

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SUKHVER KHUNKHUN (The Respondent)
A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Michael Robin Havard
on behalf of the Solicitors Regulation Authority

Mr L N Gilford (in the chair)
Mrs J Martineau
Mrs L McMahon-Hathway

Date of Hearing: 5 October 2010

FINDINGS AND DECISION

Appearances

Michael Robin Havard, Solicitor and Chairman of Morgan Cole LLP, Bradley Court, 11 Park Place, Cardiff CF10 3DP appeared for the Applicant, the Solicitors Regulation Authority ("SRA").

Robert Roscoe, Solicitor and Partner of Victor Lissack, Roscoe & Coleman Solicitors, 70 Marylebone Lane, London W1U 2PQ appeared for the Respondent.

Application

By an application to the Tribunal on behalf of the SRA made on 20 August 2009, the Applicant applied for an Order under Section 43 of the Solicitors Act 1974 (as amended), namely that as from the date specified in such Order, no Solicitor, Recognised Body or Employee or Manager of a Solicitor or Recognised Body shall employ or remunerate the Respondent in connection with his practice as a solicitor or in connection with the business of a Recognised Body, except in accordance with permission granted by the SRA. Further, that from the specified date, no Recognised Body, Manager, or Employee of a Recognised Body shall permit the Respondent to be a manager of, or have an interest in, a Recognised Body.

Preliminary Matters

1. Mr Havard, Solicitor for the Applicant, informed the Tribunal that the Applicant's witness, Mr Widdowson, who had provided a witness statement in the proceedings dated 12 November 2009, served on the Respondent with a Civil Evidence Act Notice dated 25 August 2010, had not attended at court. Attempts were being made to contact him. As there had been no reason to believe that Mr Widdowson would not attend the hearing, he was not subject to a Witness Order. The Applicant's primary case against the Respondent was based on an allegation of dishonest conduct. Mr Widdowson's evidence, which was crucial to that allegation, was and always had been disputed by the Respondent. Mr Havard asked the Tribunal to delay the commencement of the hearing in order to give Mr Widdowson time to arrive at court, and so that he could take further instructions from the Applicant.
2. Mr Havard handed the Tribunal a bundle of correspondence, commencing with a letter from Mr Havard to Mr Widdowson dated 22 December 2009, in which questions concerning documents disclosed during the course of the proceedings were raised. The bundle continued with a letter of response dated 8 June 2010 from Mr Widdowson. The contents of that letter had not been incorporated into a statement from Mr Widdowson. The documents currently carried little evidential weight, but would have greater weight if the contents could be put to Mr Widdowson. On behalf of the Respondent, Mr Roscoe stated that he had asked for the documents to be put before the Tribunal. Had Mr Widdowson attended court and given evidence, Mr Roscoe would have cross-examined him about the contents.
3. Mr Roscoe informed the Tribunal that the Respondent gave birth to a second child in May 2010 and had not returned to employment. She had attended the hearing with four witnesses. She had been in limbo since the allegations were made against her. She was unable to pursue her career and was anxious for the case to be concluded.
4. The Tribunal was not minded to allow further time for Mr Widdowson to arrive. He was already 1½ hours later than expected. The Tribunal appreciated that Mr Havard needed time to take instructions and therefore adjourned for 15 minutes.
5. On resumption of the hearing Mr Havard confirmed that there was no attendance by Mr Widdowson. No reason for his absence had been provided, and he had not responded to messages. Mr Havard was therefore instructed to seek an adjournment. He recognised that this would be a matter of concern for the Tribunal. The Respondent, her solicitor and witnesses were ready to proceed. However, Mr Widdowson was the central witness to serious allegations against the Respondent. There could be a perfectly proper explanation for his failure to attend. He had actively participated with the proceedings to date. For fairness to be seen to be done, he ought to be given the benefit of the doubt. The Applicant was content for the matter to be relisted for hearing as quickly as possible. A Witness Order in respect of Mr Widdowson's attendance would be sought. This was the first substantive hearing date, and the matter could therefore be adjourned to find out why Mr Widdowson was not present.
6. Mr Roscoe opposed the application. This case, which was quite old, had been adjourned on one previous occasion due to the confinement of the Respondent. The

Respondent had attended the hearing with two witnesses of fact and two character witnesses, all of whom had taken time off work in order to be present. Mr Widdowson was not a complainant but a witness. The explanation for events provided by the Respondent was contained within her response to the Forensic Investigation report and in all subsequent letters to the SRA. She had maintained a consistent firm denial of the allegations throughout.

7. The application for an adjournment by the Applicant was refused by the Tribunal. The Application had been listed for substantive hearing for some time. The issues between the parties had been clear throughout. The Respondent had at all times put into issue Mr Widdowson's evidence on the background and the facts. The onus was on the Applicant to ensure that it had evidence available to support its allegations. There was no explanation as to why Mr Widdowson was not present. The Respondent was present with four witnesses. The Application had been hanging over her since 2007. The Tribunal was therefore satisfied that it was not fair on balance to adjourn the hearing.
8. Mr Havard applied for leave to proceed with the allegations against the Respondent in amended form. The Applicant's case in respect of the allegation of dishonesty had always been based on the evidence of Mr Widdowson, and it would be inappropriate to press ahead with that allegation in his absence. The Respondent had not agreed Mr Widdowson's evidence and had no obligation to do so. Mr Widdowson was not present for his evidence to be tested, and, taking into account the high standard of proof applicable to the allegation of dishonesty, it would be unfair to press ahead. The Application therefore proceeded on the basis that the allegation of dishonesty against the Respondent was not pursued.

Allegations

9. The amended allegations against the Respondent were that; having been employed or remunerated by solicitors, but not being a solicitor, she had, in the opinion of the Solicitors Regulation Authority, occasioned or been party to, with or without the connivance of the Solicitors by whom she was or had been employed or remunerated, acts or defaults in relation to the solicitor's practice which involved conduct on her part of such a nature that in the opinion of the Solicitors Regulation Authority, it would be undesirable for her to be employed or remunerated by solicitors in connection with their practices.
10. In particular it was alleged by the Applicant that the Respondent signed an application for a mortgage without knowing whether the contents of the application were true and/or accurate. The mortgage related to a property known as 90 Warwick Crescent, Hayes, Middlesex UB4 8RQ.
11. The Respondent contested the allegations and opposed the making of an Order under Section 43 of the Solicitors Act 1974 (as amended).

Factual Background

12. The Respondent was born on 21 September 1978. Between January 2006 and July 2007 she was employed by Heseltons Solicitors of 62 Hesta Buildings, 58-62 High

Street, Harrow-on-the-Hill, Middlesex HA1 3LL. During this time the Respondent was employed variously as an unadmitted clerk, para-legal and trainee solicitor.

13. As a result of information received, and on instructions from the Applicant, a Forensic Investigation Report dated 29 November 2007 was prepared by Forensic Investigation Officer, Ms S Taylor. Following submission of that report to the Applicant, further enquiries were made, resulting in the issue of the Rule 8 Statement dated 20 August 2009. The Respondent left Heseltons following the enquiry into the allegations against her.
14. When employed at Heseltons Solicitors between January 2006 and July 2007 the Respondent wished to purchase 90 Warwick Crescent. The purchase price of the property was £189,000 and the Respondent wished to borrow £170,100 on mortgage. A conveyancing partner at Heseltons, Steven Drake, acted on the Respondent's behalf in the transaction.
15. At the time of the mortgage application the Respondent was earning a salary (described as "expenses") of £5,200 per annum from her employment at Heseltons. An online mortgage application form ("the Form") dated 20 October 2006 under "Case Reference Number 446047" was sent on behalf of the Respondent by Barry Widdowson, a mortgage advisor, to Mortgage Express. In the section headed "B Product Details" it was stated that the loan required was £170,100. In the section headed "2 Employment Details" it was stated that the Respondent's occupation was "Solicitor", and employer's name "Heseltons Solicitors". The start date with current employer was given as 1 July 2003. In the same section the Respondent's basic annual gross pay was stated as £36,000 per annum, with regular annual gross bonus/commission as £10,000 per annum and regular annual gross overtime as £5,000 per annum, making a total income of £51,000 per annum.
16. As a result of information received, and on the instructions of the Applicant, a Forensic Investigation Report ("FIR") dated 29 November 2007 was prepared by Miss S. Taylor, Investigation Officer. On 5 November 2007 Miss Taylor met with the Respondent, having already interviewed members of Heseltons. The Respondent told Miss Taylor that she had started with Heseltons as a paralegal in January 2006 (the date stated was disputed by the Respondent). The Respondent added that she received £20 a day in expenses, in the form of a cheque for £400 at the end of every month. Miss Taylor asked the Respondent if she had completed the mortgage application form for 90 Warwick Crescent, Hayes, Middlesex. The Respondent replied, "no, the broker filled it out", adding that she had not met the mortgage broker, but he had previously done work for her in-laws. Miss Taylor asked the Respondent how the mortgage broker knew what information to put on the application. The Respondent replied, "the broker asked my full name and address, how long I had lived at my parents' address, previous employers' address, the address of Heseltons solicitors, and how long I had been employed with them". The Respondent provided Miss Taylor with a letter dated 30 May 2006 from Mr Virdee to the broker (Mr Widdowson) which included the Respondent's personal details (FIR Appendix 4, Applicant's Bundle pages 31 and 32).

17. The Respondent informed Miss Taylor that the mortgage broker knew that she was not a solicitor as she had informed him of this at the outset of the application, adding that she also informed the broker that her husband was going to make the mortgage repayments.
18. Miss Taylor asked the Respondent to explain where the salary figure of £51,000 per annum had come from. She replied, "I have no idea where he got all the figures. I told him that I was only receiving expenses". The Respondent confirmed to Miss Taylor that it was her signature on the back of the online mortgage application form, but said that she was not sent the whole application form in the post. The first time she had seen the mortgage application was in October 2007. The Respondent confirmed that her parents had loaned the money for the deposit.
19. On receipt of the FIR and further correspondence from the Applicant, the Respondent responded to the Applicant by letters dated 9 April 2008 and 21 November 2008. She confirmed that the mortgage obtained was self-certified and that she had provided the broker (Mr Widdowson) with the information appearing at Appendix 4 of the FIR. She said that she saw the mortgage application form for the first time in October 2007. Her house purchase had completed in December 2006.

Submissions of the Applicant

20. It was submitted on behalf of the Applicant that the commencement of the Respondent's employment stated on the Form as 1 July 2003 conflicted with the true position. Mr Havard referred the Tribunal to the document headed "Applicant Information" attached to the letter dated 30 May 2006 sent by Mr B. S. Virdee on behalf of the Respondent (his son's fiancée, now wife) to Mr Widdowson (FIR Appendix 4, Applicant's Bundle pages 31 and 32 and paragraph 16 above). The information provided by Mr Virdee to Mr Widdowson stated that employment commenced in November 2005, and referred to the length of that employment as having been six months as at 30 May 2006. However, the Applicant understood from the FIR that the correct start date was January 2006. On behalf of the Respondent Mr Roscoe submitted that the actual start date was indeed November 2005 as stated on the "Applicant Information". Both parties agreed that the correct date was not July 2003 as stated in the Form.
21. The Respondent accepted that her signature appeared on the Signature Summary page of the Form (FIR, Appendix 2 – Applicant's Bundle pages 28 and 29). Various declarations within that form stated as follows:
 - (1) I/We are applying for the loan detailed in this application.
 - (2) The information in this application is true, accurate and complete.
 - (3) Should the loan be made, all the information I/We have given to you will form part of the terms of the loan contract.
 - (4) I/We have read any answers that have been completed by anyone else.
 - (5) I/We have disclosed any information which is material to my/our application.

- (8) Before completion of the loan, I/We undertake to ensure that all information that I/We have given to you is and remains true, accurate and complete, and if it is not I/We will immediately notify you in writing.
- (22) If the loan is to be regulated by the FSA, I/We have received a Key Facts Illustration for the loan detailed in this application.
- (23) Where the case has been submitted online and this declaration does not have the full paper application attached, I/We confirm that the information supplied to you online under the “case reference number” on this declaration is true, accurate and complete.
22. The Applicant submitted that the information provided in the Form, and in particular under section “2 Employment Details”, was incorrect in many material aspects. It was also submitted by the Applicant that if true and accurate information had been put into the Form, there was no basis on which a mortgage of £170,100 would have been granted by Mortgage Express or its wholly owned subsidiary Bradford & Bingley plc. The Respondent was “self-certifying” her mortgage and therefore had a responsibility to ensure that the Form contained true and accurate information before signing the “Signature Summary” page incorporating the specified declarations. This was her responsibility even if the Form had been completed, as she alleged, by Mr Widdowson on her behalf.
23. The Applicant submitted that the Respondent signed an online mortgage application form without any knowledge of whether its contents were true and accurate. It was submitted that this was a serious error of judgement on her part.
24. Further the Applicant submitted that the Respondent had permitted an individual, namely Mr Widdowson, to submit an application for a mortgage of £170,100 on her behalf with no idea as to whether its contents were true and accurate. This too was an error of judgement on her part. The Signature Summary page of the Form was signed by the Respondent, who thereby made the declarations contained on the same page, without any understanding or knowledge that the information provided in the application was true and accurate.
25. The Applicant submitted that it must have been apparent to any person, whether legally qualified or not, that such actions presented a risk that the information contained was not true and accurate. The Respondent should have satisfied herself that the content of the mortgage application was indeed true and accurate before writing her signature. The Respondent had passed her Legal Practice Course, and had been working at Heseltons for some months by the time the Form was submitted in October 2006. She had been working with Mr Drake, who undertook conveyancing. The Tribunal was being asked by the Respondent to accept that she believed that, without any guarantee or joint applicant on expenses of £5,200 per annum, she would be entitled to a mortgage of £170,100, namely over 32 times her annual income. The actual monthly instalments on the mortgage at £763.24 for 25 payments and £966.58 thereafter were considerably more than her monthly income.

26. The Applicant submitted that, even absent an allegation of dishonesty, an Order under Section 43 (1)(b) and (2) of the Solicitors Act 1974 (as amended) was proportionate taking all facts into consideration. There was a need for a much closer level of supervision of the Respondent for the immediate future. By the making of such an Order the Respondent would not be prevented from practising, but merely subject to greater supervision for as long as it was deemed necessary.
27. Mr Havard for the Applicant reminded the Tribunal that it was exercising its Regulatory rather than Disciplinary powers. Taking all the facts into account, the Respondent had no idea whether the content of the Form was true and accurate or not and had consequently proceeded to obtain a mortgage of £170,100 based on an expenses-only income of £5,200 per annum. This demonstrated a serious error of judgement. The Respondent had additionally placed herself at risk, in that she had failed to satisfy herself that the content of the Form was true and accurate. In the exercise of the Tribunal's Regulatory powers it was necessary in the interests of the public and of the solicitors' profession as a whole for an Order under Section 43 to be made. He referred the Tribunal to two decisions in support of his submissions: *Ojelade v The Law Society* [2006] EWHC 2210 (Admin) and *Gregory v The Law Society* [2007] EWHC 1724 (Admin).

Submission by the Respondent that the Application Should Not be Permitted to Proceed

28. Following the conclusion of the Applicant's case, Mr Roscoe made an application to the Tribunal on behalf of the Respondent that the Application should not be permitted to proceed on the basis that the Applicant had failed to demonstrate that there was a prima facie case against the Respondent.
29. There was no issue between the parties that the signature on the Signature Summary pages of the Form was that of the Respondent. The Form was not a genuine document, in the sense that it was not created by the Respondent, but by Mr Widdowson. When she had initially signed the Form its contents related to an application for a mortgage on a property at 79 Cleave Avenue, which had not proceeded. It did not then relate to the 90 Warwick Crescent property which she had ultimately purchased. In support of this submission the Respondent relied upon the copy of the Signature Summary page which she had retained and which appeared at page 10 of Exhibit SK 1 to her signed statement in these proceedings dated 4 December 2009. The page included; case reference number 424368, the Respondent's name, and gave the address of the property as "79, Cleave Avenue, HAYES, Middx UB3 4HB". This form, containing the declarations referred to at paragraph 23 above, bore the Respondent's signature and was dated "07/09/2006".
30. A further copy of the Signature Summary page appeared at page 28 of the Applicant's Bundle. This document included words mainly in manuscript; case reference number 446047, the Respondent's name (in typescript), address "90 Warwick Crescent, Hayes, Middx (in typescript) UB4 8RQ". This page containing the declarations previously referred to, was signed by the Respondent and dated "17/09/06". The Respondent submitted that this page was the page that she signed on 7 September 2006, but which was subsequently altered, by Mr Widdowson or some other person, to show details of the Warwick Crescent property and amended mortgage application case reference number.

31. The Respondent submitted that the material particulars of the Form provided to Bradford & Bingley plc as her application for a mortgage on 90 Warwick Crescent had not been completed by her. They had been completed by Mr Widdowson who had not used the information that she had given to him via Mr Virdee as set out at Appendix 4 of the FIR. The Respondent had not met Mr Widdowson face to face. The information that Mr Widdowson had provided was incorrect in relation to her occupation, date of commencement of employment and salary in particular. The Respondent had indeed signed the Signature Summary page. However the document she had signed was dated 7 September 2006. The subsequent mortgage application form was dated 20 October 2006. The Respondent had seen that form for the first time in October 2007.
32. The application should not be permitted to proceed further. Mr Roscoe relied upon the following points:-
- The “Applicant Information” attached to the letter from Mr Virdee to Mr Widdowson dated 30 May 2006, was acknowledged by Mr Widdowson on 31 May 2006. The mortgage application at that stage related to a property at 4 Gade Close, Hayes, Middlesex UB3 3PY. The proposed purchase of that property did not proceed. However the same information was to be used by Mr Widdowson for all subsequent properties in which the Respondent was interested. The “Applicant Information” was correct.
 - The letter dated 18 September 2007 written by Angela Heaton, Fraud Prevention Manager at the Bradford & Bingley plc to Heseltons Solicitors (Applicant’s Bundle page 52). This document states: “.....I can confirm that the Broker submits the application “on-line” to enable the case to proceed. The Applicant will read and sign the “Signature Summary” and post to ourselves to check and place on file.” The Respondent did not see and clearly did not check the whole form submitted on-line on her behalf by Mr Widdowson. In signing the Signature Summary page of the Form it would be good practice in any professional person to read everything. However the Tribunal might conclude that the Respondent was entitled to feel that she had provided correct information to Mr Widdowson and that he had included it on the Form. The Bradford & Bingley system envisages that any applicant for a mortgage will read and sign the Signature Summary without necessarily having read the form.
 - Dishonesty not now being an issue, the Tribunal should consider whether the content of the Rule 8 Statement was strong enough to merit the making of an Order under Section 43.
 - There was no complaint by either the Bradford & Bingley plc or Mr Widdowson. The complaint was made by the Respondent’s former employers, Heseltons.
 - The consequences of an Order under Section 43 on an unadmitted conveyancer far outweighed the evidence put forward in support. Mr Roscoe referred the Tribunal to the parties’ bundles of documents in support. In particular he relied upon the copy passport certified by Mr Widdowson on 15 June 2006 (SK1, page 48). This document had not been certified in the presence of the Respondent as verified by

Mr Widdowson as she was out of the country on holiday at the time. The Respondent did not meet Mr Widdowson at any time. However the “Customer Verification Form” dated 17 October 2006, completed by Mr Widdowson and provided to the Bradford & Bingley plc, states that the application had been made “Face to Face. The Respondent had put the application in the hands of Mr Widdowson, who she trusted and relied upon. If he had sent her the complete Form she would have quickly realised that the information provided was wrong and would not have signed it. Should this mean that in future the Respondent must be supervised by the SRA? She has already been dismissed by Heseltons. To impose a Section 43 Order would be disproportionate in all the circumstances.

Applicant’s Submissions in Response

33. In response on behalf of the Applicant, Mr Havard submitted that the Tribunal should hear evidence from the Respondent. The Respondent had experience of dealing with conveyancing transactions. She appeared to believe that an “expenses only” salary of £5,200 per annum merited a “self-certified” advance of £170,100. Even if Mr Widdowson went off on a frolic of his own, which was not admitted, the Respondent accepted that she had no regard to the accuracy of the information provided to the Bradford & Bingley plc. She therefore had much to answer for. If the Respondent was prepared to sign declarations without first reassuring herself that the form submitted was accurate, what did that mean for her future clients? In all the circumstances it was proportionate for the Order sought to be made.

Tribunal’s Decision on the Respondent’s Application

34. The Tribunal had heard the Applicant’s case. Mr Roscoe for the Respondent had submitted that the Tribunal should not allow the application to proceed further, not on a “no case to answer” basis, but on the basis that no reasonable Tribunal could come to the conclusion that the case would succeed on the documents before it.
35. This Application under Rule 8 was before the Tribunal for substantive hearing because it had already been certified as demonstrating a prima facie case to answer. That remained the position. Mr Roscoe in effect gave evidence on behalf of the Respondent during his submissions. The Tribunal appreciated the difficulty caused to both parties due to the absence of Mr Widdowson. The Tribunal had an on-line mortgage application document before it, the final page of which had been signed by the Respondent. The Tribunal understood the procedure followed in relation to signature of the document. Applications are made on line and the mortgagee must be satisfied as to the veracity of the contents of the document. The Respondent’s case was that she did not give the information in that document to Mr Widdowson, and that she applied for a “self-certified” mortgage on his advice. However she still had to consider how the monthly instalments were to be made.
36. All matters needed to be tested by the Respondent giving evidence. The Tribunal, whilst exercising its Regulatory function under Section 43, and whilst not seeking to punish the Respondent, still had a duty to ensure that public confidence in the profession was maintained and that the public was protected. The Tribunal therefore wished to hear from the Respondent, even if only so that she could verify the contents

of her witness statement and adduce any additional documentary evidence on which she wished to rely.

37. The Respondent's application was therefore refused.

Witnesses

38. The Respondent gave evidence on oath, and confirmed that the contents of her witness statement dated 4 December 2009 were correct, as were the contents of her two letters to the SRA dated 9 April 2008 and 21 November 2008. She said that she had been dismissed by Heseltons. The Respondent confirmed that she had been interested in a number of properties before purchasing 90 Warwick Close. She could not explain where Mr Widdowson had obtained the information in the online mortgage application from. She was not paid £51,000 per annum by her employers and had not told Mr Widdowson that she was paid that amount. She could have taken out a mortgage with her husband or with her parents. It was not necessary that the mortgage be taken out in her sole name. The Respondent confirmed that she had seen the online mortgage application form in its entirety for the first time in October 2007.
39. The Respondent confirmed that she had provided the information on the document headed "Applicant Information". That information was all true. The purchase of Gade Close fell through because of a higher offer. Mr Widdowson did not request additional information when the Respondent wished to proceed with the purchase of 79 Cleave Avenue. That too fell through. Mr Widdowson did not request additional information when the Respondent wished to proceed with the purchase of 90 Warwick Avenue.
40. The Respondent confirmed in evidence that the Signature Summary form at page 29 of the Applicant's Bundle had been signed by her, but dated by someone else. The page had been sent to her by Mr Widdowson, she had signed it and had returned it to him as he had instructed. The Respondent said that she did not recognise the manuscript writing on the document at page 28 of the same Bundle. It was not her writing.
41. The Respondent recognised that she had signed declarations on Signature Summary page. She said that she understood that by her signature she was confirming that the information that she had given to the broker was correct. She did not know that the information on the form was wrong and would not have signed the Signature Summary if she had known that it was wrong. She accepted that she should have checked the Form. There was a contract race in respect of 90 Warwick Avenue, and she believed that Mr Widdowson was being as efficient as he had been in respect of the previous two failed purchases. He was very competent.
42. In her written response to the Applicant dated 21 November 2008, the Respondent said:
- "I was also anxious as I had previously lost 2 properties after paying for surveys and therefore did not want to lose the property in question. The broker was aware of this and said he was trying to expedite the matter. I just did as the broker advised. I was advised by the broker that he was sending standard documents which required my

signature. I was asked to sign and return the same as soon as possible and very naively I trusted the broker and signed the documents where he had indicated. I now know that the broker must show the actual mortgage application which the broker makes on behalf of a client and that the client should confirm that all the information is correct. I was not shown the actual mortgage application and did not realise at the time that I should have asked to see this. This was my first purchase and I just assumed that the actual mortgage application was a document between the lender and the mortgage broker.”

This paragraph summarised what the Respondent wished to say to the Tribunal. She did not do anything intentionally dishonest or wrong. She had been naive.

43. In cross-examination the Respondent accepted that she had had some limited involvement in conveyancing transactions under the supervision of Mr Drake. She had drafted contracts but did not know the detail of mortgage applications. She would not however ask a client to sign a document and fill in the details later. She understood the importance of the client knowing what was in the documents being signed. The Respondent said she assumed that the mortgage application was a document passing between the broker and the lender and that the information on it was what she had provided on the “Applicant Information” form. She had not received the mortgage application form on any one of her two failed purchases either. She had not been asked to provide information to substantiate her husband’s employment or income. The Respondent accepted that her monthly instalments exceeded her monthly income. However the instalments had been maintained.
44. The Respondent conceded that she should have checked the information provided to the Bradford & Bingley plc. However she said that she had no reason to believe that her mortgage broker was not acting in her best interests. If he had asked for further information she would have provided it. The Respondent accepted when it was put to her by Mr Havard that she was required to sign the declarations on the mortgage application form after reading the form to cover the situation where the broker is acting inappropriately. She stated that she would not ask a client to sign a document without having read it just because there was a rush to get a job done.
45. Factual evidence as to their dealings with Mr Widdowson was also given on oath on behalf of the Respondent by her husband, Virinderpal Virdee, and her sister-in-law Priya Virdee, whose signed statements were before the Tribunal. Both witnesses confirmed that the contents of their statements were correct.
46. The Respondent called character witness evidence in respect of the allegations against her from Sarita Nahor and Sathinda Toor. They attested on oath to the honesty and integrity of the Respondent. They described the Respondent as being passionate about her work, honest, reliable, respected, hardworking and committed to a career in the law.

Closing Submissions on Behalf of the Respondent

47. Mr Roscoe submitted that there was only one issue for the Tribunal to decide: namely, was it proportionate to make an Order under Section 43 of the Solicitors Act 1974 (as amended) in all the circumstances of this case. Mr Roscoe submitted that, on the facts

as presented, there had never been a significant risk that the Respondent represented any danger to the general public or to the good reputation of the profession. For the Respondent to resurrect her training contract under the black cloud of a Section 43 Order, so that her future employment must be sanctioned by the SRA, would be unfair and disproportionate. In the circumstances it was inappropriate to make any such Order.

48. There were no closing submissions on behalf of the Applicant.

The Tribunal's Findings as to Fact and Law

49. The Tribunal thanked the Advocates for their assistance and recognised that Mr Havard had faced difficult decisions in relation to the absence of his key witness, Mr Widdowson.
50. Mr Havard had amended the application with the consent of the Tribunal, to remove the allegation contained within paragraph 14 of the Rule 8 Statement dated 20 August 2009 that the Respondent had deliberately completed an application for a mortgage knowing that the content of the application was untrue and in doing so, acted dishonestly. In consequence of that amendment there was no allegation of dishonesty against the Respondent before the Tribunal for determination.
51. Mr Havard for the Applicant invited the Tribunal to proceed to determine the application on the following basis: that when the Respondent signed the Signature Summary page of the on-line mortgage application form submitted to the Bradford & Bingley plc by Mr Widdowson on her behalf, which included a number of declarations as to the veracity of the contents of the form, she did so without knowing or checking whether the contents were in fact true and accurate. The Applicant's case was that this failure demonstrated a serious error of judgement on the part of the Respondent, making it appropriate for an Order under Section 43 (1)(b) and (2) of the Solicitors Act 1974 (as amended) to be made.
52. The Tribunal did not have an opportunity to hear evidence from Mr Widdowson. It did however see and hear the Respondent give oral evidence. It also heard from two witnesses to fact, the Respondent's husband, Mr Virdee, and her sister-in-law, Miss Virdee. In addition the Tribunal heard from two witnesses as to the Respondent's integrity and honesty. The Tribunal found the Respondent's evidence on oath to be convincing. She was a credible witness.
53. The Respondent admitted in evidence that she signed the online mortgage application form in respect of the mortgage for 90 Warwick Crescent on the Signature Summary page, which contained declarations as to the truth and accuracy of the contents of the form, without first having read the contents of the form. She believed that the form contained the information that she had provided to Mr Widdowson via Mr B.S Virdee on the "Applicant Information" document. That document contained no information about the Respondent's income. It related to her first proposed purchase at Gade Close. The Tribunal accepted the Respondent's evidence that Mr Widdowson had advised her to obtain a self-certified mortgage. The Tribunal also accepted her evidence that, although she worked in a conveyancing role, this was her first personal

house purchase, and that she had no experience of dealing with mortgage applications, either in a personal capacity or at work.

54. The Tribunal had certain suspicions about the veracity of the content of the document submitted on the Respondent's behalf by Mr Widdowson. The Tribunal could say no more than that, not having had the opportunity to see Mr Widdowson give evidence, including cross-examination on behalf of the Respondent. The Respondent's evidence as to what Mr Widdowson did or did not do or did or did not tell her is however unchallenged as a result of Mr Widdowson's absence.
55. The Tribunal found as a fact that the Respondent, as a legally trained but relatively inexperienced individual, should not have signed the Signature Summary page of the on-line mortgage application form without first having satisfied herself that all of the information contained within that form, completed on her behalf and in her absence by Mr Widdowson, was true, accurate and complete in accordance with the declarations set out in some detail on the same page of the form.
56. The Tribunal found as a fact that the Respondent trusted Mr Widdowson to act properly on her behalf. The Respondent was not a person of experience, either within the work place, or in respect of submitting applications for mortgages. This was the her first property purchase, and the first occasion on which she had made a personal mortgage application. The Respondent did work in a conveyancing role at Heseltons, but under the supervision of a more experienced partner, Mr Drake, and had no experience of submitting applications for mortgages on behalf of either herself or her clients.
57. The allegations had been pending against the Respondent since 2007. In the meantime the Respondent had been through a very difficult time, including litigation with her former employers. Section 43 of the Solicitors Act 1974 is not punitive in nature. It is there to provide a means of protecting the public, and of maintaining the good reputation of and public confidence in the solicitors' profession. An Order under Section 43 does not prohibit an individual from working for a solicitor. It does require that permission to employ a person subject to a Section 43 Order should first be obtained from the SRA so that an appropriate level of supervision in appropriate employment can be imposed.
58. The Tribunal considered carefully whether on the specific facts of this particular case there had ever been any significant danger to the general public and/or the reputation of and public confidence in the legal profession. On the specific facts of this case the Tribunal found that, if allowed to continue to work without being subject to a Section 43 Order, this Respondent did not pose any danger to the general public and that there was no threat to the good name and reputation of and public confidence in the solicitors' profession. Further the Tribunal was confident that the Respondent had learned many important and useful lessons from the circumstances in which she had found herself and from her appearance before the Tribunal today. Those lessons would, it was hoped, be of value to her in her future legal career.
59. The Application was accordingly dismissed.

Costs

60. Mr Roscoe made an application on behalf of the Respondent for costs against the Applicant. After hearing submissions from both parties, the Tribunal made no order for costs against the Applicant on the basis that the Tribunal had found that there was a case to answer and that it wished to hear evidence on oath from the Respondent before reaching its decision. It may indeed be the case that a Respondent will put forward a consistent denial of the allegations against her and ultimately be successful before the Tribunal. However this is not the criterion for a decision as to whether costs against the Applicant should be ordered. The Applicant was entitled to put its case against the Respondent, and the Tribunal had found that it was appropriate in all the circumstances for the Respondent's denial of the allegations against her to be tested on oath. There would therefore be no order for costs.

Dated this 26th day of November 2010

On behalf of the Tribunal

L N Gilford
Chairman