended as it would rely only on cases where it was acknowledged the conditions required to act had not been met. He also confirmed that the proposed amendment to allegation 1.3 would allow a full admission to be made by the Respondent as the correct number of conveyancing transactions would be identified.

5. Under Rule 11(4)(c) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the SDPR"), the Tribunal could agree to the amendment of any application or allegation or the correction of any matter. The Tribunal found the submissions made by both parties in support of the application to be helpful. The Tribunal accepted that in all the circumstances of the case including the extent of the agreement between the parties the application was reasonable. The application was granted and the amendments to allegations 1.1 and 1.3 were made as set out under Findings of Fact and Law below.

Factual Background

6. The Respondent is a six partner partnership Recognised Body based in Greater Manchester trading under the name Sleigh Son & Booth (the "Firm"). It has three offices and at the head office in Droylesden it also carries on the business of an estate agency under the name 'Sleigh & Son'.

7. As a result of concerns raised by the Legal Services Ombudsman in October 2014 following its investigation of a complaint from a former client of the Firm, a Forensic Investigation Officer ("FIO") employed by the Applicant began an investigation in September 2016. The investigation culminated in a report dated 2 June 2017 which gave rise to the allegations brought against the Firm.

Witnesses

8. There was no live evidence during the hearing. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

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

10. **Allegation 1.1: Between 8 September 2014 and 18 March 2016, it acted on behalf of both the vendor and the purchaser in 8 conveyancing transactions which were conducted at arm's length between unconnected persons in which one or the other of the vendor or purchaser did not give their informed written consent to the Respondent so acting. It thereby breached and/or failed to achieve any or all of:**

    1.1.1 Principle 4 of the Principles
    1.1.2 Principle 6 of the Principles
    1.1.3 Outcome 3.5 of the Code

<u>The Applicant's Case</u>

10.1 When outlining the thrust of the Applicant's case, Mr Williams stated that it concerned conflict of interest and the risk of such conflict. The integrity of the Firm or those within it was not criticised, no client complaints relating to the issues giving rise to the allegations had been received and no loss had been identified. However, avoiding conflicts is a fundamental objective for solicitors. Conflicts of interest can arise between clients or between solicitors and their clients and the allegations cover the risk of both. The importance of the duty to avoid acting where a conflict or a significant risk of one arises is highlighted by the competing duties which may result: the duty to

maintain confidentiality to one client and the duty to disclose all relevant material to another.

10.2 Mr Williams submitted that solicitors exist to protect clients, and that when a solicitor cannot do the best for both clients, a conflict exists. He referred the Tribunal to Outcome 3.5 from the Code which provides that a solicitor must not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply. For allegation 1.1, the circumstances in Outcome 3.6 were relevant and required that all relevant clients must give informed consent in writing and without that, the solicitor may not act.

10.3 Mr Williams stated that the allegations were all predicated on the inherent conflict between a vendor and a purchaser in a conveyancing transaction. He submitted that this conflict can be managed at the outset, but a solicitor must be alert to the possibility a conflict may arise at any stage. The Applicant acknowledged that the Firm put systems in place to protect clients and itself from conflicts, the allegations related to those systems breaking down. The Firm had devised a form which informed clients about the possibility of a conflict arising and its implications and by which they could indicate their consent if they wished to instruct the Firm. In his interview with the FIO Mr Sleigh recognised the importance of this form which was central to the Firm's mechanism for obtaining and recording informed consent. Mr Williams stated that the Applicant accepted that the form and accompanying documents providing information was a mechanism which satisfied the circumstances in Outcome 3.6 where the solicitor may act. However, there were ten transactions in which the form was not present on the case file and it was these with which allegation 1.1 as amended was concerned.

10.4 During his interview with the FIO Mr Sleigh accepted that the Firm was not as 'joined up' as it could be at ensuring that its systems were applied in every case. The Firm made prompt changes to the paperwork and auditing systems as a result of the Applicant's intervention. Without the informed written consent, however, the Respondent simply was not in a position to act for both parties and therefore it was submitted that the breaches were made out. Mr Williams stated that there was no allegation that the conduct was deliberate, but the Applicant did allege a widespread failure to take proper precautions to ensure its systems were applied in all cases. In the absence of such informed consent clients were to some extent kept in the dark.

10.5 Mr Williams submitted that this inevitably breached Principles 4 and 6 and noted that the specified breaches set out in the allegation as amended were admitted. Principle 4 required a solicitor to act in the best interests of each client and it was submitted that this could not be achieved if consent to acting in a transaction involving inherent potential conflict was not obtained. Similarly, by failing to obtain informed consent from clients when there was a significant risk of conflict it was submitted that the Respondent did not behave in a way which maintained the trust placed by the public in the Firm and in the provision of legal services. A member of the public would expect a solicitors' firm to be scrupulous in managing potential conflicts correctly in accordance with the clear rules of the regulator. The terms of Outcome 3.6 could not be met without written evidence of informed consent and its absence in 10 transactions meant that Outcome 3.5 had not been achieved as the conditions allowing the firm to act notwithstanding the inherent potential conflict had not been met.

The Respondent's Case

10.6 The Respondent admitted the allegation as amended. It had been consistently denied by the Respondent that there was any absolute prohibition on solicitors acting on behalf of both vendor and purchaser in arms' length domestic conveyancing transactions. The Respondent maintained that in each case where it did so act, its fee earners made a careful judgement as to whether there was a significant risk of a conflict of interest and concluded that there was not. They were permitted by their professional rules to make such a judgement and did so in good faith.

10.7 As amended allegation 1.1 related to cases where the documentation demonstrating informed consent was not obtained and accordingly the Respondent admitted the underlying facts and the breaches which flowed from them. It was submitted that the Respondent had provided an explanation of why the slip ups in its systems which gave rise to these breaches had occurred and had taken prompt remedial action.

The Tribunal's Decision

10.8 Allegation 1.1 as amended was admitted with regards to the breaches of Principles 4 and 6 and the failure to achieve Outcome 3.5 of the Code. The Tribunal considered that these admissions were properly made and the allegation as amended was proved beyond reasonable doubt. The lack of written evidence of informed consent meant that the clear professional rules regarding acting for clients with a significant risk of a conflict in Outcome 3.5 were not met. The Tribunal considered that by failing to comply with these important obligations the Respondent failed to act in the relevant clients' best interests in breach of Principle 4. Failing to comply in all cases with requirements relating to conflict also breached Principle 6 as this was not behaviour which maintained the trust that the public placed in the Respondent and in the provision of legal services.

11. **Allegation 1.2: Between October 2014 and October 2016, it acted on behalf of both the vendor and the purchaser in 14 conveyancing transactions where it also acted as the selling agent for the vendor. In consequence, its own interests in each of those transactions conflicted with those of both its purchaser client and, where applicable, its mortgagee clients. It thereby breached and/or failed to achieve any or all of:**

1.2.1 Principle 4 of the Principles
1.2.2 Principle 6 of the Principles
1.2.3 Outcome 3.4 of the Code.

The Applicant's Case

11.1 Allegation 1.2 concerned the Firm acting for both the vendor and purchaser when it was also acting as estate agent in the property sale. Mr Williams stated that an estate agent will always have an interest in the highest price, given its commission calculated by reference to the sale price, whilst a purchaser will self-evidently have the opposite interest. There were 14 cases in which the Respondent acted for both vendor and purchaser whilst also acting as estate agent.

11.2 Mr Williams submitted that the clause within the estate agency agreement which purported to provide consent from the vendor for the Respondent to act for the purchaser was insufficient to achieve informed consent. During his interview with the FIO Mr Sleigh acknowledged this. He stated that the Respondent had not recognised this potential conflict but since the Applicant's investigation it had ceased acting in such situations. It was again stressed by Mr Williams that the Applicant did not allege that the Respondent had deliberately set out to breach its obligations by acting in these circumstances. He noted the Respondent's account that it had set up its estate agency to avoid having to pay the referral fees demanded by estate agents which, in the Respondent's view, were not in the interests of clients.

11.3 On the basis that acting as selling agent and as solicitor or the purchaser amounted to an own interest conflict, Mr Williams submitted that Principle 4 was inevitably breached as it was not in the purchaser's interest for their solicitors to have a financial interest in a higher sale price. Similarly, allowing such a situation to arise breached Principle 6 as acting in such circumstances was not behaviour which maintained the trust placed by the public in the Respondent and the provision of legal services. The absolute prohibition on acting in an own-interest situation set out in Outcome 3.4 was also necessarily breached. Mr Williams noted that the allegation was admitted in full and that the Respondent promptly stopped acting in such circumstances following the Applicant's investigation.

The Respondent's Case

11.4 The Respondent admitted this allegation. In his evidence Mr Sleigh explained that the possibility of an own-interest conflict in this situation had not been recognised at the Firm as negotiations on price had been concluded and the price agreed before the Firm was instructed for the buyer. The buyers were also aware that the Firm had been acting as estate agent; nothing was concealed. As soon as the issue was explained by the regulator during the investigation it was acknowledged and the Respondent stopped acting for purchasers when acting as selling agent.

11.5 The Respondent had set up its estate agency to avoid the need to pay referral fees to estate agents which had the effect of conveyancing work being carried out by unqualified paralegals which detrimentally affected the general level of competence brought to bear on such work. There was no intention to breach any rule of practice.

The Tribunal's Decision

11.6 Allegation 1.2 was admitted with regards to the breaches of Principles 4 and 6 and the failure to achieve Outcome 3.4 of the Code. The Tribunal considered that these admissions were properly made and the allegation was proved beyond reasonable doubt. Acting in a position with an acknowledged conflict between the Respondent's interests as selling agent and those of the purchaser client meant that the mandatory prohibition on acting in an own interest conflict situation set out in Outcome 3.4 was not met. The Tribunal found that acting in a role with such an own-interest conflict means that the Respondent failed to act in the relevant purchaser clients' best interests in breach of Principle 4. Failing to comply in all cases with mandatory requirements relating to own-interest conflict also breached Principle 6 as this was not behaviour which maintained the trust that the public placed in the Respondent and in the provision

of legal services. The appropriate management of conflict and potential conflict was vital to the public's trust in the Respondent's and the provision of legal services.

12. **Allegation 1.3: Between 31 October 2014 and 18 November 2016, it acted for both the vendor and the purchaser in 9 property transactions without advising either or both that it also acted for the other. It thereby breached and/or failed to achieve any or all of:**

    1.3.1 Principle 4 of the Principles
    1.3.2 Principle 5 of the Principles
    1.3.3 Principle 6 of the Principles.

The Applicant's Case

12.1 This allegation related to situations where a vendor or a purchaser was unaware that the Respondent also acted for the other. The Respondent had a system for ensuring that appropriate information was provided, and consent sought, when it was acting for both vendor and purchaser. The Respondent's position on this allegation was that the individual fee earners involved had simply not used the appropriate client care letter and so in error the necessary information was not provided. The Respondent stated that its audit system had been strengthened to help ensure any such errors were picked up and that the individual solicitor primarily responsible had left the Firm.

12.2 Without such notification it was submitted by Mr Williams that it was inevitable that the client's best interests were not served and a proper standard of service had not been provided to the clients in question in breach of Principles 4 and 5. It was also submitted that not notifying a client that the Respondent was also acting for the other party in a transaction was not behaviour which maintained the trust placed by the public in the Respondent and in the provision of legal services in breach of Principle 6. Mr Williams noted that the Respondent had admitted the alleged breaches as amended.

The Respondent's Case

12.3 This allegation was admitted. The isolated errors which led to a failure to inform clients that the Respondent was acting for both parties were inadvertent. The wrong client-care letter was sent out without the necessary information and this was not picked up. The majority of the errors were made by a lawyer no longer at the Firm. Following the investigatory interview changes were made to the auditing processes to ensure as far as possible that cases where the Respondent was acting for both parties were included in the monthly audit. The Applicant had made no recommendations in its report which, it was submitted, confirmed there was no wider problem. Further, and as with the other admitted breaches, there was no intent on the part of the Respondent to breach any professional obligation.

The Tribunal's Decision

12.4 Allegation 1.3 as amended was admitted with regards to the breaches of Principles 4, 5 and 6. The Tribunal considered the admissions were properly made and the allegation as amended was proved beyond reasonable doubt. The failure to inform one party to a transaction that the Respondent was also acting for the other party meant that the

Respondent failed to act in the relevant clients' best interests in breach of Principle 4; it would always be in a client's interests to know the other party to a transaction was so represented. Similarly, the Tribunal considered that the failure to inform the vendor and/or purchaser clients of the joint representation amounted to a failure to provide a proper standard of service to the relevant clients. Failing to notify, in addition to seeking informed consent from, the other party to a transaction when the Respondent was acting for both parties also breached Principle 6 as this was not behaviour which maintained the trust that the public placed in the Respondent and in the provision of legal services. The Tribunal considered that avoiding conflicts and scrupulously following the professional obligations relating to them was vital to maintaining the trust placed by the public in the Respondent and in the provision of legal services.

13. **Allegation 1.4: Between 31 October 2014 and 18 March 2016, it acted for both the vendor and purchaser in 15 property transactions without advising its lender client of the position. It thereby breached and/or failed to achieve any or all of:**

1.4.1 Principle 4 of the Principles
1.4.2 Principle 5 of the Principles
1.4.3 Principle 6 of the Principles.

The Applicant's Case

13.1 There were 15 cases where the Respondent admitted that it was acting for the mortgagee in a transaction and which it did not inform that it was also acting for both vendor and purchaser. The Respondent had explained that it approached its obligations to inform the mortgagee from a contractual perspective. Mr Williams submitted that the obligation arose from an ethical obligation to inform the mortgagee to give it the opportunity to object to a situation where the Respondent acted for both parties which was not something the mortgagee would assume to be the case.

13.2 Again, during the interview with the FIO, Mr Sleigh accepted when the point was raised with him that on reflection the mortgagee should be informed in every such situation. From the Applicant's intervention the Respondent changed its practice so that this happened. However, in the 15 historic cases where this had not happened the Applicant alleged that the lack of information provided to the mortgagee client breached Principle 4 in that it must be in the mortgagee's interest to be advised that the Respondent was acting for both parties to a transaction so that it had the option to object. It was alleged that the omission of this information, which was important given the centrality of avoiding conflict to a solicitor's role, meant that a proper standard of work had not been provided to the mortgagee client in breach of Principle 5. As with the other allegations, it was also alleged that despite not being deliberate such a failure in such an important professional obligation was not behaviour which maintained the trust placed by the public in the Respondent and in the provision of legal services and that Principle 6 was accordingly breached.

13.3 Mr Williams stated that the Applicant acknowledged that there was no prohibition against acting for both vendor and purchaser provided the necessary steps were taken. Given the number of times in which the Respondent acted in such circumstances he submitted that it was obliged to take great care in ensuring its systems were effective and applied. It was not alleged that any failure was deliberate but it was alleged that

they were widespread. The breaches amounted to keeping clients in the dark to some extent on issues of conflict which were always significant.

The Respondent's Case

13.4 This allegation was admitted. The Respondent's approach to informing the mortgagee had been based on the Council of Mortgage Lender's Handbook. It was submitted that in part two of this handbook notification for certain lenders had been stated to be optional. Where lenders had required it, they had been notified. Again, as with the other admitted allegations, the Respondent accepted the Applicant's contentions about potential conflict when they were made during the investigation. The Respondent accepted the regulator's position and acted in accordance with it with immediate effect.

13.5 Mr Parker submitted that this response, as with the response to the other allegations, was an example of the regulatory system working well. The regulator had raised issues, explained them and they had been promptly accepted and acted upon without loss or client complaint.

The Tribunal's Decision

13.6 Allegation 1.4 was admitted with regards to the breaches of Principles 4, 5 and 6. The Tribunal considered the admissions were properly made and the allegation was proved beyond reasonable doubt. The failure to inform the mortgagee client to a property transaction that the Respondent was acting for both the vendor and purchaser meant that the Respondent failed to act in the mortgagee client's best interests in breach of Principle 4; it would always be in the mortgagee's interests to know both parties to an arms' length domestic conveyancing transaction were so represented. Similarly, the Tribunal considered that the failure to inform the mortgagee that the Respondent acted for both parties to the transaction amounted to a failure to provide a proper standard of service to the mortgagee client. Failing to notify the mortgagee when the Respondent was acting for both parties also breached Principle 6 as this was not behaviour which maintained the trust that the public placed in the Respondent and in the provision of legal services. The Tribunal considered that providing the mortgagee client with information about the non-standard scenario where the Respondent acted for both parties in a conveyancing transaction was necessary to maintain the trust placed by the public in the Respondent and in the provision of legal services.

Previous Disciplinary Matters

14. None.

Mitigation

15. Mr Parker submitted that whilst the admitted misconduct was not trivial, it was not serious or even moderately serious. The breaches were minor, historic, caused no identifiable loss and had been corrected and there remained no mechanism by which they could be repeated. He submitted that this was a case of the regulatory system working well. The Respondent had responded positively to the regulator's enquiries. Mr Parker submitted that the breaches were relatively minor slip ups and noted that the

Applicant had acknowledged there was no deliberate breach of any professional obligation and no lack of integrity was alleged.

16. Mr Parker stated that both parties agreed there was no blanket prohibition on acting for both sides in an arms' length domestic conveyancing transaction, but doing so required judgement and a risk assessment from the solicitor involved and informed written consent from the parties. Mr Sleigh's witness statement described the process for the consideration of the risk of conflict. He stressed that agreement on price was a pre-requisite and that the Respondent then considered acting on the basis of a shared common interest between the parties in completing the transaction at the agreed price. The Respondent was clear that it would not act where there was a risk of events leading to a price renegotiation. It was the usual practice for a survey to have been completed before such instructions were accepted by when the scope for events leading to a price renegotiation were very limited.

17. The Respondent had a system for declining instructions in situations where there was a risk of price renegotiation, where the client may prove difficult or unsuitable or there was a risk to the ability to protect the confidentiality of any particular client. Mr Parker submitted this was a serious and responsible approach to the possibility of working for both parties in such transactions and the Respondent and its fee-earners had this system in mind at all times. He submitted that the Applicant had not criticised the Respondent's system for managing and avoiding risk; the only criticism was that the system did not work in all cases as it was set up to.

18. In his evidence Mr Sleigh outlined the steps taken before instructions were accepted from both parties to a transaction. This habitually involved a phone call to the relevant clients and a detailed client care letter setting out information on the possibility of the Respondent acting for both sides and an acknowledgment form for clients to review and return. This system was in place before the Applicant's involvement, but it was acknowledged by the Respondent that it was not fully implemented in all cases, hence the admissions. Following the Applicant's intervention, the Respondent had tightened up its procedures further.

19. Mr Parker noted that cases in which the Respondent acted for both parties to a domestic conveyancing transaction, with which all of the allegations were concerned, amounted to around 1% of the Respondent's cases.

20. Mr Parker submitted that the early admissions made by the Respondent were a mitigating factor. He submitted that the Respondent was unable to admit allegation 1.1 as originally drafted as it did not correctly reflect the law. As soon as it had been amended the Respondent admitted the allegation at the first available opportunity. He also submitted that the Respondent was completely candid in the interviews with the FIO and with the Applicant generally. Mr Parker highlighted comments from Mr Sleigh in the investigatory interview where he openly acknowledged areas where practice could be improved and where additional diligence would be required in order to enforce the systems already in existence. Mr Parker submitted this open attitude which addressed areas where improvements had been identified was a very important mitigating factor. The Respondent had accepted the importance of the points raised by the Applicant and where weaknesses were identified they were acknowledged and addressed with remedial action.

21. The Respondent thus demonstrated insight from the outset. There was also no previous disciplinary history. Mr Parker also noted that no identifiable loss existed. He submitted that any disciplinary sanction should accordingly be at the very lowest end of the scale.

Sanction

22. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition) when considering sanction.

23. The Tribunal assessed the seriousness of the Respondent's misconduct. Clearly, any conduct which involves a failure to manage risks and potential risks of conflict is a serious matter for a solicitor. With regard to the Respondent's culpability, there was some element of financial motivation to undertake work for both parties to a transaction. There were systems implemented to manage these risks. These included standard letters informing, and seeking consent, when acting for buyer and seller, and considering the CML handbook in relation to mortgage lenders. The Respondents were certainly aware that there were relevant professional rules, and had taken steps to comply with them. However, the controls on the system had not been adequate which was reflected in the admissions. There was no intent to breach the professional obligations although as experienced solicitors the partners at the Respondent were, or should have been, aware of the risks and the importance of monitoring compliance with the system they had devised. The Respondent had direct control of the circumstances giving rise to the misconduct. Overall the Tribunal considered that the Respondent's culpability was low.

24. The Tribunal considered the harm of the admitted misconduct. No identifiable harm to clients had been found, although there was some degree of harm in not receiving information to which they were entitled. Similarly, there was some degree of harm to the reputation of the legal profession caused by a firm failing to fully comply in all cases with the requirements relating to the avoidance and management of conflicts of interest. The Tribunal considered that the harm caused by the Respondent's conduct was relatively low.

25. The Tribunal considered aggravating factors. The conduct continued over a period approaching two years. Given the experience of the partners involved the Respondent ought to have ensured that its system for managing the risk of conflict was consistently applied throughout the Firm.

26. When considering mitigating factors, the Tribunal noted that the Respondent took various steps to remedy the identified systemic errors immediately. They had also not intended to breach the rules and had designed systems which they intended to ensure they complied with the rules. The Tribunal also noted that the types of cases with which the allegations were concerned amounted to only 1% of the Respondent's cases and that no identifiable loss had been caused. There was evidence of strong and genuine insight into the shortcomings in operating the system. The Respondent had been open and frank in its admissions (save allegation 1.1 which had been incorrectly drafted and admitted promptly when rectified).

27. Having found the Respondent's culpability and the harm caused to be relatively low, the Tribunal assessed the appropriate sanction. Despite culpability and harm being found to be low, the Tribunal considered that the operation of proper systems to manage the risk of conflict to be very important to the public. Given that the Respondent had three offices, ran an estate agency and 50% of its work derived from residential conveyancing, the weaknesses in the systems of control were considered by the Tribunal to be too serious for either No Order or a Reprimand. The Applicant's investigation had highlighted some inadequacies in the internal audit and control processes. The Respondent had admitted breaches of Principles 4, 5 and 6 and these were important principles. Conveyancing transactions are very important transactions to the individuals involved and however remote the risk of conflict may have been, the possibility of that risk meant that the systems devised to manage and control it should have been better enforced. No Order or a Reprimand would be insufficient to protect the reputation of the profession and would not reflect the central importance of managing conflict to the profession.

28. The Tribunal considered that a fine at the top of level 1 in the indicative bands set out in the Guidance Note on Sanctions was appropriate for the Respondent's conduct. The Tribunal took into account the strong mitigation put forward by the Respondent. In particular, the Tribunal took into account the fact that systems for managing risk existed prior to the Applicant's involvement, the prompt and constructive responses to suggestions and identified weaknesses, the fact that no loss to clients had been identified, the evidence of genuine insight and the early admissions. The Tribunal determined that a fine of £2,000 struck an appropriate balance reflecting the importance of processes relating to the management of conflict whilst recognising the limited impact and harm and the persuasive mitigation presented.

Costs

29. Mr Williams applied for the Applicant's costs in the sum of £32.715.90 as set out in a costs schedule dated 28 September 2018. He submitted that the costs were reasonable and stressed that the Applicant had succeeded in its allegations in all four areas of misconduct.

30. Mr Parker confirmed that the Respondent did not seek to challenge the FIO's fees. He did, however, seek to challenge three specific items on the Applicant's Schedule of Costs. He submitted that over 12 hours was excessive for drafting the Rule 5 Statement in the light of over 14 hours claimed for reading documents and the 24 page forensic investigator's report which he submitted was essentially precised in the Rule 5 Report. He also challenged the entirety of the 70 hours SRA supervision costs claimed. He submitted that the only activity that he had identified to which this may relate was one letter and the assimilation of the reply from the Respondent.

31. Mr Parker also stated that the Respondent challenged the post-issue fees claimed. He stated that the Respondent had confirmed its position, including the problem with allegation 1.1 as drafted being contrary to the position at law, in May 2018. He stated that further attempts were made in July 2018 to resolve this issue with allegation 1.1 and had the Applicant engaged on this issue before the end of September 2018 there was a strong chance a hearing could have been avoided. He submitted that the Applicant should have been aware of the shortcomings of allegation 1.1 as drafted all

along and that accordingly the costs following issue, the bulk of which were counsel's fees for the final hearing, were resisted.

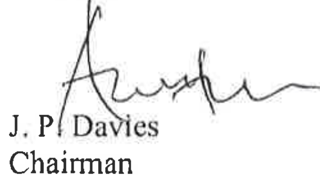
32. In reply Mr Williams accepted that there must be some reduction in the costs awarded to the Applicant to reflect the amendment to allegation 1.1 shortly before the hearing. However, he submitted that the Respondent had brought the proceedings on itself. With regards to counsel's fee, he submitted that the Applicant was entitled to engage counsel of comparable status and experience to that engaged by the Respondent for the hearing. In relation to the specific items to which the Applicant objected, Mr Williams responded as follows. The drafting time claimed for the Rule 5 Statement was perfectly reasonable considering the papers and issues involved. He did not have instructions about the activity upon which the 70 hours of SRA supervision costs were claimed and could not clarify on what basis the Applicant sought to recover them. With regards to the post-issue costs, including his own fee, he stated that he had sought to narrow the areas of dispute and reached an agreement with the Respondent's representative about the scope of allegation 1.1 promptly. By the time that the agreement was reached and the admission confirmed the brief fee for the final hearing was due.

33. The Tribunal assessed costs for the hearing. The Tribunal considered that some reduction to reflect the late amendment to allegation 1.1 was appropriate. Had the amendment been made earlier it may have obviated the need for a contested final hearing. The Respondent's position on this issue, with detailed reasons, was set out in May 2018 and the Applicant did not engage with this adequately until the end of September 2018. The Tribunal accepted that some involvement of senior counsel may be appropriate given the Respondent's appointment of similarly senior counsel. If, however, the Applicant had properly engaged it would have significantly reduced the advice required from counsel and/or the hearing preparation. The Tribunal, therefore, considered that counsel's fee should be reduced by £5,000 (which in turn reduced the costs claimed for VAT by a further £1,000). The Tribunal also considered that the SRA's supervision costs of £5,250 should be disallowed in their entirety as it was not clear to what they related, and the Tribunal had not been given any reason why the Respondent should bear them. The Tribunal considered the 12 hours claimed for drafting the Rule 5 Statement was excessive given the 14 hours claimed for reviewing documents and the detailed FIO report available. The Tribunal considered £1,000 should be deducted from the Rule 5 Statement drafting costs claimed. Accordingly, the Respondent was ordered to pay the costs of and incidental to this application and enquiry fixed in the sum of £20,465.90.

Statement of Full Order

34. The Tribunal ORDERED that the Respondent, SLEIGH SON & BOOTH of 1 Ashton Road, Droylsden, Manchester, M43 7AB, a Recognised Body, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that the Recognised Body do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,465.90.

Dated this 22nd day of October 2018
On behalf of the Tribunal



J. P. Davies
Chairman

Judgment filed
with the Law Society
on 24 OCT 2018