

IN THE MATTER OF INDERJIT SINGH PAL NIJHER, [*RESPONDENT 2*],  
[*RESPONDENT 3*] and [*RESPONDENT 4*], solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

---

Mr E Richards (in the chair)  
Mrs E Stanley  
Lady Maxwell-Hyslop

Date of Hearing: 4th March 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 Davy Avenue, Knowlhill, Milton Keynes, MK5 8NL on 16<sup>th</sup> June 2008 that:-

Inderjit Singh Pal Nijher of Farnham Common, Slough, Berkshire, SL2, solicitor

[*Respondent 2*] of Northfleet, Gravesend, Kent, DA11, solicitor

[*Respondent 3*] of Oval, London SW9, solicitor

[*Respondent 4*] of London SW15, solicitor

may be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the first two Respondents only, Inderjit Singh Pal Nijher and [*Respondent 2*] was:-

1. They misappropriated client funds. It was alleged that the First Respondent, Inderjit Singh Pal Nijher and the Second Respondent, [*Respondent 2*] had been dishonest in relation to this allegation.

The allegations against all four Respondents were:-

2. They withdrew clients' money for purposes other than a payment to or on behalf of the client, contrary to Rule 22 Solicitors Accounts Rules 1998 ("SAR").
3. They failed to keep accounting records properly written up, contrary to Rule 32 SAR.
4. They prepared inaccurate reconciliation statements contrary to Rule 32 (7) SAR.
5. They failed to comply with Rule 6 SAR.
6. They failed to remedy the breaches of Solicitors Accounts Rules contrary to Rule 7 SAR.
7. They failed to pay agreed fees into office account, contrary to Rule 19 SAR.
8. They acted in a way which was likely to diminish public confidence contrary to the Solicitors Code of Conduct 2007 Rule 1.06.

An additional allegation against the Second Respondent, [*Respondent 2*] only was:-

9. She provided misleading copies of client care letters, attendance notes, correspondence and invoices to clients and the Legal Complaints Service. It was alleged that the Second Respondent, [*Respondent 2*] had been dishonest in relation to this allegation.

By a supplementary statement dated 3<sup>rd</sup> February 2009, the additional allegation pursued against all four Respondents was:-

10. They failed to pay Inadequate Professional Services Awards in favour of former clients contrary to Rule 1 of the Solicitors Code of Conduct 2007.

An additional allegation against the First Respondent, Inderjit Singh Pal Nijher and the Second Respondent, [*Respondent 2*] was:-

11. They failed to deal with the SRA and the Legal Complaints Service in an open, prompt and co-operative way contrary to Rule 20.03 Solicitors Code of Conduct 2007.

The Applicant also sought a direction pursuant to Section 5(2) of Schedule 1A of the Solicitors Act 1974 that the direction given by the Adjudicator of the Solicitors Regulation Authority of 14<sup>th</sup> April 2008 in respect of Mr M be treated for the purposes of enforcement as if it was contained in an Order of the High Court.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when George Marriott appeared as the Applicant, all the Respondents

appeared in person and the Third Respondent, [*Respondent 3*] was represented by Mr Gary Christianson.

The evidence before the Tribunal included the admissions of all four Respondents to allegations 2 to 8, an admission by the First Respondent, Inderjit Singh Pal Nijher to allegation 1 but a denial of the allegation of dishonesty together with witness statements and a bundle of documents from Inderjit Singh Pal Nijher, a witness statement from [*Respondent 2*], a number of references for [*Respondent 3*] and a witness statement and a reference from [*Respondent 4*].

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

The Tribunal Orders that the Respondent, Inderjit Singh Pal Nijher of Farnham Common, Slough, Berkshire, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Orders that the Respondent, [*Respondent 2*] of Northfleet, Gravesend, Kent, solicitor, do pay a fine of £7,500.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Orders that the Respondent, [*Respondent 3*] of Oval, London, SW9, solicitor, do pay a fine of £5000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal Orders that the Respondent, [*Respondent 4*] of London, SW15, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen.

The Tribunal further Orders that the Respondents do pay the costs of and incidental to the application and enquiry fixed and apportioned as follows:-

Inderjit Singh Pal Nijher to pay £10,000.00

[*Respondent 2*] to pay £4,660.00

[*Respondent 3*] to pay £2,330.00

[*Respondent 4*] to pay £2,330.00

The Tribunal Orders pursuant to Section 5(2) of Schedule 1A of the Solicitors Act 1974 (as amended) that the Directions given by the Adjudicator of the Solicitors Regulation Authority of 14<sup>th</sup> April 2008 in respect of Mr. M. be treated for the purposes of enforcement as if they were contained in Orders of the High Court.

**The facts are set out in paragraphs 1-39 hereunder**

1. Inderjit Singh Pal Nijher (“Mr Nijher”) was born in 1968 and admitted as a solicitor on 3<sup>rd</sup> October 1994. His name remained on the Roll of Solicitors and at the material time he was a director with Davies Simmons Limited.
2. [*Respondent 2*] was born in 1979 and was admitted as a solicitor on 1<sup>st</sup> March 2006. Her name remained on the Roll and at the material time she was a director with Davies Simmons Limited.

3. *[Respondent 3]* was born in 1971 and was admitted as a solicitor on 1<sup>st</sup> May 2003. His name remained on the Roll and at the material time he was a director of Davies Simmons Limited.
4. *[Respondent 4]* was born in 1960 and was admitted as a solicitor on 2<sup>nd</sup> July 2001. His name remained on the Roll and at the material time he was a director of Davies Simmons Limited.
5. Mr Nijher was the sole director of Nijher and Co Limited incorporated on 24<sup>th</sup> February 1998. On 22<sup>nd</sup> June 2004 the company was renamed Davies Simmons Limited (“the Company”). The practice dealt with civil and criminal litigation, conveyancing, family, immigration, wills and probate and some criminal work. In addition to the four directors the practice employed four trainee solicitors and one receptionist. The company operated from premises at 66-68 Bell Street, London, NW1 6SP and until 5<sup>th</sup> November 2007 from 25 High Street, High Wycombe, Buckinghamshire, HP11 2AG where *[Respondent 2]* and *[Respondent 3]* were based. The office was then closed to the public and used as a consulting room only and *[Respondent 2]* and *[Respondent 3]* were relocated to the main office.
6. Between 30<sup>th</sup> October 2007 and 1<sup>st</sup> November 2007 the SRA attended the offices of the company at 66-68 Bell Street, London NW1 6SP where Mr Nijher and *[Respondent 4]* were based.
7. Following a meeting of the directors on 2<sup>nd</sup> November 2007 Mr Nijher, resigned as a director of the company. Up to that point he had been responsible for maintaining the records and books of accounts at the practice.
8. On 12<sup>th</sup> November 2007 the SRA returned to the Company to continue their investigations and interview Mr Nijher who was not available for interview during their previous visit. Following the investigation by the SRA, the SRA’s Investigation Officer prepared a report dated 11<sup>th</sup> December 2007 which was before the Tribunal. The SRA intervened into the practice on 14<sup>th</sup> December 2007.

### **Allegations 1-6**

9. The company operated 5 bank accounts, all held with the same bank. On 6<sup>th</sup> November 2007 the SRA telephoned the bank to establish what would be the quickest way of altering the mandate as the sole signatory and holder of the internet banking password had resigned. A telephone attendance note indicated that the remaining partners would have to request a mandate change pack. When asked if they could continue to use the same internet password, the SRA were told that they could, although this may be construed as fraudulent activity as the passwords were individually allocated and should not be used by other people.
10. On 19<sup>th</sup> November 2007 the SRA wrote to the bank requesting certain bank statements which were not included in the documents handed over to the SRA when they attended the firm. The letter enclosed an authority form signed by all of the directors authorising the bank to provide the SRA with copies of the bank mandates in respect of both client accounts and the firm’s business premium account.

11. The requested statements covered periods which were missing from the company's file of bank statements. According to Mr Nijher these bank statements had never been received from the bank. Furthermore, he was unable to access and print the statements on line as the system would not allow him to print off statements older than 7 days.
12. On 22<sup>nd</sup> November 2007 the Company wrote a letter to the SRA enclosing files and bank statements for one of the client accounts, including those statements which had been missing when the SRA was at the firm for inspection. The letter was not signed by an individual, however, [Respondent 2] had indicated in an email to the SRA that she would send the statements by recorded delivery. The signature on the letter sent by the Company to the SRA was similar to a signature on a letter signed by [Respondent 2] in her letter of 2<sup>nd</sup> July 2007.
13. On 27<sup>th</sup> November 2007 the SRA received a telephone call from the bank informing them that the bank would not be able to comply with the SRA's request for information as [Respondent 2] had been in contact with the bank rescinding the directors' authority. This was later confirmed in writing. After further consideration the bank agreed to release the documents.
14. The bank confirmed that the mandate for the Company's accounts was a two person "either sign" arrangement. The current signatories were Mr Nijher and Davinda Kaur Nijher who had been appointed company secretary of Nijher & Company Limited on 24<sup>th</sup> February 1998 but had resigned on 10<sup>th</sup> May 2004. Even though she had resigned in May 2004, she still appeared to be a signatory on the client account.
15. On comparing the two sets of bank statements, the SRA noticed a number of discrepancies as to the amounts and to whom the payments were being made. There were a large number of examples before the Tribunal which included the following:-

Transaction A - £750.00

A payment shown on the statements provided by the Company ("Davies Simmons statement") on 14<sup>th</sup> May 2007 as being a payment of £750.00 to "CT" who was a client of Mr Nijher. There was no reference to this payment on the statements provided by the bank ("the bank statements"). The "bank statements" showed a payment for £750.00 being made in favour of a credit card on the same day. The "Davies Simmons Statements" did not record this transaction.

Transaction D - £1,650.00

A payment was shown on the "Davies Simmons statement" on 4<sup>th</sup> June 2007 of a payment of £1,650.00 in favour of "KM" who was a barrister instructed by the firm. The "bank statement" showed no record of this transaction. The "bank statement" for the same date showed a number of payments being made. Firstly there was a payment of £150.00 - there was no reference as to whom this amount had been paid or why. Secondly, there was a payment of £750.00 in favour of a credit card and a final payment of £750.00 in favour of a further credit card. The "Davies Simmons statements" showed no record of these transactions.

Transaction E - £5,000.00

A payment was shown on the "Davies Simmons statement" on 4<sup>th</sup> June 2007 as being a payment of £5,000.00 to "AK" who was a client of Mr Nijher. The "bank statement" showed no record of this payment. The "bank statement" on the same date showed a payment of £5,000.00 to Mr Nijher. The "Davies Simmons statement" showed no record of this payment.

Transaction J - £10,280.97

A payment was shown on the "Davies Simmons statement" on 2<sup>nd</sup> July 2007 as a payment of £10,280.97 in favour of "AK" who was a client of Mr Nijher. There was no record of this payment on the "bank statements". Instead, the "bank statements" showed a number of transactions in favour of [Respondent 3] and [Respondent 4] and other Company employees as follows:-

£1,121.07 in favour of "JT"

£1,121.07 in favour of "SS"

£1,824.30 in favour of [Respondent 3]

£2,405.04 in favour of [Respondent 4]

£1,064.00 in favour of "KR"

£1,121.07 in favour of "Miss ZS"

There was also a payment of £1,064.42 but no reference as to whom or why this payment was made and a payment of £560.00 in favour of "Mr ML Peters" on 4<sup>th</sup> July 2007. None of these transactions were recorded on the "Davies Simmons statements".

16. On 5<sup>th</sup> November 2007 [Respondent 2] emailed the SRA the reconciliation statement for October 2007 together with the client ledgers. This was the last monthly reconciliation carried out by Mr Nijher before he resigned.
17. The reconciliation summary closing balance matched with the balances on the client account for 31<sup>st</sup> October 2007 which suggested that the client ledgers matched the client accounts and there was no shortfall. However, when looking at the ledgers provided, the SRA calculated that payments were wrongly included in the reconciliation statement meaning that the closing balance for the month should have been £99,819.87 suggesting that on 31<sup>st</sup> October 2007 there was a shortfall of £12,934.54 on the client accounts.
18. Furthermore, on a particular client ledger there was a credit of £23,291.29 on 19<sup>th</sup> October 2007 which should have been factored into the reconciliation. Various payments recorded on the ledger meant that at the end of the month the balance on the ledger was zero. However, none of the payments shown on the ledger were recorded on the client account statements. The SRA calculated that the shortfall for October 2007 was £36,225.83 but this had been calculated on the basis that the opening balance for October 2007 of £842,651.21 was correct. In fact the correct opening balance for October was recorded on bank statements as £842,479.21. A further

analysis of past reconciliation reports showed other discrepancies between the reconciliation summary and client ledgers.

19. An analysis of the monthly reconciliation and ledgers for September 2007 showed that actual payments from the client accounts totalled £50,000, not £126,315.86 as suggested by the reconciliation summary sheet. Total monies received into the client accounts were £820,980.69 not £819,934.64. Therefore, with an opening balance of £149,032.47 the closing balance for September (and as such the opening balance for October) should have been £920,013.16.
20. On an analysis of the client ledgers provided by the Company, cross-matching them with the bank statements of the client account provided by the bank and the Company, and the paying in and paying out slips, the SRA discovered a number of discrepancies in addition to those stated above. The situation was that detailed entries had been made and matching paying out slips had been completed in many cases but various payments were not made out of the bank client account. An example of these ledgers was as follows:-

Client ledgers representing clients of Mr Nijher

On one client ledger a CHAPS debit of £359.00 on 23<sup>rd</sup> August 2007.

On another client ledger a debit of £20,750.00 on 2<sup>nd</sup> August 2007.

On another client ledger a debit of £172.04 on 1<sup>st</sup> October 2007.

Client ledgers representing the clients of [Respondent 2]

On one client ledger a credit of £500.00 dated 12<sup>th</sup> July 2007 and a debit of £500.00 on 2<sup>nd</sup> August 2007.

On another client ledger a credit of £400.00 on 4<sup>th</sup> June 2007 and a debit of £83.00 on 2<sup>nd</sup> August 2007.

On another client ledger a debit of £436.75 on 23<sup>rd</sup> August 2007.

The effect of these was to reduce, on paper, the amount of money required to be held in the client bank account.

**Allegation 7**

21. The client ledgers for [Respondent 3] did not have a record of any monies being paid. At interview on 15<sup>th</sup> November 2007 [Respondent 3] was questioned with regard to the contents of his client ledgers. He stated that most of his work was done under agreed fees but that his clients could not usually pay the full amount up front and instead paid in instalments. [Respondent 3] would record the receipt of payment on the file and then take the money to Mr Nijher who paid it into the bank.
22. In response to a request by the SRA for more information, the Respondents by a letter dated 16<sup>th</sup> November 2007 attached all receipts of monies from [Respondent 3] totalling over £18,500.00 and described them as “agreed fees”. The Respondents stated that they did not physically bank the funds as, under the rules, they were entitled to use them for office expenses or disbursements.

**Allegation 9**

23. A client of the firm, Dr S, lodged a complaint form with the Legal Complaints Service (LCS) dated 31<sup>st</sup> March 2007. The complaint was directed at Mr Nijher and the Company and the basis of the complaint was that Dr S had paid around £140,000 to the firm, over a course of six months and had not received any invoices or receipted invoices for these payments, despite contacting the firm on numerous occasions.
24. Dr S also stated that on 13<sup>th</sup> February 2007 he had paid the firm a further £10,000 as a payment of outstanding VAT to the firm before they would release his files to his new solicitors but he had not received an invoice for this amount.
25. In a letter dated 21<sup>st</sup> May 2007, the Company contacted the LCS saying that despite having already provided Dr S with invoices they would forward him further copies by recorded delivery on the same day. Dr S received the invoices under cover of a letter dated 21<sup>st</sup> May 2007 and contacted the LCS on 23<sup>rd</sup> May 2007 saying that invoices for approximately £8,000.00 were missing.
26. A letter from Davies Simmons to the LCS dated 23<sup>rd</sup> May 2007 and signed by [*Respondent 2*] enclosed copies of the invoices and the client care letter which Dr S was provided with. The letter also stated that Dr S was fully aware of the issue of outstanding fees for VAT and as such the firm was well entitled to exercise a lien over his papers until the amount was paid.
27. Analysis by the SRA showed that, in total, the invoices provided by the Company including VAT, totalled £141,483.75. However, the client ledger for Dr S only recorded payments totalling £117,350.00 (there was an error on the SRA analysis which stated that the amount recorded on the client ledger was £116,350.00). There was never any allegation that Dr S did not pay the fees when requested, leading to the conclusion that payments of at least £24,133.75 had not been accounted for on the client ledger.
28. The Company had always maintained that they provided Dr S with invoices for the amount he paid to them. However, during the investigation into the Company by the SRA, Dr S's file was examined and documentation on the computer was analysed. Inspection of computer documents showed all of the invoices dated from 7<sup>th</sup> July 2006 to 19<sup>th</sup> December 2006 were saved in one Word document. The properties of that Word file showed that it was created on 1<sup>st</sup> May 2007 which is the same day that the LCS first contacted Davies Simmons regarding Dr S's complaint.
29. During the same investigation, the SRA accessed the client care letter dated 13<sup>th</sup> July 2006. The properties box of this Word document showed a creation date of 23<sup>rd</sup> May 2007, the same date as the letter sent by [*Respondent 2*] to the LCS.
30. In August 2005 Mr A instructed the Company on the sale of his apartment. The sale was completed on 24<sup>th</sup> October 2005 for £175,000 and Mr Nijher was the fee earner with conduct of this matter.
31. Towards the end of 2006 Mr A complained to the LCS after his requests for a completion statement for the sale of his property were not complied with. Mr A's



complaint was on the basis that since he had never received a completion statement, he did not know how the proceeds of the sale of his property had been spent or how much money he should expect from the sale.

32. On 14<sup>th</sup> February, following contact with the Company, the LCS faxed a copy of a completion statement to Mr A which the LCS had received from the Company. On receipt of this, Mr A made further observations on the statement namely that there was no date, no case reference number and no full sale price – merely an adjusted price to take into account apportionment of service charges which were not detailed on the statement. Mr A was also concerned that the statement had been manually amended by handwritten annotations and was not on headed paper or signed by a solicitor.
33. On 19<sup>th</sup> February 2007 the Company replied to the LCS's request for information. The Company expressly stated Mr A had been provided with his completion statement at the time the sale completed. A further completion statement was sent by fax from the Company to the LCS on 28<sup>th</sup> March 2007. This statement differed from the original statement sent to the LCS and was in response to Mr A's query regarding the reduction in purchase price. The completion statement also referred to a retention figure of £500.00 which was missing from the statement provided on 14<sup>th</sup> February 2007.
34. In a letter from [*Respondent 2*] on 22<sup>nd</sup> May 2007, she explained that on several occasions Mr A was informed of the issue of retention. The letter stated that the retention sum had been released back to the Company from the purchaser's solicitors in February 2007 and they had forwarded a cheque on to Mr A. In support of this position the letter enclosed a number of letters and attendance notes appearing to have been made through the transaction, documenting various issues including the issue of service charge arrears and retention.
35. Whilst carrying out its investigation into the Company, the SRA accessed Mr A's file on the Company's computer. Saved in one file were a number of attendance notes dated from 22<sup>nd</sup> August 2005 to 7<sup>th</sup> November 2005 and letters dated 17<sup>th</sup> October 2005 and 21<sup>st</sup> and 27<sup>th</sup> February 2007. The properties box of this document showed a creation date of 22<sup>nd</sup> May 2007, the same date as [*Respondent 2*]'s letter to the LCS.
36. Between 19<sup>th</sup> and 27<sup>th</sup> December 2007 the SRA asked each Respondent a number of questions and their responses were as follows:-
  - (a) Mr Nijher replied by a letter dated 11<sup>th</sup> January 2008 that he was responsible for maintaining the Company's books of accounts and for ordering missing bank statements.
  - (b) [*Respondent 2*] replied by a letter dated 15<sup>th</sup> January 2008, through her legal adviser, and stated:-
    - She had no authority in relation to the firm's accounts or maintenance of the books of accounts.
    - She was not responsible for any breaches.

- She was not responsible for any alteration of the bank statements.
  - She was not responsible for the misleading documentation.
- (c) *[Respondent 3]* replied by a letter dated 15<sup>th</sup> January 2008 and stated the following:-
- That his position within the Company was akin to that of an employee or salaried partner.
  - He was not involved in the management of the Company.
  - He had no input and made no entries in the Company's bank accounts or client ledgers.
  - All agreed fees were handed over to Mr Nijher.
- (d) *[Respondent 4]* replied by a letter dated 15<sup>th</sup> January 2008 and stated that Mr Nijher controlled company accounts and that *[Respondent 4]* had never had access to the Company accounts or banking passwords.

### **Allegations 10 and 11**

37. The LCS investigated a complaint by Mr M, a former client of the Respondents' firm concerning a claim he was making through them in relation to a beneficial interest in his former matrimonial home. Mr M's complaint was that the firm had failed to provide him with adequate costs information including failing to advise him on public funding which caused a delay, failing to keep him informed, failing to respond to his complaints and failing to obtain a remuneration certificate in respect of their fees.
38. The LCS investigated this complaint which initially the Respondents were prepared to reconcile and made an award in favour of Mr M on 14<sup>th</sup> April 2008 directing the Respondents to reimburse Mr M in respect of £300.00 concerning Counsel's fees but to make a further payment of £200.00 by way of compensation and to reduce their fees by £161.00 making a total of £661.00. The Respondents were obliged to carry out the direction of the LCS within 7 days.
39. The Respondents were notified of this decision by the LCS by a letter dated 17<sup>th</sup> April 2008 and by further letters. No response had been received from either *[Respondent 2]* or Mr Nijher.

### **The Submissions of the Applicant**

40. The Applicant confirmed that all the Respondents had admitted allegations 2 to 8 and allegations 10 and 11.
41. Regarding allegation 1, which was only against Mr Nijher and *[Respondent 2]*, this allegation was accepted by Mr Nijher but the allegation of dishonesty was denied. This allegation was denied by *[Respondent 2]*.

42. Regarding allegation 9, which was against *[Respondent 2]* only, this allegation was denied.
43. The Applicant also confirmed that he was not pursuing any allegation of dishonesty against *[Respondent 3]* and *[Respondent 4]* and they had been notified of this in November 2008. They had sent comprehensive documents which confirmed that they had no knowledge that they had been paid from client account rather than office account.
44. The Applicant submitted that Mr Nijher and *[Respondent 2]* were in a relationship at the time of the SRA inspection.
45. The Tribunal was referred to a letter from the bank to the SRA dated 11<sup>th</sup> December 2007 in which they had stated *[Respondent 2]* had rescinded the authority given by the directors of Davies Simmons Limited to respond to the letter from the SRA dated 19<sup>th</sup> November 2007. The Applicant invited the Tribunal to accept the truth of the contents of that letter as there was no motive for the bank to say that a customer had instructed them otherwise. The Applicant submitted that if the Tribunal accepted what the bank had said, then *[Respondent 2]* was complicit in the attempt by her and Mr Nijher to prevent the SRA from seeing the real bank statements.
46. The Applicant also referred to the witness statement provided by *[Respondent 2]* in which she had stated that Mr Nijher, *[Respondent 2]* and *[Respondent 3]* were the only people who would have been able to request bank statements since they were signatories on the account. As could be seen from the letter from the Bank, dated 28<sup>th</sup> November 2007, the only signatories were in fact Mr Nijher and Davinda Kaur Nijher (who had resigned from Nijher and Company Limited in May 2004). She was Mr Nijher's ex wife. The other Respondents had no authority to sign the mandate. The Applicant submitted that all the control was in Mr Nijher's hands and as he was still in a relationship with *[Respondent 2]*, she helped him to try and prevent the SRA from obtaining the real bank statements. The transactions that had been brought to the Tribunal's attention had taken place between May and October 2007. Many of the payments had been made directly to Mr Nijher or to his order and the Applicant submitted that the Tribunal should bear in mind this was all taking place at a time when Mr Nijher claimed he had never received these bank statements, he was in sole control of the company's records and books and that *[Respondent 2]* tried to prevent the SRA from accessing those bank statements. The Applicant accepted that both *[Respondent 3]* and *[Respondent 4]* were not aware of what was going on and were innocent in their conduct. However, the case had been presented against all the partners as they were stewards of the client accounts and therefore responsible.
47. Mr Nijher was taking the lion's share of profits and appeared to exercise rigid control over the accounts. He had prevented the other Respondents apart from *[Respondent 2]*, any access to the bank accounts. However, the Applicant submitted that all the partners were still liable for the breaches and if they had not been able to access the firm's accounts, they should have resigned.
48. Regarding transaction A, the Applicant indicated that the payment of £750.00 had been made in respect of a credit card in which Mr Nijher had an interest. Transaction D showed payments in favour of a credit card for which Mr Nijher was responsible

and there was also a payment of £150.00 for which there was no reference as to whom it had been paid or why the amount had been paid. Transaction E had been a payment made directly to Mr Nijher and Transaction J (while on the face of it was a lawful payment) was payment of staff wages which should not have been taken from client funds.

49. The Applicant submitted that all of these transactions demonstrated Mr Nijher was creating entries for the Company's statements but in actual fact the money was going elsewhere. Mr Nijher had accepted ultimately that the accounts were his responsibility. In his witness statement dated 26<sup>th</sup> February 2009, he had accepted that the sum of £22,300.00 had been applied inappropriately in relation to monies for himself and had claimed that there was a deposit in the sum of £15,700.00 from his mother at his request to cover the loss to client account. The Applicant confirmed that this was not accepted and it was not accepted that the shortfall in client account was £6,400.00 as claimed by Mr Nijher in his statement.
50. The Applicant submitted Mr Nijher was controlling the Company's side of client account and the game was up when the SRA wanted to see the original bank accounts. The Applicant submitted it was no coincidence that the statements were not there or that [Respondent 2] had tried to hide them although the Applicant accepted that there was no evidence that [Respondent 2] had benefited from this save that [Respondent 2] and Mr Nijher were in a relationship at the time.
51. In relation to allegation 9, this was disputed by [Respondent 2]. She denied providing misleading copies of various documents in particular those relating to the matter of Dr S. The invoices provided by the company totalled £141,483.75 which exceeded the amount showing on the client ledger. There were no office entries on Dr S's ledger, no transfers from client account to office account for bills raised but simply money being paid in and money being paid out. The Applicant submitted that this supported the allegation that Dr S had never received any invoices and it was only when the SRA started to make enquiries about the matter that [Respondent 2] moved quickly, needing to create those documents and create those bills. It was submitted by the Applicant that the documents provided had been created specifically to deal with the SRA's enquiries and in a way so as to appear that they had been created at an earlier date.
52. Similarly, in the matter of Mr A where Mr Nijher had been the fee earner. The completion statement that had been provided to the LCS was undated, contained no reference number and no full sale price. [Respondent 2] had written to the LCS on 19<sup>th</sup> February 2007 stating "it is incorrect that Mr A did not receive a completion statement. Mr A attended our offices on various occasions and was provided with a completion statement". The Applicant submitted that this in itself was odd. Why would a client attend offices on various occasions just to get a completion statement. In any event, the completion statement that was provided by fax to the LCS on 28<sup>th</sup> March 2007 was different to the first completion statement that had been provided. The Applicant submitted that [Respondent 2] was the Complaints Partner and responsible for dealing with this matter and that due to her relationship with Mr Nijher, she was protective of him and seeking to get him out of a difficult situation. The Applicant submitted that the completion statements must have been created by her to show that they had been created at an earlier date. Mr Nijher had been unable

to comment on the date of the creation of documents but submitted in his second witness statement that when a document is copied by disc or otherwise from one computer to another, a different creation date is created. The Tribunal was referred to the letter dated 15<sup>th</sup> January 2008 sent by [Respondent 2]'s legal representative at that time in which he had stated that she denied any personal responsibility for the alleged forgeries and whilst the letter of 23<sup>rd</sup> May 2007 was signed off by [Respondent 2] the attachments to the letter would have been provided by the fee earner responsible for the file. She denied all knowledge of these matters prior to them having been raised in the investigation.

53. The Applicant submitted that Mr Nijher's submissions may be true that if there was no network of computers in the firm, and each computer was a stand alone computer. In that case when transferring from one computer to another this would result in both computers and their documents having the same date, e.g. the client care letter of 1<sup>st</sup> January 2006 sent by disc to the second computer a year later would show a creation date as a year later. This would only be the case where there was no network of computers.
54. However, where a network of computers existed, the document is stored only once and if access to that document is required, it could be found by the person requiring access simply sending a link to access the one copy of the document which was stored in the memory of the network.
55. The Applicant submitted that both defences were misconceived. Mr Nijher and [Respondent 2] were in it together and it was inconceivable that [Respondent 2] did not know the documents had been fabricated.
56. The Applicant further submitted that in relation to allegation 1 both Mr Nijher and [Respondent 2] had been dishonest. In addition, in relation to allegation 9, [Respondent 2] had also been dishonest. The Tribunal was referred to the test of dishonesty set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12 which was a two stage test. The Tribunal had to consider firstly whether a reasonable, ordinary and honest person would regard the Respondents' behaviour as dishonest. Then the Tribunal had to consider whether the Respondents themselves had been aware that what they were doing was dishonest by the standards of honest and reasonable people. The Applicant submitted that this was a case where Mr Nijher had taken money out of client account for his own personal use, and a woman with whom he had an attachment was complicit in assisting him to do this. The Applicant therefore submitted that the test laid down in Twinsectra v Yardley had been established.

#### The Oral Evidence of Ms Hutchings

57. Carole-Ann Hutchings took the oath and confirmed she was employed as an Investigation Officer with the SRA for 5 years. She also confirmed that the Report dated 11<sup>th</sup> December 2007 had been prepared by her, although it had been signed by Karen Nokes, who was the Head of Casework Investigations and Operations. She confirmed the Report was true to the best of her knowledge and belief.

58. She also confirmed that it seemed *[Respondent 2]* had contacted the Company's bank to rescind authority to provide copies of the bank's client account statements. She also confirmed that all the computers at the firm were linked together in a network.
59. On cross examination by *[Respondent 4]*, Ms Hutchings was unable to say whether the figure of £2,000.00 given to her by Mr Nijher relating to a figure paid by the Legal Services Commission per month to the practice was true. She had not verified this amount.

### **The Submissions of Mr Inderjit Singh Pal Nijher**

#### The Oral Evidence of Mr Nijher

60. Mr Nijher took the oath and confirmed his full name and his address. He confirmed that his witness statements before the Tribunal dated 26<sup>th</sup> and 28<sup>th</sup> February 2009 were true to the best of his knowledge and belief and that he adopted those statements as his evidence in chief. In those statements Mr Nijher had confirmed that he had been involved in a relationship with *[Respondent 2]* which had ended at the end of 2006. Whilst the relationship was not conjugal in nature, he accepted that there had been a physical relationship and he did have a child with *[Respondent 2]*. He accepted that £22,300.00 had been applied inappropriately in relation to monies to himself. However, there was a deposit in the sum of £15,700.00 from his mother at his request to cover the loss to client account. In addition to this, Mr Nijher had borrowed money to top up the office account from various sources to pay basic bills and he accepted there was a shortfall of £6,400.00 owing by him.
61. Mr Nijher had said in his statement that he could not comment on the creation dates of the documents but would remind the panel that when a document was copied by disc or otherwise from one computer to another, a different creation date was created. Mr Nijher confirmed that the firm did have a network of computers but it had never been properly utilised. Staff would often create documents and save those documents on their own personal computers under "My Documents". Mr Nijher provided a medical report from a Consultant Psychiatrist, Dr Kamath dated 2<sup>nd</sup> March 2009 in which it had been confirmed that Mr Nijher suffered from alcohol dependent syndrome in the period from 2006 until the end of 2007. It was also indicated in the medical report that before this time Mr Nijher had been drinking excessively and that he had suffered numerous personal difficulties over the last few years. He had been using alcohol as a coping mechanism initially to deal with the various stresses he had faced in his married life and later the distress he had felt when he lost contact with his children. Dr Kamath had indicated that Mr Nijher had made remarkable progress in addressing his alcohol dependence and that whilst he was not currently dependent on alcohol, he was not yet completely abstinent.
62. The problems suffered by Mr Nijher in his personal life, and the background to his professional career were detailed in his witness statement dated 28<sup>th</sup> February 2009.
63. Mr Nijher gave evidence to the Tribunal confirming that he accepted full responsibility for the accounting breaches. He confirmed these had nothing to do with *[Respondent 2]*, *[Respondent 3]* or *[Respondent 4]* and that they had no input into the accounts at all. Mr Nijher had signed the cheques, none of the other Respondents had

ever signed cheques whilst Mr Nijher was with the Company. Mr Nijher indicated that he had made mistakes, he accepted that starting in 2005 he had suffered a breakdown which had got worse until the Summer of 2008. He had not completely come off his alcohol addiction but had cut down. He accepted full responsibility and that it was his practice and he should never have let it get to the stage that it did.

64. He also wished to advise the Tribunal that concerning the case of Dr S, which had been referred to by the Applicant, the costs indicated were not exorbitant given the amount of work which had been required. There had been 25 boxes of 25 lever arch files and the matter had involved a GMC disciplinary hearing that had gone to the Court of Appeal. A tremendous amount of work had been done and Mr Nijher asked the Tribunal to look at the ledger concerning Dr S where there was reference to an entry stated as "COB" and this meant the transfer of money after a bill had been raised. Dr S's money had been paid into client account and then transferred to office account after bills had been raised.
65. Mr Nijher accepted he was in a relationship with [*Respondent 2*] but that relationship had ended at the end of December 2006. He said there was no reason for [*Respondent 2*] to protect him as he had started to see someone else.
66. Regarding his own condition, Mr Nijher confirmed he attended Alcoholics Anonymous twice a week and as a result of the SRA investigation he had suffered a relapse. He was now seeing his children regularly once a week and had been doing so for the past six months. This is what had been keeping him going.
67. Mr Nijher confirmed that whilst he accepted responsibility, he did not accept he had been dishonest in any way. He had been intoxicated at the time that the conduct had taken place. He had come to terms with his alcoholism when his mother was diagnosed with cancer and it made him realise he was wasting his life away. Mr Nijher indicated that in the last eight months he had radically changed as a person.
68. On cross examination by Mr Christianson, on behalf of [*Respondent 3*], Mr Nijher confirmed that [*Respondent 3*] did not sign any cheques and had no responsibility for the firm's accounts. Mr Nijher also confirmed that over a period of 5 months £86,000 had been taken from client account but £50,000 of this was to pay staff salaries. Mr Nijher accepted responsibility for about £22,000 which was due to his condition.
69. On cross examination by the Applicant, Mr Nijher accepted he had been negligent and that he would not have taken money out if he had been sober. Indeed, he had never behaved in this manner from 1998 until 2004 and these incidents had happened at a time when he did not know what he was doing. Mr Nijher accepted he could not blame anyone else and that the bookkeeper should have picked up the entries in the statements.
70. Mr Nijher said he telephoned the bank to request the original bank statements when the SRA wanted to see them and that he had not hidden or destroyed any of the statements from the bookkeeper to prevent him noticing discrepancies in the entries that had been made.

71. The Applicant asked Mr Nijher if it was a coincidence that for the period of the false entries the original bank statements were missing. Mr Nijher replied he accepted it was his responsibility that it was a coincidence. He was unable to recall whether his bookkeeper had informed him that there were no original bank statements from May to October 2007. Mr Nijher said that he could not make any entries during this period as he was physically incapable. He also confirmed he did not tell the bookkeeper to make any entries as the bookkeeper's job was to make sure everything reconciled. Mr Nijher said that if he looked back he saw things in a different light now but at the time he did not know what he was doing. Mr Nijher confirmed that in 2003/2004 he used to deal with the entries himself and was capable of doing so but in 2006 to 2007 he stopped being capable and was unable to deal with things on any level. He also confirmed that it was always the bookkeeper who had made entries during that period.
72. Mr Nijher confirmed that in terms of transferring money from client account, only he could telephone the bank or sign cheques and that none of the other Respondents were able to do this. Mr Nijher accepted that he was wrong to put different entries in the Davies Simmons statements but that he had not been dishonest because he was intoxicated and thus did not realise what he was doing was wrong.
73. Mr Nijher confirmed that with regard to transaction A, this had been a payment to his personal credit card, and that only he could authorise the Bank to pay this. The Applicant asked Mr Nijher whether he agreed that there was a level of sophistication as the bookkeeper was putting entries that he thought were correct while Mr Nijher was diverting the money to different funds. Mr Nijher accepted this was wrong and he should have put the money in office account and then paid the salaries from there.
74. The Applicant put it to Mr Nijher that the amount paid in relation to salaries was £37,000 but actually £50,000 had been paid out by Mr Nijher or to Mr Nijher's order. Mr Nijher said that not all had gone to him, it may have gone into the business and he accepted that it was his responsibility, he could see that now.
75. The Applicant put it to Mr Nijher that when the SRA had inspected the company, it was no coincidence that the bank statements were missing because Mr Nijher must have known that the game was up. Mr Nijher responded that he resigned at the time.
76. The Applicant put it to Mr Nijher that he accepted there was a network of computers but these were not properly used as a network. Mr Nijher replied that he did not say they were not used but that documents were saved as "My Documents" by individual staff members. Mr Nijher went on to say that he had not been accused of dishonesty regarding the creation of any documents and that he was trying to be transparent. He was trying to make amends for mistakes that had arisen from his condition.
77. Mr Nijher apologised to all his fellow directors and trainee solicitors and said that it was his fault. He wished he could go back in time but he could not. He could only go forward now.

#### **The Submissions of [Respondent 2]**

78. [Respondent 2] did not give evidence but relied upon her witness statement dated 3<sup>rd</sup> March 2009 which was before the Tribunal. This statement indicated that



*[Respondent 2]* had been qualified for less than a year when she joined the firm and that her fault lay in not taking sufficient steps to fulfil her responsibility as a junior director of the company. She had not signed a partnership deed with the partners but accepted she had a professional responsibility as a partner. She had not received any remuneration or profits, mainly due to the fact that she was on sick leave and had not met her targets or maintained a caseload that was cost effective to enable her to be remunerated.

79. *[Respondent 2]* had accepted the position as a director of the Company after a Law Society audit in January 2007 on the understanding that her appointment was making her the focal point of contact for dealing with complaints. There was no other partner who wanted to or had the time to deal with correspondence from the LCS. However, from the beginning of her partnership she was mostly on sick leave and her physical presence at the office was minimal until she was transferred to work in the High Wycombe Office.
80. *[Respondent 2]* provided a medical report dated 2<sup>nd</sup> March 2009 from Dr Sivaramalingam, her General Practitioner, which confirmed the medical difficulties she had suffered from March 2007 to 2009.
81. *[Respondent 2]* was the only partner who dealt with the SRA's investigation and her statement confirmed that whilst she had been involved in a relationship with Mr Nijher, this had terminated in December 2006. She refuted any suggestion that this relationship impinged on her professional responsibility towards the SRA.
82. *[Respondent 2]* submitted that only Mr Nijher had authority to deal with the bank, and as he was the only person on the mandate, the bank would not have accepted her authority to rescind provision of the original bank statements. *[Respondent 2]* confirmed she had no internet password details and if she had had these details, she would have got copies of the original bank statements herself and would have been able to see the breaches that were taking place and remedy them.
83. *[Respondent 2]* in her statement said that she had not taken part or known anything about the misappropriation of funds and she was not a signatory on any bank accounts authorising any of the transfers to take place. None of the payments had been made to her and indeed, during her partnership she had not received any funds or withdrawn any money from client account.
84. Regarding preventing the SRA from obtaining bank statements, *[Respondent 2]* in her statement stated that no conversation had taken place with the bank and that she had no possible motive to stop the bank from obtaining statements. She was never on the mandate and therefore could not have given instructions to rescind any authority.
85. In relation to allegation 9, *[Respondent 2]* submitted that the creation of documents did not relate to her. Her role within the firm was to try and resolve complaints and fee earners would provide her with the documents required to resolve issues. *[Respondent 2]* further submitted that the documents referred to by the Applicant did not state her name upon them and indeed, during the time of the two complaints referred to, she had only been at the office part time as she had been off sick.

86. In her witness statement, [*Respondent 2*] confirmed that during her sick leave, she was visited by trainee solicitors at the hospital and at her home who brought letters for her to sign. She did not have the time or strength to look through the documents in great detail due to her health and was only ever provided with the covering letter drafted by the Respondents. In relation to Dr S, the documents were requested from Mr Nijher and provided by him. Her statement said that the creation of documents did not identify her on the computing records and she could not be accused of fabricating them when she was not the person who created them. In relation to Mr A, again, she submitted that the computer record did not identify her as the creator.
87. The Tribunal was referred to the references attached to [*Respondent 2*]'s witness statement. She accepted that she had a responsibility as a director that she had not fulfilled but she denied that she had been dishonest in any way. She submitted she had no motive to be dishonest. Her career as a solicitor had been very short lived and she submitted she would never be dishonest and ruin years of studying and hard work. She had only practised as a solicitor for approximately 3 to 4 months, she had far less experience than the other Respondents and only a year into her career, she was facing disciplinary proceedings.

### **The Tribunal's Findings**

88. The Tribunal found allegations 2 to 8 against all four Respondents to be substantiated, indeed they were not disputed.
89. In relation to allegation 1, this was admitted by Mr Nijher but the allegation of dishonesty had been denied. This allegation was denied in its entirety by [*Respondent 2*].
90. The Tribunal was concerned to note that Mr Nijher had exhibited quite a sophisticated pattern of behaviour over a considerable period of time, despite suffering from alcohol addiction at the time. The missing bank statements were missing for a lengthy period of time, from March to October 2007 and during this period Mr Nijher had accepted in his evidence that it was wrong of him to state that the payments had been made for a different purpose to the actual purpose recorded on the bank's original statements. Throughout his evidence, Mr Nijher had accepted he was negligent and that he took full responsibility for the breaches, and that they had nothing to do with any of the other Respondents. He accepted he had been negligent, although indicated that he would not have behaved in this manner if he had been sober.
91. Whilst the Tribunal accepted that Mr Nijher had been suffering from a medical condition at the time that the conduct took place, alcohol dependency could not be an excuse for such behaviour. It was clear from the evidence that a substantial sum of money had been wrongly taken from client account and furthermore, Mr Nijher had changed the ledgers on the company's accounts to give a different explanation for the use of the monies to what they had actually been used for. The Tribunal considered the test laid down in the case of *Twinsectra v Yardley* and found that the first part of the test was satisfied, namely that a reasonable, ordinary and honest person would take the view that Mr Nijher's conduct was dishonest.

92. Given that there were two sets of bank statements and Mr Nijher had accepted that he had made entries on the company's statements which stated payments had been made for one reason, when it was clear from the bank's original statements that the payments had been made for a different reason often for Mr Nijher's personal benefit, the Tribunal was satisfied that the second part of the test was also proved, namely that Mr Nijher himself must have been aware that his conduct was dishonest. The Tribunal found that over a long period of time, there had been a sustained pattern of deception pursued by Mr Nijher and whilst his full and frank admissions were noted, his defence that his alcohol dependency meant he did not know what he was doing could not be accepted. His judgement may have been impaired. However, the misappropriation of client money did take place over a prolonged period of time. It was a repeated pattern of behaviour and therefore the Tribunal was satisfied that Mr Nijher had been dishonest and must have been aware at least during his lucid moments that his conduct was dishonest.
93. Regarding the Second Respondent, [*Respondent 2*], in relation to allegation 1, it was clear from the evidence that she did not have any control over the firm's accounts. She did not have the password for internet banking and did not have authority to deal with the bank given that she was not on the bank mandate. She has derived no personal benefit from the client funds. In the circumstances, the Tribunal was not satisfied to the required standard of proof that allegation 1 had been made out against [*Respondent 2*].
94. Regarding allegation 9, whilst the Tribunal was satisfied that the various letters, documents and attendance notes were not created on the date stated on those documents, based on the evidence provided of the date the documents were created and the date of the clients' complaints. However, the Tribunal did not find that allegation 9 had been made out against the Second Respondent, [*Respondent 2*]. The Tribunal could not be certain that [*Respondent 2*] herself had created those documents on dates different to those stated on the documents. The Tribunal was concerned that whilst dishonesty on her part, would not be proven there was a degree of recklessness in the manner in which she had signed documents without checking them properly.

#### The Mitigation of Mr Nijher

95. Mr Nijher asked the Tribunal to consider his two witness statements, his psychiatric report and the report provided by S. Hiwaizi, who was his pharmacist. Mr Nijher indicated that he relied on all the documents attached to his witness statement as his mitigation.

#### The Mitigation of [*Respondent 2*]

96. [*Respondent 2*] asked the Tribunal to take account of her long periods of absence from the office. She referred the Tribunal to the references provided on her behalf and the mitigation referred to in her witness statement.
97. She also reminded the Tribunal that she was the only partner who had communicated with the SRA throughout the investigation and that she had sent documents to the SRA, such as the reconciliation statements, even though she had no way of completing them herself.

98. She reminded the Tribunal that she had only been a solicitor for 3 to 4 months, and her position within the firm was supposed to be an administrative role to deal with complaints and nothing more. However, she accepted she had obligations as a partner and she admitted these had not been met.

The Mitigation of [Respondent 3]

99. Mr Christianson, on behalf of [Respondent 3], confirmed that [Respondent 3] had accepted all the allegations at the outset, other than the allegation of dishonesty which had been withdrawn by the Applicant in November 2008. He had been served with the Rule 5 Statement in June 2008 and immediately had produced the documents required to confirm he had not been dishonest in any way which is why the dishonesty allegation had been withdrawn against him.
100. Mr Christianson asked the Tribunal to give [Respondent 3] credit for dealing with what was a complete and utter mess. Due to his naivety, [Respondent 3] had got himself into this situation and the key word was naive.
101. All the allegations against [Respondent 3] revolved around accounts breaches. [Respondent 3]'s trust had clearly been misplaced and he accepted the folly of agreeing to be a partner of a firm where he had no access to the client accounts.
102. Documents before the Tribunal showed that [Respondent 3] had recorded receipts of all client monies and then had given the money to others to lodge at the bank. He accepted that by failing to have a proper system in place, he had found himself before the Tribunal.
103. Since the intervention had taken place, [Respondent 3] had been employed for 2 months out of 15. There had been claims arising as a result of the intervention and complaints which had been passed to the insurers. If the firm had been making any money, perhaps it could have taken steps to put things right but this was lost as a result of the intervention. In light of that, Mr Christianson submitted that imposing a penalty on [Respondent 3] was unnecessary. He had not resiled from his responsibilities and the fact that dishonesty had not been pursued against him showed that he was of good character.
104. His naivety had been in relying on another partner. He had qualified in March 2003 and become a partner in 2005. However, 99% of the capital had been provided by Mr Nijher and 90% of the profits were taken by Mr Nijher. Essentially, the firm was Mr Nijher's vehicle and [Respondent 3] had just failed to question this. The effect had been catastrophic. [Respondent 3] was now seeking employment with conditions on his practising certificate and in the current climate, this was very difficult.
105. The cost of the intervention to be paid by the partners was likely to be £150,000 and the financial burden on [Respondent 3] was overwhelming.
106. The Tribunal was asked to give [Respondent 3] credit for wanting to stay in the profession. The Tribunal was referred to the number of references that had been provided in relation to [Respondent 3]'s character which showed he was capable of

discharging his fee earning functions well. It was submitted to the Tribunal that even if *[Respondent 3]* left today without any financial penalty he would still be poorer and certainly wiser. In relation to the costs of the action the Tribunal was asked to bear in mind *[Respondent 3]*'s approach to the proceedings from the outset.

#### The Mitigation of *[Respondent 4]*

107. *[Respondent 4]* submitted that he adopted the Applicant's case that he was an innocent victim of his own folly and the dishonest conduct of Mr Nijher. He submitted his circumstances were slightly different from *[Respondent 3]* in that he had been unhappy with the situation where he had been given no access to the accounts.
108. In May 2006 he had attempted to resign from the Company by giving Mr Nijher a Form 288 tendering his resignation as a director, but 6 months later, he had received correspondence telling him he was still a partner. He had confronted Mr Nijher about this and had been told by Mr Nijher that he had signed the form in the wrong place. *[Respondent 4]* had then tried to find a job elsewhere using the status of a partner with Davis Simmons to try and help him but unfortunately he did not get out quick enough before the intervention and had now found himself in this mess.
109. *[Respondent 4]* submitted he had put his hand up quite quickly and he had had no idea of the appalling carry on with the accounts. He had submitted two bundles to the Tribunal to show he had made meticulous accounts of his own as that was all that he could do and he also referred the Tribunal to the reference provided by a barrister confirming his character.
110. *[Respondent 4]* indicated he was in the same financial position as *[Respondent 3]*, it had taken him 8 months to get a job and currently he was in employment but would not be able to meet any award made.
111. He asked the Tribunal to consider the contents of his witness statement dated 26<sup>th</sup> February 2009. He accepted that he had a duty and should have resigned sooner and that he had learnt a very big lesson.

#### **Costs**

112. The Applicant confirmed he wished to pursue his costs and provided the Tribunal with a schedule which came to a total of £46,600.00. The Applicant did not wish to encourage the Tribunal to refer the matter to a detailed assessment as this would inevitably increase costs and suggested the Tribunal should order costs according to a percentage to be paid by each Respondent.

#### The Submissions on Costs of Mr Nijher

113. Mr Nijher submitted that the costs schedule seemed exorbitant. The SRA had only been at the offices during the investigation for 2 days and had stayed at a hotel for 2 nights. Mr Nijher confirmed he was on job seeker's allowance, he did not have any savings or income and he was unable to pay any costs. He provided the Tribunal with a schedule of his income and expenditure for consideration. He also asked the

Tribunal to take into account the case of John Michael Charnley (1990) and the case of Martin David Clapham (2008), which were previous decisions of the Tribunal.

114. In the case of Charnley, the Tribunal had accepted that the Respondent had not deliberately misled the Solicitors Complaints Bureau and that his judgment had been seriously hampered by his alcohol dependency. The Tribunal had suspended Mr Charnley.
115. In the case of Clapham, where the Respondent had also had a problem with alcoholism, the Tribunal had been satisfied that it was not necessary to prevent the Respondent from practising.

The Submissions on Costs of [Respondent 2]

116. [Respondent 2] confirmed that she was not in employment at the moment, she was on income support looking for a job. She did not have any savings or capital and could not pay any costs.

The Submissions on Costs of [Respondent 3]

117. Mr Christianson submitted on behalf of [Respondent 3] that the misconduct of Mr Nijher had led to all the Respondents being here today. The case had been listed for 2 days and had only taken 1 day and none of this was the fault of either [Respondent 3] or [Respondent 4].

The Submissions on Costs of [Respondent 4]

118. [Respondent 4] adopted the submissions of Mr Christianson regarding costs and submitted that costs should be apportioned according to the culpability of the parties. He also reiterated that the Respondents were all here today due to Mr Nijher's actions.

**The Tribunal's Decision**

119. Dealing firstly with Mr Inderjit Singh Pal Nijher, the Tribunal had found all the allegations to have been substantiated including the allegation of dishonesty. It was clear from Mr Nijher's evidence that he accepted, with hindsight, that his behaviour was wrong and whilst the Tribunal had a degree of sympathy with Mr Nijher due to the personal difficulties he had been suffering, it could not be accepted that alcohol dependency was an excuse for dishonest behaviour. This was a case where there had been a pattern of behaviour, Mr Nijher had been quite secretive in the way he had operated the accounts and it was clear that he could not be trusted to look after client funds.
120. He had brought the profession into disrepute and he had betrayed the trust of his fellow partners and other colleagues. He had severely damaged not only his own reputation but that of the profession.
121. Whilst the Tribunal had great sympathy for Mr Nijher's situation and difficult circumstances and appreciated his full and frank admissions, misappropriation of

client funds was a very serious matter and the public had to be protected from any person who had used client funds inappropriately.

122. The Tribunal had considered the two cases referred to by Mr Nijher but only in respect of sanction. In both the cases of Charnley and Clapham, dishonesty had not been alleged, which distinguished these cases from Mr Nijher's position. The Tribunal had also taken into account the references provided on Mr Nijher's behalf. However, the matters were very serious and the protection of the public and the reputation of the profession were absolutely paramount. Mr Nijher had damaged public confidence and abused the trust placed in him. In the circumstances it was right that Mr Nijher be prevented from being a member of the profession and accordingly the Tribunal Ordered he should be Struck Off the Roll of Solicitors.
123. In relation to *[Respondent 2]*, *[Respondent 3]* and *[Respondent 4]*, the Tribunal was concerned about the lack of involvement and diligence on the part of these Respondents and their failure to discharge their responsibilities as partners with regard to the Solicitors Accounts Rules which are there to protect the interests of clients. The Tribunal was particularly concerned in relation to *[Respondent 4]* that, despite him being aware of the problems of accessing the accounts, he did nothing for 8 months, purely to enhance his ability to find alternative employment.
124. Nevertheless the Tribunal accepted that *[Respondent 3]* and *[Respondent 4]* had a much smaller roll in relation to the matters before the Tribunal today and accordingly decided that the appropriate sanction in relation to *[Respondent 3]* and *[Respondent 4]* was to fine them £5000.00 each.
125. In relation to the Second Respondent, *[Respondent 2]*, the Tribunal noted that she had had very little experience as a solicitor when she joined the practice. However, the Tribunal was concerned about her reckless behaviour in that she had been signing letters without checking the attachments and enclosures and thereby supplying information to her regulatory body without checking that information was accurate and correct. This was reckless behaviour and certainly not the professional behaviour expected from a solicitor. In the circumstances, the Tribunal felt that the appropriate sanction in relation to *[Respondent 2]* was to fine her £7500.00.
126. The Tribunal also made an order, as requested by the Applicant, that the direction given by the Adjudicator of the Solicitors Regulation Authority of 14<sup>th</sup> April 2008 in respect of Mr M, be treated for the purposes of enforcement as if it were contained in an Order of the High Court.
127. In relation to the question of costs, the Tribunal assessed the Applicant's costs at £46,600.00. The Tribunal took the view that Mr Nijher was liable for 80% of these costs, given that he had been primarily responsible for the breaches and had in fact exercised sole control over the accounts, and indeed, had accepted liability in full for the breaches. However, the Tribunal had considered Mr Nijher's limited means and had taken into account the principles laid down in the case of Merrick v the Law Society [2007] EWHC 2997 (Admin). The Tribunal was conscious that having struck Mr Nijher off the Roll of Solicitors, he had been deprived of his livelihood and his ability to pay costs had been reduced. Having taken into account Mr Nijher's age the Tribunal took the view that he did have a residual earning capacity albeit this would

be less as a result of being struck off. The Tribunal also considered his schedule of income and expenditure, the Tribunal reduced Mr Nijher's contribution to the Applicant's costs to the sum of £10,000.00. The Tribunal further ordered that *[Respondent 2]* should pay the sum of £4,660.00 towards costs, *[Respondent 3]* should pay £2,330.00 towards costs and *[Respondent 4]* should pay £2,330.00 towards costs.

128. The Tribunal Ordered that the Respondent, Inderjit Singh Pal Nijher of Farnham Common, Slough, Berkshire, solicitor, be Struck Off the Roll of Solicitors.
129. The Tribunal Ordered that the Respondent, *[Respondent 2]* of Northfleet, Gravesend, Kent, solicitor, do pay a fine of £7,500.00, such penalty to be forfeited to Her Majesty the Queen.
130. The Tribunal Ordered that the Respondent, *[Respondent 3]* of Oval, London, solicitor, do pay a fine of £5,000.00, such penalty to be forfeited to Her Majesty the Queen.
131. The Tribunal Ordered that the Respondent, *[Respondent 4]* of London, SW15, solicitor, do pay a fine of £5,000.00, such penalty to be forfeited to Her Majesty the Queen.
132. The Tribunal Ordered pursuant to Section 5(2) of Schedule 1A of the Solicitors Act 1974 (as amended) that the Directions given by the Adjudicator of the Solicitors Regulation Authority of 14<sup>th</sup> April 2008 in respect of Mr. M. be treated for the purposes of enforcement as if they were contained in Orders of the High Court.
133. The Tribunal further Ordered that the Respondents do pay the costs of and incidental to the application and enquiry fixed and apportioned as follows:-  
  
Inderjit Singh Pal Nijher to pay £10,000.  
*[Respondent 2]* to pay £4,660.  
*[Respondent 3]* to pay £2,330.  
*[Respondent 4]* to pay £2,330.00

Dated this 6<sup>th</sup> day of August 2009

On behalf of the Tribunal

E Richards  
Chairman