

IN THE MATTER OF TONY PEARCE, SIMON JOHN STEVENSON, MICHAEL
SHERWOOD and PETER THORNLEY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr L N Gilford (in the chair)
Mr R B Bamford
Mr P Wyatt

Date of Hearing: 3rd December 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by George Marriott, solicitor and partner in the firm of Gorvins Solicitors, 4 Davey Avenue, Knowlhill, Milton Keynes, London, MK5 8NL on 18th July 2008 that Tony Pearce, Simon John Stevenson and Michael Sherwood, all solicitors of Thornleys Solicitors Limited, 246/247 Dean Cross Road, Plymstock, Plymouth, PL9 7AZ 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.

A further application was duly made on behalf of the SRA by the Applicant on 11th November 2008 that Peter Thornley formerly of Thornleys Solicitors Limited, 246/247 Dean Cross Road, Plymstock, Plymouth, PL9 7AZ, subsequently of 7 Mutley Road, Mannamead, Plymouth, PL3 4SA, 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.

On 11th November 2008 the Applicant made a supplementary statement containing further allegations against Tony Pearce, Simon John Stevenson and Michael Sherwood.

By Order of the Tribunal dated 13th July 2009 the Tribunal agreed that matter Nos. 10051/2008 and 10136/2008 be consolidated.

At the opening of the hearing the Applicant sought leave to withdraw certain allegations. The Respondents agreed and the Tribunal consented thereto. The allegations set out below include a note of the withdrawals and are the allegations contained in the two original statements and the supplementary statement.

The allegations were as follows.

The allegations made against each of Mr Pearce, Mr Stevenson and Mr Sherwood were that each of them:

1. [withdrawn]
2. Failed to provide the client with all relevant information regarding the referral agreement between Live Organisation Limited and Thornleys Solicitors Limited, contrary to s.2A(3) Solicitors Introduction and Referral Code 1990 ("SIRC");
3. Failed to carry out and record six monthly reviews of the referral agreement contrary to s.2(10) and s.3A(4) SIRC;
4. Failed to include statements of independence and confidentiality and failed to detail the conveyancing services, contrary to s.3A(9) SIRC;
5. Failed to provide the client with clear and adequate cost information contrary to Rule 3 and Rule 4 SIRC;
6. [withdrawn]

The allegations against Mr Pearce, Mr Stevenson, Mr Sherwood and Mr Thornley were that each of them had:

7. Rewarded introducers by the payment of referral fees before March 2004 contrary to s.2(3) SIRC;
8. Failed to provide clients with all relevant information regarding the referral agreement between Live Organisation Limited ("Live Org") and Thornleys Solicitors Limited, contrary to s.2A(3) SIRC 1990;
9. Failed to carry out and record six monthly reviews of the referral agreement, contrary to s.2(10) and s.3A(4) SIRC 1990;
10. Failed to take reasonable steps to remedy breaches of SIRC by the introducer, contrary to s.3(A)(5) SIRC 1990;
11. Failed to include statements of independence and confidentiality and failed to detail the conveyancing services, contrary to s.3A(9) SIRC 1990.

12. [withdrawn]

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 3rd December 2009 when George Marriott appeared as the Applicant and all of the Respondents were represented by David Bradley of Counsel.

The evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondents both as to the facts and the allegations.

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

The Tribunal Orders that the Respondent Tony Pearce of Thornleys Solicitors Limited, 246 Dean Cross Road, Plymstock, Plymouth, PL9 7AZ, solicitor, be reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society on a joint and several basis.

The Tribunal Orders that the Respondent Simon John Stevenson of Thornleys Solicitors Limited, 246 Dean Cross Road, Plymstock, Plymouth, PL9 7AZ, solicitor, be reprimanded and it further Orders that he do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society on a joint and several basis.

The Tribunal Orders that the Respondent Michael Sherwood of Thornleys Solicitors Limited, 246 Dean Cross Road, Plymstock, Plymouth, PL9 7AZ, solicitor, do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society on a joint and several basis.

The Tribunal Orders that the Respondent Peter Thornley of 7 Mutley Road, Mannamead, Plymouth, PL3 4SA solicitor do pay the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society on a joint and several basis.

The facts are set out in paragraphs 1 – 25 hereunder:

1. Mr Pearce, born in 1956, had been admitted as a solicitor in 1990. Mr Stevenson, born in 1970, was admitted as a solicitor in 1996. Mr Sherwood, born in 1946, had been admitted as a solicitor in 1972. Mr Thornley, born in 1946, had been admitted as a solicitor in 1973. At the date of the applications the names of all of the Respondents remained on the Roll of Solicitors but Mr Thornley's name was removed from the Roll on 3rd June 2009 in accordance with the Solicitors (Keeping of the Roll) Regulations 1999.
2. The Respondents had been partners in the firm of Thornleys Solicitors, established in 1981 with an office at Dean Cross Road, Plymstock. Mr Thornley retired as a partner in Thornleys in 2006 and fully retired from practice in January 2008.

3. On 1st May 2007 the practice incorporated as Thornleys Solicitors Limited and the other three Respondents were directors of Thornleys. Mr Pearce was the managing partner, Mr Stevenson was the partner in charge of the conveyancing department and Mr Sherwood was a partner in that department. The firm undertook work in the fields of conveyancing and property work, trusts and tax and wills, elderly client services, commercial, employment, civil dispute resolution and litigation.
4. On 12th March 2001 Thornleys entered into an agreement ("2001 Agreement") with Live Organisation Limited ("Live Org") in connection with conveyancing transactions. Live Org provided conveyancing services for clients of estate agents and their connected purchasers. By entering into an agreement with Live Org, a firm would be placed on Live Org's panel of solicitors. Live Org would then sub-contract conveyancing services to a member of that panel. In return the panel solicitors would pay an "access fee" and an "administrator's fee" every month.
5. The procedure adopted was that Live Org provided its customers with a quotation setting out the fees likely to be payable including legal costs and likely disbursements. The quotation was sent to the panel solicitor. At this point the solicitor sent out a letter to the client and confirmed their instructions and also sent a "client care" letter.
6. Upon completion of the conveyancing transaction the solicitor sent an invoice to Live Org for their standard work, but billed to the client direct for any extraordinary costs. The client paid Live Org to settle a Live Org bill and then Live Org sent the solicitor his fees.
7. A new agreement between Live Org and Thornleys had been prepared but Thornleys had not entered into it because it found a clause limiting the firm's independence to be objectionable.
8. On 30th April 2007 the SRA commenced an investigation into Thornleys and prepared a Report dated 29th May 2007 which was before the Tribunal.
9. The agreement between Thornleys and Live Org was accompanied by a document headed "Payment Terms". Under the heading "Payment to Us (Live Org)", Thornleys were obliged to pay an "Access Fee" in each month as calculated by the "Access Fee Schedule", namely £15 plus VAT on a case by case basis. The schedule acknowledged that information regarding the access fee should be disclosed to clients under the SIRC.
10. Neither Thornleys original client care letter nor its original retainer letter made reference to the operation of the referral scheme. There was no reference to the access fee or to any payments being made by either party as a result of the referral.
11. Around February 2007 amendments were made to the initial instruction letter so that it disclosed the existence of the referral agreement and that the arrangement involved the payment of a fee by Thornleys to Live Org, although the amount of the fee was not included. The letter was further amended on or about 1st July 2007 so that the amount of the payment by the solicitor to the introducer was disclosed.

12. SIRC required a firm to carry out six monthly reviews and to keep a record of them and submit the same to The Law Society upon request. Mr Pearce, Mr Stevenson and Mr Sherwood had not complied.
13. SIRC required solicitors to include certain information in their written terms of business given to referred clients. The terms of business had to set out the details of the conveyancing services to be provided, including a statement that any advice given by the solicitor was given independently and that the client was free to raise questions regarding any part of the transaction. Also the terms had to include confirmation that none of the client's personal details would be disclosed to the introducer without the client's consent. Thornleys' original client letter and its retainer letter did not satisfy these requirements. The amended letter created around February 2007 did not fully meet the requirements. The initial client letter used from 1st July 2007 contained an independent and confidentiality statement but referred to "conveyancing services" without going into more detail.
14. The Client Care Code 1999 provided that any information given by the solicitor in relation to costs had to be given in a way which the client could understand and must not be inaccurate or misleading. Further the solicitor should give the client the best possible information about likely overall costs showing the breakdown between fees, disbursements and VAT. Where relevant, the solicitor must inform the client about the firm's hourly charging rates and the client must be kept up to date if those rates change.
15. Under the heading "Our Fees" Thornleys' original retainer letter stated that the client had received a quote from Bradleys Conveyancing which represented a standard charge for standard work. Any extra work was not included in the quotation and would result in an extra charge calculated at the firm's hourly rate set out in Thornleys terms of business. The quotation sent by Live Org to the potential customers contained no breakdown between fees payable to Thornleys and those retained by Live Org and did not mention the possibility that work which was not covered by the quotation might arise or that extra costs might be payable.
16. On 12th March 2001 Mr Thornley, on behalf of the firm, had entered into the 2001 Agreement with Live Org. Live Org was described as a conveyancing marketing company which, as part of its marketing strategy, had written a software programme. The firm wished to increase its market share of conveyancing work by using Live Org's marketing services and programme. Live Org granted to the firm a non-exclusive licence to use the software.
17. According to the 2001 Agreement a panel solicitor's fee accounted for 82.5% of Live Org's quotation after VAT and disbursements. If there were any costs above this, then the firm billed the client direct.
18. Under the 2001 Agreement in return for the referrals, the firm was required to pay Live Org an initial sum of £2,500 upon signing the agreement; a further £2,450 was due when Live Org installed its software programme or the agreement had been in effect for six months, whichever was the earlier date.

19. In addition to these "one-off" payments the firm was also required to pay Live Org an "access fee" of £250 per month for each "designated fee earner". The "designated fee earner" was defined in the agreement as a fee earner within the firm who handles matters referred under the agreement. The "access fee" was defined by the agreement as "the monthly fee payable for each designated fee earner". In January 2006 the "access fee" was altered to the payment on a per case basis of £15.
20. After March 2004 changes to SIRC allowed solicitors to make payments to third party introducers but only where they had provided the client with the relevant information concerning the referral, in particular the amount of any payment.
21. Mr Thornley had provided the SRA with the client care information which was sent to clients by the firm when a case introduced by Live Org had been accepted. The literature did not provide the client with the relevant information regarding the referral arrangement and the payments to be made to the introducer. SIRC did not allow a solicitor to rely on disclosure given by the introducer.
22. The Agreement provided that the payment of an administrator fee of £150 per month covered the work done by each administrator or secretary using the software with a designated fee earner.
23. After the changes to the SIRC in March 2004 a solicitor had to meet the requirement that a referral agreement be set out in writing and that six monthly reviews under s.2(10) were recorded and made available for inspection by the SRA. This requirement had not been met.
24. Also under the SIRC, Live Org was obliged to provide certain information in writing to its customers. Live Org's documents did not include a statement to the effect that the Respondents' firm would remain independent (from Live Org) and subject to the instructions of the client. Mr Thornley had received copies of the literature sent by Live Org to their customers from which it was evident that the required statement was absent. Similar obligations were upon the Respondents. The documentation sent by the Respondents and the firm did not include a statement that they and the firm would remain independent (from Live Org) and that the client was free to raise questions on all aspects of the transaction.
25. Clause 5 of the 2001 Agreement stated that where the solicitor was asked to recommend another professional the solicitor would, where possible and with the consent of the client, refer the client back to Live Org so that Live Org could make the recommendation and this was contrary to the condition in SIRC that where a solicitor recommends that a client uses a particular agency or business that recommendation must be made in good faith and in the best interests of the client.

The submissions of the Applicant

26. Prior to March 2004 there was an absolute prohibition against solicitors paying a fee for the referral of business to them. Following the changes in March 2004 s.2A(3) of SIRC stated that:

“a solicitor might make a payment to an introducer only where immediately upon receiving the referral and before accepting the instructions to act. The solicitor provides the client with all relevant information concerning and in particular the amount of any payment”.

27. It was the Applicant's case that Thornleys' original instruction letter and client care letter breached the SIRC as they failed to provide all information regarding the referral agreement between Live Org and Thornleys. Further, it was submitted that the letter created in or about February 2007 also amounted to a breach even though it disclosed the existence of the referral payment because it did not provide details of the amount of the payment.
28. It was further the Applicant's case that Thornleys' original instruction letter and client care letter breached SIRC as it failed to include the independence and confidentiality statements, details of the conveyancing services to be provided and make reference to the clients' freedom to raise questions. The letter created about February 2007 was also in breach as it failed to include the necessary statements. The client care letter created on or about 1st July 2007 also was in breach as it only mentioned the provision of "conveyancing services" without going into more detail about the exact nature of the services being provided.
29. In relying upon the Live Org quotation it was further submitted that Thornleys failed to provide its clients with sufficient information in relation to costs and as a result acted in breach of the Client Care Code.
30. Solicitors were permitted to refer their clients to third parties under SIRC but that was on condition that where a solicitor recommended a client to use a particular agency or business, the recommendation had to be made in good faith and in the best interests of the client. Solicitors should not enter into agreements which would restrict their freedom to recommend any particular business or agency.
31. The Applicant pointed out that the SIRC was in place in order to preserve the independence of solicitors and to ensure that the clients' best interests were always put first and thus to protect the public.
32. The Applicant accepted that the Respondents had gone to considerable trouble to respond to their professional regulator when enquiries were made about the breaches which had come to be admitted. It was further accepted that the breaches had been inadvertent and were not deliberate. It was further accepted that no client had complained.

The submissions of the Respondents

Mr Tony Pearce

33. Mr Pearce began work as a trainee filing clerk in 1983, had studied to become a legal executive and had joined a firm in which Mr Thornley was a partner in 1988 to undertake litigation. He went on to qualify as a solicitor in 1990. Mr Pearce concentrated on developing the litigation side of the practice.

34. He became a salaried partner in 1991 and became an equity partner with Mr Thornley in 1994. Mr Thornley had the main responsibility for management, but subsequently Mr Pearce had taken on advertising and promotion roles and business development, except in conveyancing which remained Mr Thornley's domain.
35. Mr Pearce had made it clear to Mr Thornley that he was not prepared to continue to undertake personal injury work if it involved paying for that work. Personal injury work was a major part of his litigation practice. He firmly remained against paying for the introduction of work. Mr Pearce had taken active steps to explain his field of work.
36. In the middle of 2005 Mr Thornley made it clear that he was intending to retire. When he did retire from the partnership in April 2006 Mr Pearce took on all his management and practice roles. It was necessary to re-organise the practice and get to grips with all the functions and practices of the firm with which Mr Pearce was not familiar. At the end of 2005 he was appointed as a deputy district judge.
37. Mr Pearce did not seek to avoid his responsibilities for any breaches but his lack of knowledge of the conveyancing department of the firm at the material time was relevant.
38. Mr Thornley had at about the end of 2000 told Mr Pearce of an approach from Bradleys about the possibility of Thornleys Solicitors being appointed to the Live Org Conveyancers Panel. Thornleys was recognised as a good and efficient law practice and Bradleys was a major local contact. As this was Mr Thornley's area of responsibility Mr Pearce had been content for him to look into possible panel membership so that they could make a decision whether to join the panel once he had made enquiries.
39. Mr Thornley and Mr Pearce must have discussed the matter before March 2001 when the agreement was signed. Mr Pearce could not recall being shown a copy of the 2001 Agreement until Mr Thornley's appeal against his reprimand.
40. When Mr Pearce took over control of the firm on 1st May 2006 Mr Thornley updated him on the Live Org arrangement and he was informed of discussions which had taken place between the firm and Bradleys Estate Agents over whether Thornleys would continue the agreement with Live Org. When Mr Pearce took possession of all the management files, it was not immediately possible for him to review the Live Org agreement. After a period of time he started to look into it with Mr Stevenson.
41. Live Org continuously pressed the firm to enter a new agreement in 2006. Mr Pearce had written expressing his unhappiness with proposed new terms particularly that which sought to limit the firm's ability to act with independence.
42. On 23rd August 2006 Mr Pearce wrote to Live Org and declined to enter into the 2006 Agreement, despite pressure from both Bradleys, prominent local estate agents, and representatives of Live Org. It was estimated at that point that this refusal would lead to loss of conveyancing work to the practice which employed two people to do such work.

43. Mr Pearce encountered many problems when endeavouring to re-organise the practice including a number of departures of senior staff, and staff illness as well as finding time to sit as a deputy district judge. One of the decisions he did make was to decide that the practice would not join the Live Org scheme providing "all inclusive conveyancing".
44. Mr Pearce had indicated on the 2006/2007 practising certificate renewal form that he "believed" the firm might have had a referral agreement with Live Org. He said "believed" because he did not really know whether the 2001 Agreement with Live Org was a referral agreement.
45. The SRA's visit had come at a very busy time and had proved stressful. Mr Pearce had not experienced such an investigation before.
46. Appropriate steps were taken upon receipt of the SRA's compliance report.
47. Mr Pearce and his co-directors acknowledged that there were breaches of certain of their professional obligations but such breaches were inadvertent and not deliberate.
48. Thornleys had always endeavoured to provide the very best professional service to clients and did its utmost to ensure full compliance. It had a good disciplinary and compliance record and a good record in connection with complaints or claims. They enjoyed an excellent relationship with their clients. The Tribunal was invited to give due weight to the written references handed up at the hearing from local firms, all of which spoke highly of the competence and good reputation of Thornleys and its members.
49. The delay in the investigations together with the delay in getting the matter to a hearing had been a very considerable strain on the Respondents and their families.
50. The firm had received no instructions from Live Org since it was informed that the firm was no longer interested in appearing on its panel. One or two matters had been retained after being removed from the panel but this was only in order to conclude the transactions. The firm had only ever had one referral arrangement and had no desire to become involved with a referral panel again. The Respondents apologised for what had occurred. The Tribunal was invited to take all of the background into account, in particular the "false comfort" that was offered to the Respondents by the assurances offered by Live Org, Counsel's opinion and the fact that many of the solicitors had taken part in the scheme.
51. Credit should be given for the firm's refusal to enter into a new agreement which it considered would impair its independence. Further the breaches had taken place when the question of referral fees had been the subject of confusion and indeed the Code had been changed in March 2004.

Mr Simon John Stevenson

52. Mr Stevenson was 38 years of age. His employment with Thornleys Solicitors commenced in February 2000 as an assistant solicitor to assist Mr Thornley with his commercial conveyancing caseload. His residential conveyancing caseload had

increased over a time particularly when the firm's residential conveyancer had left. In May 2002 Mr Stevenson (and another solicitor) was offered a salaried partnership. His roles were to deal with data protection and anti-money laundering issues. He remained a salaried partner until May 2007 when the firm was incorporated and then became a salaried director.

53. Mr Stevenson had been aware from the time that when he joined Thornleys the firm already had strong links with Bradleys Estate Agents. He understood that Bradleys had the largest market share of estate agency work in Plymstock and the surrounding area. Clients spoke highly of Bradleys who worked hard to sell properties and could properly be recommended to clients. Mr Stevenson recalled being approached by Mr Thornley and being told of discussions about Live Org and the proposed arrangements.
54. Mr Thornley said that Live Org was a national organisation which had established similar relationships with many estate agents and solicitors' firms all over England; Bradleys were keen to proceed with Live Org because for a number of reasons that would assist the house selling process and be beneficial to clients. There was to be a meeting with Bradleys and Live Org to see whether or not Thornleys would be interested in entering into such an arrangement. Mr Stevenson was not asked to attend. Mr Thornley had wanted Mr Stevenson to take on the day to day residential conveyancing fee earning work that would stem from such new arrangement should it come into being and lead to a larger volume of residential conveyancing work. Mr Stevenson had the advantage of being IT literate. When the Live Org agreement was entered into Mr Stevenson dealt with the fee-earning aspect only for Live clients and he acted for them in exactly the same way as he did for clients who had not been recommended to Thornleys by Live Org. The only difference between the manner in which Mr Stevenson dealt with Live Org clients, as opposed to non Live Org clients, was that Live Org clients' files were updated weekly on the internet so that they could receive weekly internet reports on the progress on their matters.
55. Mr Stevenson had not been involved in the decision to enter into the arrangement with Live Org or the drafting of the retainer letters that were sent to Live Org clients or the day to day monitoring of the agreement between the firm and Live Org. He was involved in the fee earning work for Live Org clients from 2001 to 2005. He had been aware from discussions with Mr Thornley that the firm would be paying monies to Live Org on a monthly basis for the use of its software systems and training costs. As an assistant solicitor he had no say in policy or financial decisions. He had not seen a copy of the Live Org agreement until Mr Thornley asked him to send a copy a copy to him in connection with the matter relating to the Adjudicator's reprimand of Mr Thornley. Mr Stevenson had attended a training conference run by Live Org which was attended by representatives from a number of other local solicitors' firms. The training concentrated on the technical processes.
56. Shortly after the training course Mr Stevenson began to receive instructions from Live Org to act for their clients. He had been aware that a monthly fee was paid for the use of the Live Org software and had accepted Mr Thornley's assurances that he had looked into the proposed agreement with Live Org carefully and that it was perfectly satisfactory for the firm to carry out work on such terms and that numerous firms across England had entered into the same agreement. He understood that there was a

Counsel's opinion obtained by Live Org confirming that the agreement did not contravene any of the solicitors' professional obligations. Mr Stevenson trusted Mr Thornley's judgment.

57. In 2004 Mr Thornley relieved Mr Stevenson from his large residential conveyancing caseload and decided that all new Live Org work should be carried out by another fee earner under Mr Thornley's supervision. Mr Stevenson's Live Org introduced work thereafter reduced dramatically and he ceased to act for Live Org clients by 2005.
58. Mr Stevenson had been made aware on occasions by Mr Thornley that Live Org was attempting to impose new agreements on the firm. He recalled that Mr Thornley had been outraged by a suggestion that the firm should refuse to act for former Live Org clients, who would not instruct Live Org again, as it would have restricted their independence.
59. Mr Pearce asked Mr Stevenson to become head of the property department upon Mr Thornley's retirement in 2006. As far as the Live Org work was concerned Mr Stevenson had inherited a system that had been in place since March 2001, He had assumed that all was well with the same, as he had heard nothing to the contrary, and had assumed that as Live Org matters had been dealt with in the same way since 2001.
60. Mr Stevenson's only concern had been prompted by the fact that he had been told by Mr Pearce that he believed he might now be paying a per case fee as opposed to a monthly fee following Mr Stevenson remarking that Live Org client instructions had dropped off and they were still paying a monthly access fee for licence, software, IT, training and so on. Mr Pearce had responded that as the firm was now paying only a fee per case, this would not be of concern. Mr Stevenson considered that this should be reflected in the client care letter and he had amended it accordingly. He subsequently noticed that the per case fee was in fact an access fee payable for support, training and systems provided by Live Org and considered that as this fee was payable to Live Org for a particular service as opposed to a payment for referring clients and concluded that he should amend the letter again to include specific reference to this fee and what it was for. He did this in the interests of transparency to the client and genuinely did not think of the fee as a referral fee.
61. On becoming head of the property department in May 2006 Mr Stevenson carried out a review of the department to improve efficiency and achieve better risk management. With hindsight he recognised that he should have reviewed in detail the existing 2001 Agreement with Live Org and all relevant documents but, in error, he had not thought this was necessary.
62. In July 2006 Mr Pearce informed Mr Stevenson that he had received a new draft agreement from Live Org. Mr Pearce refused to sign the 2006 Agreement because it contained provisions requiring the firm to refuse to act for former Live Org clients if they refused to use Live Org's services again. Mr Pearce asked Mr Stevenson to provide a letter to Live Org and part of his response was incorporated into Mr Pearce's letter of 23rd August 2006 to Live Org. In his draft Mr Stevenson attempted to retain the firm's independence and integrity in connection with its choice of search providers best suited to the clients' interests.

63. When Mr Stevenson's research led him to learn that new rules were to come into effect on 1st July 2007, he produced a further version of the retainer letter including the required statements with a note to the effect that this version of the letter would be used from 1st July 2007 and every Live Org client had been sent an SRA disclosure statement which had been drafted by Live Org transmitted to the firm with the new Live Org clients' details and it was sent to the client at the outset of the transaction with the client care letter. It was clear from the terms and conditions that the firm would be responsible to the Live Org client. In practice advice was at all times given independently and clients were treated as Thornleys' clients for the purposes of advice. No complaints were ever received from Live Org clients that their best interests were not put first.
64. Mr Stevenson had at all times been mindful of his professional obligations and had believed that these had been met. The firm had not entered into a new agreement with Live Org which it considered to be objectionable.

Mr Michael Sherwood

65. Mr Sherwood was 63. He had undertaken both residential and commercial conveyancing and had never dealt with contentious business. He had joined Thornleys in February 1996 as a salaried employee and soon afterwards entered into partnership with Mr Peter Thornley and Mr Pearce. He was a salaried partner until the firm's incorporation in 2006 when Mr Pearce, Mr Stevenson and Mr Sherwood became co-directors. Mr Sherwood continued to be a salaried director.
66. At some point in early 2001 it became clear that the firm would be entering into an arrangement with Live Org. Mr Sherwood had not been involved in doing any conveyancing work for "Live clients" or in the day to day operation of the arrangement.
67. He had not been an equity partner and was not consulted in connection with the arrangement. He had not seen the agreement with Live Org until a copy was exhibited in the disciplinary proceedings. As a salaried employee Mr Sherwood had not been in a position to make decisions on the firm's financial matters or on major matters of policy.

Mr Peter Thornley

68. Mr Thornley had retired from practice and would not practise as a solicitor in the future. He had founded the firm of Thornleys Solicitors in 1981 and was senior partner of the firm until his retirement. The firm had become a successful and well respected firm in Plymouth and the surrounding area with a broad based high street practice including conveyancing.
69. Thornleys was one of a number of firms who dealt with Bradleys Estate Agents. Some time in 2000 the firm was advised by Bradleys that they had entered into a marketing arrangement with Live Org.

70. Discussions took place with Live Org which was looking for panel solicitors to provide conveyancing services to their customers and who would use a computer-based system Live Org was developing. Live Org was to provide a "one stop" service to Bradleys' customers embracing conveyancing, surveying, search arrangements and other services linked to the house buying and selling process.
71. Following these discussions Thornleys entered into the agreement with Live Org.
72. Mr Thornley's personal workload did not involve domestic conveyancing under the Live Org arrangement. He did however supervise the department and accepted that the responsibility rested primarily with him.
73. At first neither Live Org nor Thornleys believed that the scheme involved a referral fee. Thornleys billed the lay client direct. A payment to Live Org was not made on a case by case basis until later when, after consultation with The Law Society, the firm was advised that that was the way in which it should be dealt with. The Live Org software developed into a case management system. It had been agreed that the firm would make a payment for the software but the software never materialised.
74. Because the payments were to be made in respect of the software, training and administration, Mr Thornley had not at the outset believed that this was a referral arrangement caught by the Rules or the Code.
75. The fact that a number of other solicitors' firms had entered into similar agreements with Live Org gave the Respondent comfort in believing that they were acting within the terms of the Referral Code.
76. It was the first and only formal arrangement of this type that firm had entered into and they were very cautious about entering into the agreement with Live Org. The Respondents had been entirely satisfied that their independence and integrity were not being compromised.
77. When Live Org proposed a second agreement in 2004 the Respondents decided not to sign it. It had become more difficult to deal with Live Org who were becoming increasingly assertive. The proposed new agreement appeared to be ridiculously restrictive. The Respondents decided not to sign it.
78. The 2001 agreement required the firm to pay Live Org an initial sum of £2,500 which Mr Thornley took to be a down payment on the licence to use the software and to cover administration costs, with a further payment due when it installed the software programme or six months down the line. The access fee of £250 per month for each designated fee earner also seemed to Mr Thornley to be a user licence fee in respect of IT.
79. The agreement in 2001 provided for an administration fee of £150 per month to be paid but this was never paid.
80. The firm had not revealed to the clients the payments that they were making to Live Org as they were not in relation to the introduction of the individual cases.

81. Mr Thornley had appreciated that the SIRC required openness with the clients in respect of arrangements which affected their cases but he did not believe at the time that these set up arrangements were matters which should be disclosed.
82. Mr Thornley did not believe that the clients would have been influenced against instructing the firm had the set up arrangements and payments made been revealed to them.
83. An Adjudicator had imposed a reprimand on Mr Thornley but he had pointed out to the Appeal Committee that, for the period that had been alleged in the Report, he had not been a principal of the firm. That appeal was allowed, albeit that there was a recommendation that the SRA investigated the earlier period in the original agreement.
84. The Tribunal was invited to bear in mind the reprimand imposed in respect of the later matters and also to note that in respect of the identical agreement, another firm on the Live Org panel in Plymouth had been issued with a warning in respect of their conduct in circumstances which appeared identical to those of the Respondents.
85. Mr Thornley had been caused great distress and sadness by the disciplinary proceedings after enjoying a blameless career in which he strived to serve the interests of his clients. No client had been prejudiced and no client had made any complaint.

The Findings of the Tribunal

86. The Tribunal found the allegations to have been substantiated, indeed they were not contested.
87. The Tribunal accepted that the breaches found to have been established were not deliberate on the part of the Respondents. The Tribunal understood that careful consideration had been given to the arrangements with Live Org and the Respondents had been given false comfort both by a written opinion obtained by Live Org and by the fact that a number of other firms of solicitors, a number of which were known to the Respondents as other firms practising in the same geographical area as Thornleys had entered into an arrangement with Live Org, which had also encouraged them in their view that the arrangement did not amount to a breach of any of the professional Rules or Codes by which solicitors were bound.
88. The Tribunal had given the Respondents credit for their admissions and also taken into account the written testimonials which had spoke highly of Thornleys Solicitors.
89. The Tribunal concluded that the involvement of the different Respondents could be distinguished and as a result so could their individual levels of culpability.
90. Mr Thornley had originally entered into the arrangement with Live Org. He had been the senior solicitor at the firm and others had respected his experience and his opinion. Mr Thornley's name had been removed from the Roll of Solicitors earlier in 2009 under the Solicitors Keeping of the Roll Regulations. The Tribunal had jurisdiction to deal with allegations made against Mr Thornley but it was limited as to the Order that it could make namely that Mr Thornley be not restored to the Roll

without the consent of the Tribunal. The Tribunal recognised that such an Order was usually regarded as being tantamount to a striking off order and it considered that such an order would be too draconian in the light of Mr Thornley's failures. The Tribunal would have been minded to impose a financial sanction upon Mr Thornley had it been open to it to do so. In all the circumstances the Tribunal considered that it was appropriate and proportionate to make no sanction order but to make an order for costs against Mr Thornley. The costs were to be subject to a detailed assessment and were to be a joint and several liability between the Respondents.

91. The Tribunal recognised that after the retirement of Mr Thornley, Mr Pearce became the sole equity partner and considered that his responsibility was at a higher level than those that were not in a position to make any policy decisions. The Tribunal recognised that Mr Pearce was not a conveyancing solicitor and that his main fault had been that he allowed an existing situation to continue and had not taken any steps to check that there was no breach. The Tribunal concluded that it would be appropriate and proportionate to order that Mr Pearce be reprimanded.
92. With regard to Mr Stevenson, the Tribunal recognised that he was a salaried partner or a salaried director in the firm and was not in a position to make policy decisions. However he was a conveyancing solicitor and had been appointed as head of the firm's conveyancing department. It was clear that Mr Stevenson had given the matter of the arrangements with Live Org some thought as he had when he felt it appropriate to amend certain letters addressed to the clients and had been aware of the amount of work or the falling off of work introduced by Live Org. Because of his particular knowledge in the conveyancing field and the fact that he undertook Live Org work or supervised others who undertook it, it was right, appropriate and proportionate in all the circumstances that he be reprimanded.
93. With regard to Mr Sherwood he had very properly accepted his liability as a partner and a director but it was clear that he did not undertake conveyancing and had little or no knowledge of the arrangements with Live Org. In the circumstances the Tribunal accepted that Mr Sherwood had strict liability for the breaches but had no personal culpability. The Tribunal did not impose a sanction upon him but considered it right that he had a liability for the costs awarded to the Applicant. With regard to costs, the Tribunal noted that the parties had not been able to reach an agreement as to quantum. It did consider that all of the Respondents should bear a joint and several liability for such costs and Ordered that they be subject to a detailed assessment unless agreed between the parties, such costs to include the Investigation Officer's costs.

Dated this 25th day of February 2010
On behalf of the Tribunal

L N Gilford
Chairman