No. 10129-2008

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF COLIN DAVID POOLE, solicitor (First Respondent)
and
[RESPONDENT 2] – NAME REDACTED, solicitor (Second Respondent)

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

Mr E Richards (in the chair)
Mr M Fanning
Mrs V Murray-Chandra

Date of Hearing: 4th, 8th and 11th – 15th October
and 3rd December 2010

FINDINGS & DECISION

Appearances

Michael Robin Havard, solicitor and partner in the firm of Morgan Cole Solicitors, of Bradley Court, Park Place, Cardiff, CF10 3DP appeared on behalf of the Solicitors Regulation Authority ("SRA") was the Applicant. He was represented by Mark Cunningham QC.

The First and Second Respondents were present and in person.

The application to the Tribunal was made on 28 October 2008.

The Rule 5(2) Statement in support of that Application was replaced on 28 August 2009 by a Supplementary Statement under Rule 7 of the Solicitors (Disciplinary Proceedings) Rules 2007.

Allegations

The allegations against the First and Second Respondents, jointly and individually, were that they had:

1. Conducted themselves in a manner that was likely to compromise their independence and integrity contrary to Rule 1(a) of the Solicitors Practice Rules 1990.

2. Conducted themselves in a manner which was likely to compromise or impair their duty to act in the best interests of their clients contrary to Rule 1(c) of the Solicitors Practice Rules 1990.

3. Conducted themselves in a manner which was likely to compromise or impair the good repute of the solicitors' profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990.

4. Acted in a deceitful way and in a manner contrary to their position as solicitors in a relation to the terms of the Sale Agreement relating to the purported sale by the First Respondent of, and the divestment of his interest in, Poole & Co.

5. Falsely represented fees as disbursements on conveyancing transactions in the form of bank charges for telegraphic transfers and, in so doing, derived a secret profit.

6. Acted dishonestly or, in the alternative, recklessly.

The allegations against the First Respondent alone were that he had:-

7. Referred business to other persons in breach of the Solicitors Introduction and Referral Code 1990 contrary to Rule 3 of the Solicitors Practice Rules 1990.

8. Paid referral fees to Claims Direct Plc and/or Medical Legal Support Services contrary to Section 2(3) of the Solicitors' Introduction and Referral Code 1990.

9. Induced and/or misled firms of solicitors who had been members of the Claims Direct Panel into paying referral fees to Claims Direct Plc and/or Medical Legal Support Services contrary to Section 2(3) of the Solicitors Introduction and Referral Code 1990.

10. Failed to account to third parties in relation to disbursements.

11. Transferred monies from client account to office account in respect of fees to which he had not been entitled.

12. Acted where his own interests had conflicted, or had been likely to conflict, with the interests of clients or potential clients.

13. Failed to provide any or any proper advice in relation to recoverability of the Claims Direct Protect Policy Premium on After The Event ("ATE") Insurance Policies.

14. Misled and/or failed to advise adequately Claimants regarding the prospects of recovery of the full amount of premium payable for ATE Insurance.

15. Advised clients to pursue their claim with the benefit of a Claims Direct Protect Policy when it had not been in their best interests to do so.

16. Made statements to the National Franchise Association of Claims Managers with regard to the recoverability of premiums on After The Event insurance which had been misleading and inaccurate.

17. Failed to provide material and relevant information to the public in advance of the flotation of Claims Direct.

18. Made misleading statements to the media and/or claimants.

The allegations against the Second Respondent alone were that he had:-

19. Permitted funds to be drawn from client account otherwise than in accordance with Rule 22(1) of the Solicitors Accounts Rules 1998 leading to a cash shortage.

20. Having discovered a cash shortage, failed to remedy promptly the cash shortage in breach of Rule 7 of the Solicitors' Accounts Rules 1998.

21. When completing an application for professional indemnity insurance, provided information which he had known, or should have known, had been misleading and incorrect.

Preliminary Matter

Leading Counsel for the Applicant explained to the Tribunal that having reviewed all the evidence against the Second Respondent, the SRA did not consider it appropriate to continue to prosecute the allegations of deceit and dishonesty as against the Second Respondent. Accordingly, Leading Counsel sought the permission of the Tribunal to withdraw those allegations. He explained that the Second Respondent had admitted all the allegations against him, save for dishonesty.

The Tribunal allowed the allegations of deceit and dishonesty, as against the Second Respondent, to be withdrawn.

Factual Background

1. The First Respondent, born in 1964, was admitted to the Roll of Solicitors on 1 November 1988. The Second Respondent, born in 1971, was admitted on 1 December 1998.

2. In May 1996, the First Respondent had set up Poole & Co as a specialist claimant personal injury practice. The First Respondent had also been involved in Claims Direct ("CD") which since 1996, had advertised and offered a claims management service to potential litigants.

3. In September 2000, CD had been floated on the Stock Exchange and at one stage had been valued at approximately £724 million. In July 2002, CD had been placed into administration and as of January 2003 had been in liquidation.

4. In March 2001, John Weaver, a Partner in the firm of Russell Cooke Solicitors, and Norman Pink of the Companies Investigation Branch of the Department of Trade and

Industry ("DTI"), had been appointed Inspectors for the purposes of an investigation into the company Claims Direct Plc. Subsequently, they had prepared a Report for the DTI. That investigation had led to proceedings under the Company Directors Disqualification Act 1986 ("CDDA").

5. On 17 January 2002, the DTI had provided a copy of the Report to the Law Society for the Law Society to determine whether the First and/or Second Respondents had complied with their regulatory obligations.

6. On 29 July 2002, Brian Simpson and Barry Cotter of the Forensic Investigations Unit of the Law Society had commenced an inspection into the affairs of Poole & Co resulting in a Forensic Investigation Report ("FIR") dated 2 March 2005.

The proceedings under the Company Directors Disqualification Act 1996

7. The First Respondent and Tony Sullman, both directors of Claims Direct Plc, had been subject to proceedings under the CDDA in the Chancery Division of the High Court.

8. The proceedings, as against the First Respondent, had been resolved on the basis of his Undertaking. The terms of that Undertaking (the Disqualification Undertaking) had been that in accordance with Section 1A of the CDDA the First Respondent would not for a period of ten years:

   (a) be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has the leave of a court, nor

   (b) act as an insolvency practitioner.

9. Attached to that Undertaking had been a Schedule of Unfit Conduct in which had been set out the grounds of unfitness on which the Disqualification Undertaking had been based.

10. The CDDA proceedings against Mr Sullman had resulted in Mr Justice Norris handing down his judgment (the Norris Judgment) on 19 December 2008.

Factual Background to Poole & Co, Claims Direct and the Claims Direct process

11. CD had been formed by Tony Sullman who had, since 1990, established and run a company known as Somerford Claims. That company had assisted taxi drivers to recover damages flowing from road traffic accidents in which they had been involved.

12. From 1990 to 1996 the First Respondent had practised in partnership with Messrs Turner Coulston Solicitors. Prior to his resignation as a partner of that firm he had represented Somerford Claims, and Claims Incorporated ("Claims Inc") (a predecessor to Claims Direct), companies established by Tony Sullman.

13. Claims Inc had subsequently been represented by the First Respondent's new firm,

Poole & Co, when the firm had commenced business in 1996.

14. The First Respondent had been the sole equity principal in the practice of Poole & Co from the date it had been established by him in 1996, to the date of the firm's purported "sale" in or about August 2000 to the Second Respondent.

15. According to Companies House records, the First Respondent had been a director of the following Claims Direct related companies for the following periods:

Claims Incorporated Plc	08/07/1997 to 29/08/2001
Medical Legal Support Services Plc	21/05/1996 to 29/08/2001
Accident Assist (UK) Limited	25/02/2000 to 29/08/2001
Claims Direct Plc	20/06/2000 to 29/08/2001
Claims Direct Protect Limited	18/01/1999 to 29/08/2001

16. From 1996 CD had advertised and offered a claims management service to potential litigants.

17. The First Respondent had entered certain contractual agreements with CD. Inter alia, by a contract dated 1 June 1996 CD had contracted with Poole & Co to establish and support a network of Panel Solicitors who would accept CD referred cases. That had included maintaining and updating a Panel Solicitors' Operating Manual. The initial Panel Solicitors' Manual had been drafted by Poole & Co and later addition had been amended by CD. Panel Solicitors had paid a fee to be on the panel and to receive "assistance and support" from Poole & Co. Additionally, Poole & Co had initially been retained by CD to vet each claim received by CD. Poole & Co had charged £72.50 to Panel Solicitors for each claim vetted by them and subsequently referred to a panel member.

18. Poole & Co had established the panel of solicitors and had entered into contracts with them in relation to the provision of legal services to Claimants who had been conducting their claims with the assistance of CD.

19. Poole & Co, as lead member of the panel, and the other panel firms had accepted instructions in a large number of personal injury cases which had been underwritten initially by CD on the basis of "the 30% arrangement", and subsequently by the Claims Direct Protect Policy ("CDPP") backed by Insurance Underwriters which had underwritten liabilities under the CDPP Scheme.

20. CD had floated on the Stock Exchange on or about 13 July 2000 at 180 pence per share, valuing the Company at approximately £350 million. The company's shares had subsequently peaked at approximately 363 pence, valuing CD at that time at approximately £724 million.

21. The First Respondent had held 6.4% of the shares of CD at the time of flotation, which had valued his interest in the company at £18.36 million.

22. The First Respondent had been Chief Executive Officer ("CEO") of Claims Direct Plc from flotation in July 2000 until his resignation from the company on 29 August 2001.

23. In order to take up his role as CEO of CD Plc, the First Respondent had been required to divest himself of his interest in Poole & Co hence the sale of the practice on or about 1 September 2000.

24. Shortly following flotation, the contract for vetting claims had subsequently been "sub-contracted" back to CD by a payment from CD to the First Respondent in the sum of £9.75 million.

25. In or about September to November 2000, CD had come under intense media exposure primarily in relation to complaints from Claimants that they had been misled by CD to the extent that they had been advised by CD and/or Claims Managers that the premium in respect of the policy they had entered into prior to 1 April 2000 would be recoverable.

26. In part, as a consequence of the adverse publicity and or the company's decision to make ex-gratia allowances in their accounts of approximately £5 million to complainant clients, the share price had collapsed to a low of approximately 4p.

27. Some shareholders had alleged that CD had not made full and frank disclosure of the potential risk factors on flotation and Claims Managers had alleged that CD had misled them into mis-selling the pre-April 2000 insurance policy.

28. The company's difficulties had been further exacerbated by defendant insurers' refusal to pay CD premiums, and indeed all other ATE insurers, until such time as the court had resolved what costs could reasonably be included in the definition of "premium" and further what level of premium was reasonable within the terms of section 29 of the Access to Justice Act.

29. In or about June 2001, the First Respondent together with Tony Sullman had made an offer to purchase the issued share capital of CD as from August 2001 for the sum of 10 pence per share, Claims Direct share price at listing in September 2000 being £1.80 per share. The acceptance of that offer had not been initially recommended by the Board of Directors. The offer had however ultimately been recommended in August 2001 and a large percentage of shareholders had accepted it.

30. On 29 August 2001, the First Respondent had resigned his directorship of CD and the other CD related companies.

31. The First Respondent and Tony Sullman had entered an agreement with Mr Simon Ware-Lane on or about late August 2001 to sell him their shares in CD.

32. In or about May 2002 the First Respondent had retaken possession of Poole & Co as sole equity principal. It had been a term of the contract of sale that payment of the purchase price for the practice be deferred until 1 September 2001 at which time the Second Respondent had the option of purchasing the practice outright or electing to return it to the First Respondent. It would appear that the parties had reached agreement for the option to be exercised later than 1 September 2001.

33. CD had been placed into Administration in July 2002 and as of January 2003 has been in Liquidation.

The Claims Direct Process

30% Contingency Fee (or Portfolio) Scheme

34. By means of Section 58 of the Courts and Legal Services Act 1990, certain contingency fee agreements had become permissible.

35. When it had commenced business, CD had operated a scheme to assist clients in pursuing a claim, the terms of the Scheme being set out in the "Fair Trading Statement". That Scheme had provided the client with an indemnity in respect of the client's costs in pursuing the claim to include the costs of the other side if the claim were to fail. In return, the client had agreed to pay CD 30% of any monies recovered. A similar scheme had been operated by Somerford, the company operated by Tony Sullman.

36. However, the following areas of risk had existed in relation to the 30% contingency fee Scheme:

    (i) In providing an indemnity to the client in respect of any cost liability, there had been an issue as to whether CD had been providing a contract of insurance in which event CD would have needed to be authorised under the Insurance Companies Act 1982.

    (ii) Again taking account of the position with regard to costs, there had been an issue as to whether the arrangement had been champertous and, therefore, contrary to public policy.

    (iii) There had been concern that under the 30% scheme, CD had been potentially liable for substantial sums in costs and, by early 1999, when plans had been afoot to float CD on the London Stock Exchange, that had been recognised as a potential concern for investors.

37. The potential Claimants who had been injured as a consequence of an accident for which the Defendant had been insured had been encouraged, by national advertising, to telephone CD, partly by the inducement of a "no win no fee" arrangement for the conduct of their claim.

38. The potential Claimants had telephoned the number advertised and contact had been made with Brian Cox Advertising & Design ("BCA&D") who had acted as agents and call receivers on behalf of CD. BCA&D had taken particulars from the potential Claimant in order to determine whether they had a potential claim against an insured defendant and to arrange an appointment for a Claims Manager to attend upon him/her for further instructions.

39. The Claims Managers had acted as the link between the clients and CD and the various other aspects of the claims operation. As at July 2000, there had been 330 Claims Managers who had held a franchise with CD in accordance with a Franchise Agreement.

Claims Direct Protect Policy ("CDPP") Scheme

40. In the period 1997-98 there had been widespread consultation in relation to the implementation of the proposed Access to Justice Act which, save in respect of certain Sections to include Section 29, had become law on 27 July 1999. An important proposed provision in the Act was contained in Section 29 which provided that:

> "Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to Rules of Court, include costs in respect of the premium of the policy".

In other words, a premium in respect of After the Event ("ATE") insurance would be recoverable as a disbursement from defendant insurers on successful claims. The stated intention of the Government had been to reduce the burden of the legal Services Commission on the public purse.

41. After a lengthy consultation process, section 29 of the Access to Justice Act 1999, had been implemented on 1 April 2000. Critically, the Act did not permit premiums in respect of ATE insurance policies dated prior to 1 April 2000 to be recoverable retrospectively.

42. In anticipation of the passing of that legislation, CD had entered into negotiations with ATE Insurance Underwriters to create Claims Direct Protect Policy ("CDPP").

43. CD had introduced the CDPP ATE Insurance Policy Scheme to Claimants in or about August 1999.

44. To a large extent CDPP had replaced the previous 30% contingent fee arrangements which had formerly operated. However, the 30% contingent fee arrangements had continued in respect of criminal compensation cases and motor vehicle accident insurance cases where there was no insured defendant driver. For a period after the CDPP had been introduced, all of the 30% arrangement cases had been conducted by Poole & Co. Additionally, as the Access to Justice Act 1999 had not applied in Scotland, the contingent funding arrangements had continued in that jurisdiction.

45. A similar management process had been applied to the CDPP cases. The main difference had arisen when proceedings had been issued and when the damages had been paid to the Claimant. A variance to the "Fair Trading Statement" to reflect the 30% agreement had been provided.

46. The process had remained the same as for 30% cases up to the stage of acceptance of the case by a Panel Solicitor. At that stage the Claims Manager had paid to CD the sum of £250 in consideration of the referral of the Claimant.

47. The Claims Manager would attend upon the Claimant at their home and explain the advantages of the CD system and the ATE insurance policy. In addition the Claims Manager would verify and obtain further particulars in relation to the incident which

had given rise to the prospective cause of action and the Claimant's injuries. If the Claimant had been interested in proceeding, then the Claims Manager assisted the Claimant in completing a consumer credit agreement by which he had applied for a loan from either First National Bank or Investec depending upon the date of the application, to fund the premium on the ATE insurance policy.

48. A brief application form would be completed setting out the details of the claim, injuries and losses suffered, medical attention received and so on. At the time of completing the consumer credit agreement, the claimant would be given a document, historically called a "Fair Trading Statement" and latterly a "proposal" along with a questions and answers" sheet.

49. The premium had initially been £1,250 plus Insurance Premium Tax ("IPT") of £62.50 totalling £1,312.50, but had later been increased to £1,495 plus IPT before reverting to £1,250 plus IPT. Litigation Protection Limited ("LPL") had been insurance agents acting for underwriters providing ATE insurance. Under the Scheme, as launched, the client had been liable for payment of the premium of £1,312.50 to LPL. Only a small proportion of that sum had been paid to the Insurance Underwriters or their agents to secure the required insurance cover. The balance had been paid to CD and Medical Legal Support Services ("MLSS"), a wholly-owned subsidiary of CD.

50. The Claims Managers would then submit the completed paperwork to CD for "vetting", such "vetting" having been undertaken by Poole & Co prior to 1 September 2000. Post 1 September 2000, the forms had been provided to an in-house legal department which had dealt with a preliminary assessment of the claim. If the vetting solicitor had agreed that the claim had a greater than even prospect of success, three things had occurred:

    (i) The sum of £200 (first instalment) was paid to the Claims Manager for successfully converting a referral from BCA&D to a Claimant who had taken out an insurance policy under the CD Scheme.

    (ii) The file was referred to a Panel Solicitor for action.

    (iii) CD arranged the Claimant's loan funding with FNB and ATE insurance with Litigation Protection Limited ("LPL"), representatives of Lloyds insurers who had underwritten CD's Scheme.

51. As at July 2000, CD had approximately 300 Panel Solicitors who had been required to operate in accordance with CD's Panel Solicitors' Operating Manual, an 8th Edition of which had come into force on 1 August 1999 and a further version had come into force on 1 September 2000.

52. The Panel Solicitor would undertake its own vetting process of the case received from the Vetting Department. If the Panel Solicitor considered that the case had a greater than even chance of success and decided to accept the case then the firm would fax an acceptance form to CD's legal department. Upon acceptance of a referral, the Panel Solicitor became responsible for two invoices:

(i) Poole & Co would issue an invoice for £72.50 to the Panel Solicitor for vetting charges. As Poole & Co had "subcontracted" the vetting business back to CD as of September 2000, when those funds had been received by Poole & Co, they would be immediately remitted to CD. The £72.50 vetting charge was payable within seven days.

(ii) Medical Legal Support Services ("MLSS") would raise an invoice for £395 to the solicitor in respect of support services provided by the Claims Manager. That invoice was payable by the Panel Solicitor upon the successful completion of the action on behalf of the Claimant or at the expiration of nine months from the date the solicitor had accepted the case on referral. The debt did not attract any interest.

53. The Panel Solicitor, including Poole & Co, would send a client care letter to the Claimant pursuant to Rule 15 of the Solicitors' Practice Rules, dealing with information required to be given to clients upon retainer with a copy which the Claimant was asked to sign and return to confirm that he/she wished to proceed. The Claimant had then had a 14 day cooling off period in which to elect not to proceed with the loan and accordingly the policy and the claim under the CD Scheme. That had been to comply with statutory consumer credit protection in respect of the loan which had been taken out to fund the insurance premium. The letter would also restate the Claims Direct system and would attempt to summarise what would happen if a claim was successful or unsuccessful and what deductions would be made from their damages on a successful claim. Panel Solicitors had been provided with a Claims Direct drafted, standardised Rule 15 letter which had formed part of the Panel Solicitors' Manual.

54. The Panel Solicitors' agreement with CD had required that the solicitor must, except in exceptional circumstances, refer the Claimant to Mobile Doctors Ltd for the provision of a medical report in relation to his injuries. A fee had been paid by Mobile Doctors Ltd to CD in the sum of £40 for each Claimant referred to a General Practitioner and £50 for each Claimant referred to a Specialist.

55. Panel Solicitors' agreement with CD had also required the solicitor, except in exceptional circumstances, to refer the case to a CD panel barrister for advice on liability and quantum. The solicitor had been primarily responsible for Counsel expenses in this regard. A fee in the sum of £15 would be paid to CD in respect of each Claimant referred.

56. If the solicitor had required further information from the Claimant or other parties then such information had been supposed to be obtained by the Claims Manager at the solicitor's request. If a settlement offer had been received in respect of the Claimant's action, the Claimant, the Claims Manager, and CD would have been notified by the Panel Solicitor.

57. Upon the successful conclusion of the Claimant's action, whether it be by agreed settlement or by judgement in proceedings, the following had occurred:

(i) The cheque in settlement of agreed damages had been submitted to the funding bank for settlement of the loan to finance the ATE insurance premium

and any interest which had accrued. The balance had then been forwarded to the Claimant. At the same time the bank which had received the damages cheque had sent a statement of account to both the Claimant and the Panel Solicitor.

(ii) When the matter had been concluded, the Panel Solicitor had recovered its costs in relation to the conduct of the action from the Defendant's insurer. In addition to professional fees incurred in the course of the proceedings, the Panel Solicitor would have attempted to recover the vetting fee paid to Poole & Co (which, post 1 September 2000, was paid on to CD under the sub contract arrangement) and the £395 administration and service fee paid to MLSS. The £395 fee had been sought to be recovered in one of the following ways:

(a) Panel Solicitors had sought to recover the MLSS invoice as a disbursement. Some defendants had challenged the item as not being recoverable.

(b) Operating Manuals issued by Poole & Co had advised solicitors to recover the £395 paid by claiming that the amount paid to MLSS represented time costs for the work of the Claims Manager as a outdoor clerk. Recovery had been sought therefore through an increase in the time costs claimed in the Panel Solicitor's own bill even though work had not been carried out by staff employed at the Panel Solicitor's, and also the majority of work had been undertaken by the Claims Manager before the Panel Solicitor had been instructed.

58. In the event that the solicitor had recovered the full amount of the loan taken out to finance the ATE insurance policy and interest, the full amount of the compensation award had been returned to the Claimant less interest which had accrued on the loan to fund the premium.

59. If the solicitor had not recovered the full amount of the loan, then to the extent that it had not been recovered, such monies had been deducted from the compensation before the balance had been remitted to the Claimant. Indeed, interest on the Consumer Credit Act loan had never been recoverable from the Defendant and accordingly there had always been some deduction from the damages and costs, even assuming that 100% recovery of the premium and costs had been made.

60. From April 2001 an enhanced insurance policy, known as a "ring-fenced damages" policy, had been negotiated with underwriters. As a result, the Claimant had been guaranteed to receive at least £1,000 compensation in any event, if his compensation had exceeded £1,000 or if less than £1,000 had been recovered, that sum. The DTI had been advised by Paul Doona, the Finance Director and more latterly the Managing Director of CD that the ring fenced damages policy had been discontinued following the Appeal Court decision in Callery -v- Gray. The ring fenced damages policy had been introduced in an attempt to deal with the substance of client complaints to the effect that even on successful cases, when the premium had not been recovered or not recovered in its entirety, the client had been receiving effectively notional damages.

61. If the Claimant's claim had been unsuccessful the same steps up to acceptance of the Claimant's case by the Panel Solicitor would occur. If the matter had then been discontinued by the solicitor, prior to the institution of proceedings, the Claimant had been covered under the insurance scheme in respect of his own and the defendant's costs, if any, and the repayment of the loan and associated costs for financing of the ATE insurance policy. Panel Solicitors had agreed with CD that in addition to any disbursements which had been incurred, including the vetting fee and MLSS service fee, they would only seek to recover professional fees in the sum of £250.

The scale of the CD Operation

62. Approximately 70,000 people had engaged Claims Direct to assist them with their personal injury actions. At one time there had been approximately 370 Claims Managers and in excess of 300 firms of solicitors on the solicitors panel. Having floated on the Stock Market, the value at one time of Claims Direct had been in the region of £724 million.

63. CD had generated revenue from various sources and at various stages throughout the claims process under the CDPP Scheme. As examples, for the year ended 31 March 2001, CD had derived income from the following sources:

(i) Franchise Claims Manager - £2.269 million;

(ii) Panel Solicitors - £1.103 million;

(iii) Vetting Fees - £1.388 million;

(iv) Fees to MLSS - £16.411 million;

(v) Mobile Doctors Limited - £1.423 million; and

(vi) Insurance "Premium" - £42.905 million.

In respect of the last item, of the "premium" purported to be for the ATE insurance of £1,250 plus IPT, only a proportion had gone to LPL and the insurance underwriter, the balance being paid to CD or its subsidiary, MLSS.

Correspondence with Respondents

64. Letters dated 12 August 2005 had been sent to the First and Second Respondents enclosing a copy of the FIR dated 2 March 2005 and inviting the First and Second Respondents to provide their comments in respect of issues raised within the Report.

65. By letters of 23 November 2005 and 18 April 2006, the First Respondent had responded to the Law Society.

66. By letter of 6 October 2005, solicitors instructed on behalf of the Second Respondent, Penningtons, had responded to the Law Society, incorporating a letter from the Second Respondent of the same date together with enclosures.

67. By a Decision of 31 October 2006, it had been resolved to refer the First and Second Respondents to the Solicitors Disciplinary Tribunal.

Forensic Investigation Report Dated 23 February 2009

68. Having been duly authorised, on 29 September 2008 and various dates thereafter, Mrs Sara Houchen, a Forensic Investigation Officer at the SRA, had attended the offices of Bennetts, Solicitors, at Westmead House, Westmead, Farnborough, Hampshire GU14 7LP to carry out an investigation, resulting in a Forensic Investigation Report dated 23 February 2009. The Second Respondent had begun practising as the sole principal (of Bennetts) in July 2002 although the investigation had centred around events between September 2006 and February 2009.

69. Whilst initially the cash shortage as at 31 August 2008 had amounted to £1,312.50 as a result of debit balances on the files of D,S and L, such cash shortage being rectified on 26 September 2008, it had taken some 7 months to rectify the cash shortage of £750.56, i.e. from 27 February 2008 to 26 September 2008.

70. However, the position on the client ledger of Mr and Mrs L, relating to the re-mortgage of their property for £183,445.00, had been as follows. The debit balance as at August 2008 which had not been shown on the client ledger had amounted to £387.76. Closer analysis of the client ledger had illustrated historic shortages of £97,187.65 which had existed between 28 and 31 March 2008 and a debit balance, or cash shortage, of £85,547.20 which had existed between 3 April 2008 and 5 August 2008, i.e. 4 months. The cash shortage had not been remedied until August 2008, some three months after its existence had become known.

Incorrect Statements made in application for professional indemnity insurance

71. The Second Respondent had stated, in his application for professional indemnity insurance, that he had not been the subject of any investigation by any Regulatory Department of the SRA. This was despite the fact that he had been fully aware that he had been the subject of such an investigation and, indeed, had been referred to the SDT.

72. By letter of 23 March 2009 the SRA had written to the Second Respondent enclosing a copy of the FIR and requesting a response.

73. By a letter received by the SRA on 21 April 2009, the Second Respondent had provided a response.

74. By a Decision dated 28 July 2009, it had been decided to include the additional allegations in the ongoing disciplinary proceedings against the Second Respondent.

Documentary Evidence before the Tribunal

75. The Tribunal reviewed the Rule 7 Statement and the documentary exhibits attached to the Statement including the FIR dated 2 March 2005 and the DTI Report dated 17 January 2002.

76. Inter alia, the Tribunal also had the benefit of ten trial bundles as well as or including the following documents:

- The Disqualification Undertaking
- Schedule of Unfit Conduct
- The Judgment of Mr Justice Norris dated 19th December 2008
- Skeleton Arguments on behalf of both the Applicant and the First Respondent
- Written Closing Submissions by the First Respondent
- The Response of the Second Respondent

Opening Submissions by the Applicant

77. Leading Counsel took the Tribunal briefly through the allegations against the Second Respondent, all of which were admitted. He referred the Tribunal to a letter from the Second Respondent received by Mr Havard on 20 September 2010, in which the Second Respondent had admitted all the allegations, other than dishonesty, and had apologised for his conduct.

78. The Tribunal noted the Second Respondent's admissions and directed that his submissions as to mitigation and costs should be dealt with on the last day of the hearing and that unless he wished to stay, he was released until then.

79. Leading Counsel referred the Tribunal to his written Skeleton Argument explaining that it dealt mainly with the position as regards the First Respondent.

80. Leading Counsel explained that the SRA's case had originally been deployed in the Rule 5 Statement dated 28 October 2008. However, on 19 December 2008, Mr Justice Norris had handed down his judgment in the CDDA proceedings which had originally been brought against both Mr Sullman and the First Respondent. Leading Counsel referred to the First Respondent's Disqualification Undertaking and the attached Schedule of Unfit Conduct.

81. He said that the SRA had considered that the disciplinary proceedings had substantially mirrored the Disqualification case and had therefore thought it necessary and appropriate to adapt the way it had put its case so as to reflect the findings made in the Norris Judgment. Accordingly, on 28 August 2009, the SRA had served and filed its Supplementary Statement under Rule 7 of the Solicitors' (Disciplinary Proceedings) Rules 2007 in order to replace the Rule 5 Statement.

82. Leading Counsel explained that the Rule 7 Statement contained nine narrative descriptions of specific misconduct each being referred to as a "Charge". Each Charge being followed by a series of allegations setting out what, from a disciplinary and regulatory perspective, was said to be wrong with the specific misconduct charged.

83. Leading Counsel referred the Tribunal to the nine charges and to the allegations as follows:

Charge One

Failure to provide any or any proper advice in relation to the recoverability of CDDP premiums and making misleading public statements.

Charge One involved the following allegations as against the First Respondent alone:- Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity;

Rule 1(c) SPR – Best Interests of clients;

Rule 1(d) SPR – Good Repute of Solicitors' Profession;

Acted dishonestly or, in the alternative, recklessly;

Acted where his own interests had conflicted, or had been likely to conflict with the interests of clients or potential clients.

Failed to provide any or any proper advice in relation to the recoverability of the CDPP Premium;

Made misleading statements to the Media and/or clients and/or potential clients of Poole & Co.

Charge Two

Transfer of cases from 30% arrangement to CDPP.

Charge Two involved the following allegations as against the First Respondent alone:

Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity.

Rule 1(c) SPR – Best Interests of Clients.

Acted dishonestly or, in the alternative, recklessly.

Acted where his own interests had conflicted, or had been likely to conflict with the interests of clients or potential clients.

Taking advantage of clients by advising them to pursue their claim with the benefit of a CDPP when it had not been in their best interests to do so.

Charge Three

Misleading statements to the National Franchise Association (NFA)

Charge Three involved the following allegations as against the First Respondent alone:-

Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity.

Rule 1(d) SPR - Good Repute of Solicitors Profession.

Acted dishonestly or, in the alternative, recklessly.

Made statements to the National Franchise Association of Claims Managers with

regard to the recoverability of premiums on After The Event insurance which had been misleading and inaccurate

Charge Four

Introduction and Referral Fees.

Charge Four involved the following allegations as against the First Respondent alone:

Rule 1(a) Solicitors Practice Rules (SPR) – Independence and Integrity.

Rule 1(d) SPR – Good Repute of Solicitors' Profession.

Acted dishonestly or, in the alternative, recklessly.

Referred business to other persons in breach of the Solicitors Introduction and Referral Code 1990 contrary to Rule 3 of the SPR 1990.

Paid referral fees to Claims Direct Plc and/or Medical Legal Support Services contrary to Section 2(3) of the Solicitors Introduction and Referral Code 1990.

Induced and/or mislead firms of solicitors who had been members of the Claims Direct Panel into paying referral fees to Claims Direct Plc and/or Medical Legal Support Services contrary to Section 2(3) of the Solicitors' Introduction and Referral Code 1990.

Charge Five

Contract for sale of Poole & Co - misleading investors and underwriters to the float.

Charge Five involved the following allegations as against both Respondents:

Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity.

Rule 1(d) SPR – Good Repute of Solicitors' Profession.
Acted in a deceitful way and in a manner contrary to their position as solicitors in relation to the terms of the Sale Agreement relating to the purported sale by the First Respondent of, and the divestment of his interest in, Poole & Co.

As to the First Respondent only acted dishonestly.

Charge Six

Misleading prospectus - failing to disclose the benefits which the First Respondent (and Mr Sullman) would derive from the initial public offering.

Charge Six involved the following allegations as against the First Respondent alone:

Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity.

Rule 1(d) SPR - Good Repute of Solicitors' Profession.
Acted dishonestly.

Failed to provide material and relevant information to the public or investors in advance of the flotation of Claims Direct.

Charge Seven

Failure to account.

Charge Seven involved the following allegation as against the First Respondent alone:

Failed to account to third parties in relation to disbursements.

Charge Eight

Improper transfer - PB £190.

Charge Eight involved the following allegations as against the First Respondent alone:

Rule 1(c) SPR - Best Interests of Clients.

Transferred monies from client account to office account in respect of fees to which he had not been entitled.

Charge Nine

Telegraphic transfer fees - secret profits.

Charge Nine involved the following allegations as against both Respondents:

Rule 1(a) Solicitors Practice Rules (SPR) - Independence and Integrity.

Rule 1(c) SPR – Best Interests of Clients.

Rule 1(d) SPR – Good Repute of Solicitors' Profession.

Falsely represented fees as disbursements on conveyancing transactions in the form of bank charges for telegraphic transfers and in so doing had derived a secret profit.

84. Leading Counsel explained that the nine charges fell into four groups:

(i) Misleading (by acts of commission and omission) the public and Claims Managers as to the characteristics and value of Claims Direct's products (Charges 1, 2 and 3).

(ii) Wrongly accepting and inducing other solicitors to pay referral fees (Charge 4).

(iii) Misleading (by acts of commission and omission) investors and underwriters as regards the floatation of Claims Direct (Charges 5 and 6).

(iv) Miscellaneous financial irregularities in the operation of Poole & Co (Charges 7, 8 and 9).

85. Leading Counsel submitted that the Tribunal would have to consider what weight and significance to attach to the judgment of Mr Justice Norris in the Disqualification case (the Norris Judgment). He referred the Tribunal to Rule 15(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 which provide that the Findings of Fact upon which a Judgment was based are admissible as proof but not as conclusive proof of those facts.

86. Leading Counsel also referred the Tribunal to the remarks of Lord Justice Moses in Constantinides v The Law Society [2006] EWHC 725 (Admin) in which it appeared that the weight to be given to findings of fact would vary according to the particularities of each individual case, in effect "such weight as is appropriate".

87. Addressing the question as to what weight the Tribunal should give to the Norris judgment, Leading Counsel accepted that as the First Respondent had not taken part in that trial, the findings of misconduct made against Mr Sullman might not be determinative as against the First Respondent. In particular, Leading Counsel accepted that it would not be appropriate for the Tribunal to make findings of dishonesty against the First Respondent other than on its own account and by reference to its own independent assessment of the evidence. However, Leading Counsel submitted that it would be appropriate for the Tribunal to attach very considerable weight to the Norris Judgment and in particular to the conclusions that he had drawn from the primary facts. Leading Counsel noted that Mr Justice Norris was an experienced judge of long standing and that he had considered many of the current allegations against the First Respondent as well as many of the documents and arguments relied on in the proceedings before the Tribunal. Moreover, he had also seen many of the same witnesses being cross-examined; Mr Weaver, Mr Harris and Ms Crawley.

88. Leading Counsel referred the Tribunal to the leading authorities relating to the combined test for dishonesty namely Twinsectra v Yardley [2002] UKHL 12 and Bryant & Bench v The Law Society [2007] EWHC 3043. He also referred to the definition of recklessness as "unreasonable risk-taking" being relevant to the alternatives in Charges 1, 3 and 4. Leading Counsel accepted that the burden of proof was on the Applicant and that the higher standard of proof was the standard appropriate before the Tribunal.

89. Referring to the Skeleton Argument of the First Respondent, Leading Counsel submitted, inter alia, that it contained as much evidence as argument. He stressed that it was part of the Applicant's case that the First Respondent had, contrary to his denials, been motivated by money in his actions relating to Claims Direct. Leading Counsel referred to the First Respondent's receipt of £9,750,000 from the sale of Poole & Co's Vetting Department and of £10,700,000 from the sale of shares via Cartmel Securities; a total of some £20 million in three months.

90. Leading Counsel acknowledged that the activities of the First Respondent and the public floatation of Claims Direct Plc had attracted media interest, but insisted that the SRA had brought proceedings, not because of such interest, but as a consequence of detailed investigations.

Submissions as to Charge One: Failure to provide any or any proper advice in relation to the recoverability of the CDDP premium and making misleading public statements.

91. Leading Counsel submitted that the First Respondent had misled clients into believing that the cost of the premium for the insurance policies taken out by clients would be recoverable from defendants' insurers, when he did not believe or could not have reasonably believed that would be the case. He explained to the Tribunal that Charge One focussed principally on the misleading marketing of the Claims Direct product to new clients.

92. Leading Counsel submitted that the Tribunal would need to determine two key issues; what the First Respondent knew to be the true position about premium recoverability and what he had been telling clients about premium recoverability.

93. Leading Counsel reminded the Tribunal that Section 29 of the Access to Justice Act, permitting the recovery of premiums for after-the-event insurance from the defendant, had been implemented on 1 April 2000. The relevant transitional provisions had not permitted retrospective (i.e. pre-April 2000) recovery.

94. The probable lack of retrospectively, Leading Counsel submitted, had always been made clear to and understood by the First Respondent. Leading Counsel referred to and relied upon four key documents to establish that position.

95. Firstly, a note of a conference with James Goudie QC and Andrew Gordon-Saker that took place on 14 June 1999 in which the First Respondent had been advised that pending the implementation of the Access to Justice Bill, the premium would be payable out of the damages.

96. Secondly, a letter, dated 19 July 1999, from Helen Smith of the Lord Chancellor's Department in which Ms Smith had written:-

> "I have now spoken to a colleague who is dealing with the provision for the recoverability of insurance premiums in the Access to Justice Bill. She has advised that, whilst there will be consultation about the recoverability of insurance policies pre-enactment of the Access to Justice Bill, she considers it will be extremely unlikely that recoverability will be back-dated."

97. Leading Counsel explained that the letter from the Lord Chancellor's Department had been a response to a letter dated 9 July 1999 signed by Tony Sullman, the Chief Executive of Claims Direct, but drafted, at least in part, by the First Respondent, to Brian Blackwell at the Lord Chancellor's Department. The relevant paragraphs being:

> "As I indicated earlier we are considering whether it is in our clients' best interest to transfer from their existing contracts with Claims Direct to this new

> insurance premium scheme. Much of that of course will depend on whether the insurance premium, if a policy is taken out today, can be recovered at the conclusion of the case. If the Access to Justice Act provides for insurance premiums being recovered where the policy has been taken out prior to the Access to Justice Act coming into force, then clearly it would be beneficial to the large majority of our clients to be given that option.
>
> We are at this moment attempting to obtain clarification on this from the Lord Chancellor's Department, and any assistance that you are able to give us in that regard would be appreciated."

98. Thirdly, a letter from the First Respondent to Peter Carroll (a Claims Manager) dated 17 August 1999 in which the First Respondent stated "the Access to Justice Bill is most unlikely to be retrospective."

99. The fourth document was the LCD Consultation Document that had been produced in September 1999 and had included the following:

> "28. It is also proposed that:
>
> The recoverability of the insurance premium should not be retrospective but should apply only to policies entered into after the coming into force of the relevant section of the Act."

100. Leading Counsel referred to the First Respondent's Skeleton in which he had stated that between 27 July 1999 (the date of the enactment of the Access to Justice Act) and February 2000, there had been considerable uncertainly for all connected with the industry. However, Leading Counsel submitted that far from "considerable uncertainty" it had been clear that retrospectively had been extremely unlikely.

101. Leading Counsel referred the Tribunal to extracts of the Norris Judgment in order to illustrate how the Claims Direct product had been marketed as from 16 August 1999 by way of a training manual and telesales scripts.

Submissions as to Charge Two: Transfer of cases from 30% arrangement to CDPP

102. Leading Counsel explained that Charge Two related to the two misrepresentations made to existing clients. He said that the first of those had been as to the likelihood of recovery of the insurance premium from the other party and referred the Tribunal to a letter from Claims Direct to its franchisees dated 1 October 1999 and signed by the First Respondent as Managing Director, enclosing a copy of a letter to be sent from Claims Direct to all its existing clients. Leading Counsel submitted that the following, in the letter to all existing clients of Claims Direct, had been a misrepresentation:-

> "Should you win your case under the terms of the new law the cost of the insurance policy should be payable by the other party."

103. The second misrepresentation, he submitted, had been made by way of omission to existing clients of Claims Direct with small claims worth less than £3,500. Leading

Counsel explained that for those clients there had been disadvantages in switching from the 30% scheme in that under the 30% scheme the maximum costs payable out of a £3,500 damages award had been 30% or £1,050, a lower sum than the £1,250 premium plus tax payable under the new scheme.

104. Leading Counsel referred the Tribunal again to the note of the conference that had taken place with James Goudie QC and Andrew Gordon-Saker on 14 June 1999. In particular to the advice that:

> "In particular, claims worth less than £3,000 would be likely to stay with the current scheme."

105. Leading Counsel submitted that notwithstanding the specifically disadvantaged position of existing clients with small claims, no attempt had been made, either in the October 1999 letter to all existing clients or otherwise, to differentiate them from other clients or to draw the further disadvantage of the new scheme to their attention.

Submissions as to Charge Three: Misleading statements to the National Franchise Association (NFA)

106. Leading Counsel explained that Charge Three concerned the same misrepresentation as to the probability of premium recovery but in relation to it having been made to Claims Managers (Franchisees). In addition to the note of the conference of 14 June 1999, the letter from the LCD of 19 July 1999 and the Consultation Document issued in September 1999, Leading Counsel referred to minutes of meetings of the National Franchisee Association held on 12 August and 30 September 1999 at which the First Respondent had been present.

107. At the meeting of 12 August 1999, Leading Counsel noted that the First Respondent had been recorded as saying, in relation to the recoverability of insurance premiums, that "so far no specific guidance had been issued from the Lord Chancellor's department on the matter." Leading Counsel pointed out that that statement had been made despite the letter from the LCD dated 19 July 1999 saying that "it will be extremely unlikely that recoverability will be back-dated."

108. At the meeting of 30 September 1999, it had been agreed, in relation to the proposed letter to existing clients, that the paragraph on compensation should be re-worded as follows:-

> "Should you win your case it is unlikely that any monies will be deducted from your compensation. Under the terms of the new law all costs of the insurance policy should be payable by the other party....."

109. Leading Counsel submitted that the assertions that any deduction was "unlikely" and that insurance policy costs "should be" payable by the other party had been wrong and misleading and had been known by the First Respondent to be so, particularly after the LCD Consultation Document of September 1999.

110. Dealing with a challenge by the First Respondent as to whether and if so when the draft letter to all existing Claims Direct clients had been deployed, Leading Counsel referred to the following paragraph in the letter dated 1 October 1999 to all

Franchisees:

> "As of 4 October we shall be contacting approximately 360 clients a day, 6 days a week for the next three months....."

He also referred to a paper, dated 18 August 2000, written by and presented to the Claims Direct Board by the First Respondent as Chief Executive, dealing with proposals for ex-gratia payments to some 8,000 clients who had purchased insurance policies prior to 1 April 2000 and who would not be able to recover their insurance premiums.

Submissions as to Charge Four: Introduction and Referral Fees

111. Leading Counsel explained that Charge Four was a composite charge that raised complaints in relation to three separate income streams received by Claims Direct; Vetting Fees, Training & Support Fees and MLSS Invoices.

112. Dealing first with vetting fees, Leading Counsel referred the Tribunal to Section 2(3) of the Solicitors' Introduction and Referral Code 1990 (SIRC) noting that the prohibition had not applied to referrals as between solicitors. In addition, payments could be made for services genuinely provided by the recipients of the payments.

113. Leading Counsel explained that up until 5 July 2000 Poole & Co had charged its panel solicitors a "vetting fee" of £72.50 for each case that was referred to the panel solicitor. However, on 5 July 2000 Claims Direct had acquired Poole & Co's "vetting" business and had taken the "vetting" in house. Although Poole & Co had no longer undertaken any vetting work, the firm had continued to render invoices to the panel solicitors and had paid over the fees received in respect of those invoices directly to Claims Direct.

114. Leading Counsel submitted that in effect the panel solicitors had been paying Claims Direct fees that had not been "genuinely made in consideration of the services...." of Poole & Co and that the arrangements for payment to Poole & Co had been made so as to hide the payment of referral fees by panel solicitors to Claims Direct.

115. Turning to the Training and Support Fees, Leading Counsel explained that panel solicitors had paid a minimum of £5,000 per annum. The payments had initially been made to Poole & Co but after 5 July 2000, to Claims Direct. Leading Counsel noted that the Claims Direct operating manual had stipulated that the "training and support fee" was expressly quantified by reference to the number of cases allocated to the panel solicitor.

116. Leading Counsel submitted that the purchase of cases via graduated "Training and Support Fees" had in fact been the payment of referral fees by solicitors contrary to the SIRC s.2 (3) prohibition.

117. Panel solicitors, Leading Counsel explained, had additionally been required to pay a fee of £395 for every case referred to them by Claims Direct. Those payments had been made to Medico Legal Support Systems (MLSS) a wholly owned subsidiary of Claims Direct. The First Respondent had been a director of MLSS between May

1996 and August 2001. MLSS fees had generated income of £16.411 million for Claims Direct for the year ended 31 March 2001.

118. Leading Counsel referred the Tribunal to the Minutes of a Claims Direct Board Meeting on 10 February 1999 in which it had been noted as follows:-

> "Poole & Co have identified approximately 600 cases prior to a medical report being requested, which they could possibly sell to panel solicitors for the current standard fee of £395.00."

Leading Counsel submitted that the selling of cases had been a plain breach of the prohibition against referral fees created by s.2 (3) of the SIRC in that the First Respondent had known that the fee of £395 had not represented the costs of services provided by MLSS and had therefore not been a payment genuinely made in consideration of the services of MLSS.

119. Leading Counsel also referred the Tribunal to the Judgment of Chief Master Hurst, Senior Costs Judge, in the Claims Direct test cases given on 3 January 2003 as follows:

> "83. It is quite clear that the £395 plus VAT is the price which the panel solicitor must pay in order to obtain the work. If the panel solicitor is not prepared to pay the work goes elsewhere. This is not a case of client choice but of MLSS effectively selling work to panel solicitors. Panel solicitors have the option of rejecting a case, if for some reason they do not want to take it on, but if they do wish to take it on they cannot avoid having to pay the fixed price.
>
> 84. The payment of £395 plus VAT is therefore a referral fee....."

Submissions as to Charge Five: Contract for sale of Poole & Co - misleading investors and underwriters to the float.

120. Leading Counsel explained that in the Prospectus for the floatation of Claims Direct, issued on 12 July 2000, there had been a public representation that the relationship between Poole & Co and Claims Direct would be removed by the sale by the First Respondent of Poole & Co.

121. Leading Counsel referred the Tribunal to the Agreement, made on 18 August 2000, for the sale by the First Respondent to the Second Respondent of Poole & Co. He noted that the Agreement had given the Second Respondent a 12 month period within which to Opt-In, i.e. to proceed with the purchase. Further, that the Second Respondent had to pay "the whole of the profits of the Practice" up until the date when the Opt-In was triggered and that the Second Respondent had agreed to a number of onerous and restrictive obligations.

122. Leading Counsel submitted that in reality the "sale " to the Second Respondent had not been a bona fide disposal of Poole & Co and as such had not met the obligation that the First Respondent had entered into by making the representation in the Prospectus that the "related party relationship" would be removed.

123. In referring to the "Further Advice", dated 17 August 2000, of Counsel who had drafted the Agreement, Leading Counsel drew the Tribunal's attention to the following:

> "No draftsmanship can disguise the fact that during that period[the 12 months during which the Opt-In can be made], the practice is being carried on entirely for Mr Poole's benefit, subject only to his arrangements with [RESPONDENT 2]; the assets will be formerly vested in [RESPONDENT 2] but the benefit of them will not. In my view, therefore, Mr Poole will remain in law either a sole practitioner..... or else a partner with [RESPONDENT 2]....."

He submitted that the First Respondent had acted dishonestly in relation to the disposal of his practice.

124. Leading Counsel also referred the Tribunal to the provision in the Prospectus dealing with the First Respondent's entitlement to £9.75 million in respect of the sub-contracting to Claims Direct of Poole & Co's vetting business. He noted that the First Respondent's entitlement had not come into effect until the day after the First Respondent had ceased to be a partner in Poole & Co.

Submissions as to Charge Six: Misleading prospectus - failing to disclose the benefits which the First Respondent (and Mr Sullman) would derive from the initial public offering.

125. Leading Counsel explained that as a director of Claims Direct, the First Respondent had been obliged to ensure that the Prospectus had been full, frank and fair in its disclosure. He referred the Tribunal to Section 146 of the Financial Services Act 1986 and to the Judgment of (the then) Mr Justice Timothy Lloyd in Re Atlantic Computers PLC (15th June 1998 unreported).

126. In the section of the Prospectus headed "Interests of Directors and Others", Leading Counsel explained that it had been disclosed that Cartmel would be selling 27,777,778 Claims Direct shares which, at 180p per share, would generate £50 million. What would become of that £50 million had been explained as follows: -

> "The ownership of Cartmel is vested in discretionary trusts constituted under the laws of Guernsey. The trustees have the right in pursuance of their discretionary powers to appoint any party (which may include any director) a beneficiary at a future date, provided always that such beneficiary shall then be resident for tax purposes outside the UK."

127. Leading Counsel noted that in fact the recipients of the £50 million had been the First Respondent and Mr Sullman. He referred to the Norris Judgment in which the Judge had found that:

> "...a reader of the Claims Direct prospectus would not have appreciated that the....directors were personally realising £50 million."

and that:

> "....the literal truth in the Prospectus constituted a substantial

misrepresentation of the reality."

In the circumstances, Leading Counsel submitted that in failing to discharge the very special burden of responsibility that fell upon a director, the First Respondent had acted dishonestly.

Submissions as to Charge Seven: Failure to Account

128. Leading Counsel referred the Tribunal to the Forensic Investigation Report dated 2 March 2005 which had noted that on seven files, Poole & Co had failed to pass on agreed amounts relating to disbursements totalling £1,150.78.

Submissions as to Charge Eight: Improper transfer - PB £190

129. Leading Counsel referred the Tribunal to the Forensic Investigation Report dated 2 March 2005 which had noted that a sum of £190 had wrongly been taken as costs.

Submissions as to Charge Nine: Telegraphic transfer fees - secret profits.

130. Leading Counsel again referred the Tribunal to the Forensic Investigation Report dated 2 March 2005 which had noted that Poole & Co had charged clients a total of £48,915.18 as disbursements in respect of 1,642 telegraphic transfers when the firm's bank had charged only £17,577.00. Leading Counsel submitted that Poole & Co had made and retained an undisclosed profit of £31,338.18 at the expense of their clients.

131. Leading Counsel confirmed that while Charges One to Six included allegations of dishonesty as against the First Respondent, Charges Seven, Eight and Nine were not advanced as grave allegations.

Witnesses called by the Applicant

132. John Weaver relied on his Statement, dated 30 June 2010, prepared for the Tribunal proceedings and his previous Statements of 24 September 2004 and 30 August 2006 in the CDDA proceedings before Mr Justice Norris. He gave evidence in relation to his role as an Inspector appointed for the purposes of an investigation into Claims Direct Plc and about his subsequent Report, dated 22 January 2002, prepared for the Department of Trade and Industry. He stressed that his evidence was based upon the documentary evidence before the Tribunal.

133. In cross-examination by the First Respondent, inter alia, Mr Weaver acknowledged that a number of different bodies, who had not been interviewed by the DTI, would have been involved in the preparation of the "Prospectus" for the flotation of Claims Direct - a document issued by Claims Direct on 12 July 2000 entitled "Placing Retail Offer and Admission to the Official List". He said that he had been aware of previous preparations for flotation and agreed that information gathered for that exercise would have been utilised subsequently, subject to updating by the directors.

134. Mr Weaver confirmed that it would have been extremely unlikely that the ownership of Cartmel would not have been known by the seven directors of Claims Direct and the other bodies involved in the flotation. However, he stressed that the issue for the

DTI had been what the Prospectus had been saying to the world at large.

135. In relation to the various income streams from vetting, training and support fees and MLSS, Mr Weaver confirmed that he had not sought to interview panel solicitors or vetting staff. However, he agreed that he had been told by the First Respondent that the MLSS fee of £395 had been worked out on an average cost per case, although he had not seen any record or time sheets. Mr Weaver said that he had been aware that had the value been commensurate with costs, such would not have been referral fees but that he had not found evidence of such value, rather that payments had been disproportionate to any value. In addition, he had been aware that because MLSS work had been pre-retainer, there had been issues as to recoverability from defendants.

136. In relation to clients of Poole & Co switching from the 30% Scheme to the insurance scheme, Mr Weaver explained that he had looked at some files but could not recall seeing any letters of specific advice to individual clients as to the better scheme for their circumstances. He confirmed that he had been aware of the Claims Direct Fair Trading Statement, which had been in existence from August 1999, and had noted the wording "My solicitor will attempt to recover the amount of the premium....." While he accepted that the Statement and the Rule 15 Client Care Letter did not guarantee recovery of the insurance premium, Mr Weaver insisted that a wealth of other evidence did.

137. Mr Weaver referred to the Minutes of the Claims Direct National Franchisee Association, held on 12 August 1999, as evidence of the introduction of the new insurance scheme as from 16 August 1999.

138. Although aware of the existence of a Claims Direct intra-net site, Mr Weaver explained that he had not had access to it during the course of the DTI investigation. Moreover, he said that although Counsel in the CDDA proceedings had tried to find the Court of Appeal case referred to by the First Respondent, as a precedent for the recovery of an insurance premium, during the meeting of the Claims Direct Franchisee Association on 12 August 1999, they had been unable to find any such case.

139. Alison Crawley, formerly Director of Compliance at the Law Society of England and Wales, gave evidence relying on her Statement, dated 30 June 2010, prepared for the Tribunal proceedings and her previous Statement of 16 June 2006 in the CDDA proceedings before Mr Justice Norris. Ms Crawley detailed her dealings with the First Respondent and Claims Direct between late 1995 and 2000 while she was Head of Professional Ethics at the Law Society. She explained that the Professional Ethics division of the Law Society had been involved with the regulation of solicitors through the setting of standards rather than through investigation and enforcement.

140. In cross-examination by the First Respondent, inter alia, Ms Crawley confirmed that she had corresponded with the First Respondent and had met him on three occasions, once, on 27 April 2000, with David Hartley, who had been particularly interested in insurance issues. She agreed that a report had been drafted after that meeting but she was unable to recall what, if anything other than sitting on the file, had happened to that particular report. Ms Crawley said that in her dealings with the First Respondent,

she had in general been positive towards him and Claims Direct so that he would be open to the Law Society as to the running of his business. She confirmed that the First Respondent had appeared to be open about matters relating to the operation of Claims Direct, including payments, although she had had on-going concerns as to whether she had been getting all the relevant information.

141. Ms Crawley said that she could not recall if the Law Society had notified Claims Direct about referral fee concerns. She did not think firm conclusions had been reached in that it would have been a question of the value given for any payments and of waiting to see what the Costs Judges allowed as against Defendants. Ms Crawley thought that solicitors telephoning the Law Society about whether or not a specific payment was a referral fee, would have been told about the general approach and left to take their own view in the particular circumstances.

142. Ms Crawley explained that she had written to the Office for the Supervision of Solicitors to say that in her view there should be an investigation of Claims Direct solicitors but she had not been aware of any such investigations or of any disciplinary action against Claims Direct panel solicitors.

143. In re-examination, Ms Crawley confirmed that she had not been aware of any sub-contracting arrangements for vetting.

144. Peter Harris, a retired Private Secretary in the Lord Chancellor's Department, gave evidence relying on his Statement, dated 29 June 2010, prepared for the Tribunal proceedings and his previous Statement of 8 August 2006 in the CDDA proceedings before Mr Justice Norris. He explained that in both statements he had outlined his involvement with Claims Direct and with the First Respondent.

145. In cross-examination, inter alia, Mr Harris explained that his role, on behalf of Ministers, had been to monitor the development of the conditional fees and the after the event insurance markets during the period of the Access to Justice Act 1999.

146. Mr Harris confirmed that he had operated an open door approach to the industry and had been dealing with large numbers of people. However, while accepting that some of the views of Claims Direct had been accepted, Mr Harris stressed that there had been no special relationship with Claims Direct.

147. Mr Harris accepted that he had attended a meeting with the First Respondent on 13 December 1999 but said that he had not been aware that the meeting had been recorded and that he had certainly not "given the nod" to a figure representing a recoverable insurance premium either during that meeting or at any other time. He stressed that the Government had not had any view on what or how much was to be recoverable in proceedings.

<u>The Opening Submissions on behalf of the Respondent</u>

148. The First Respondent asked the Tribunal to treat all of his Skeleton Argument of 223 paragraphs, in which he had reviewed his position with regard to each of the charges and allegations, as his opening submissions. His main contentions were as follows:

(a) That at all times, both he and his fellow directors had sought and relied upon the advice of Counsel prior to implementing changes to the business model.

(b) The actions of seeking Counsel's advice or approaching the Law Society for guidance, or having other professionals advise were not the actions of a man or a company who had a flagrant disregard for the law or professional rules of conduct. On the contrary such actions demonstrated an ethical and responsible approach to business.

(c) The burden of proof was upon the Applicant in the proceedings and it was for the Applicant to prove the allegations made beyond all reasonable doubt.

(d) The amount of time that had expired since the events had taken place had inevitably resulted in witnesses and documents being unavailable and even where witnesses were available, their recollection being adversely affected.

(e) The Judgment of Mr Justice Norris in the proceedings brought by the DTI against Mr Sullman, a former director of Claims Direct, would no doubt be heavily relied upon by the Applicant. The First Respondent contended that it would be unsafe for the Tribunal to place too much emphasis on that Judgment as Mr Justice Norris had not had at his disposal all the evidence available to the Tribunal. Furthermore that Mr Justice Norris had arrived at his conclusions on the balance of probabilities.

(f) The Applicant would also no doubt seek to rely upon the terms and effect of the Undertaking given by the First Respondent in the DTI proceedings. The First Respondent submitted that that Undertaking should not be seen as an admission on his part of any of the matters contained within it.

<u>An Application by the First Respondent to interpose a witness</u>

149. The First Respondent explained that one of his witnesses, David Archer, would only be available during the afternoon and that his witness statement would not be available until early afternoon. He sought the Tribunal's permission to call Mr Archer during his own cross-examination.

150. Leading Counsel opposed the Application stressing that not only would it be inappropriate for him to be interrupted during his cross-examination of the First Respondent but also that he would need time to consider Mr Archer's witness statement and to prepare his own cross-examination of Mr Archer.

151. Having considered the representations of both parties, the Tribunal refused the application because it considered that it would be extremely disruptive, both to the parties and to the Tribunal, to interpose a witness during the cross-examination of the First Respondent. The Tribunal noted that no written statement had yet been provided although the Tribunal's Rules required any statements to be relied upon to be filed and served 21 days before the substantive hearing. However, the Tribunal was willing to hear the witness after the conclusion of the cross-examination or, if the witness was not available, to admit his statement and accord it such weight as was appropriate in the absence of any cross-examination.

The oral evidence of the First Respondent

152. The First Respondent confirmed he was the Sole Proprietor of Firm Legal Solicitors and gave evidence relying on his Statement dated 29 September 2010 responding to the allegations in the Supplementary Statement dated 28 August 2009 and his previous statements filed within the proceedings dated 15 July 2010 and 14 April 2010.

153. The First Respondent clarified his most recent Statement explaining that he had continued to hold 10,200,00 shares in Claims Direct after the floatation, which shares had been quite separate from those held by Cartmel. He had not benefited from the sale of his personal shareholding in Claims Direct.

154. In cross-examination, the First Respondent explained the use of the expression " time to cash my chips in" by Mr Sullman, in the e-mail of 14 August 1999, as referring to the exit strategy that they had had from the start of the Company. He said that the £20 million, referred to by Mr Sullman, had been the value of his own shares in Claims Direct and not the sums from the Cartmel payment and the sale of the vetting business to Claims Direct. Moreover, at that time (August 1999) he had not contemplated selling the vetting part of the business.

155. As to his Response to the Part 18 Request on the CDDA proceedings, the First Respondent denied that it had been another example of an opaque answer. He said that there had been two reasons for the terms of his answer as to financial gain, firstly because it had been almost impossible to value the benefit arising and secondly because the Request had been regarded as a fishing expedition.

156. Referring to the Board Paper dated 18 August 2000 presented by the First Respondent as Chief Executive of Claims Direct, he stressed that the 8000 clients had been referred to as an indication as to a potential liability.

157. The First Respondent accepted that the draft Client Transfer Letter had been sent to the franchisees as an enclosure to the letter to the franchisees dated 1 October 1999. However, he did not accept that as from October 1999 some 25,000 letters had been sent (360 clients a day, six days a week for three months) because Claims Direct had not had that many clients.

158. The First Respondent confirmed and stressed that the full paragraph including the words "the cost of the insurance policy should be payable by the other party" had represented his view at that time. He agreed that he had received a copy of the LCD Consultation Document before the letter of 1 October 1999 had been sent to the franchisees. However, the First Respondent insisted that he had been having conversations with Mr Harris during that period. Moreover, there had been a difference in the LCD Consultation Document with regard to the recoverability of the success fee and the recoverability of the insurance premium that he had considered relevant. Mention had been made of the date of the issue of proceedings for the recoverability of the success fee and the First Respondent explained that he had believed that would also be relevant to the recoverability of the insurance premium.

159. Referring to his Undertaking in the CDDA proceedings, the First Respondent

explained that he had completed it, not as admissions, but as matters that he would not dispute for the purposes of the CDDA proceedings only. He had had directors' insurance and there had been other proceedings and the insurers had indicated that provided he compromised the disqualification proceedings, they would cover those costs and also defend the other proceedings. Because he did not need or want to be a director, he had believed that there had been nothing at stake in not defending the DTI proceedings.

160. The First Respondent insisted that there had been nothing sinister in the "draft" statements that he had sent to some prospective witnesses because those draft statements had been akin to witness summaries. He stressed that he had been attempting to comply with the order of the court and had drafted, from his recollection of events, what he had thought the witnesses would say.

161. The First Respondent maintained that Mr Harris had given him an assurance as to recoverability of insurance premiums. Moreover, the reference to implementation by Counsel on 14 June 1999, he had taken to refer to the coming into force of the Act on 27 July 1999. The First Respondent said that he had not been aware of the detail as to enactment and he had not anticipated recoverability taking as long as it had to come into force. However, whether premiums had been recoverable or not had not really mattered as long as Claims Direct had been in the same position as its competitors.

162. The First Respondent explained that Franchisees/Claims Managers had been told never to give advice about legal matters including costs, but to refer the clients to their solicitors and that they should not deviate from the Fair Trading statement. He accepted that some clients had been misled as to recoverability by Claims Managers, but not that such representation had been widespread.

163. As to Claims Direct's failure to distinguish clients with claims under £3,000 in the Client Transfer Letter, the First Respondent explained that Claims Direct would not have known the value of claims, unless proceedings had been issued, so they had not been able to target the under £3,000 claims and had relied on the clients' solicitors to advise them. He stressed that solicitor would receive copies of any letters sent to their clients.

164. The First Respondent explained that franchises and panel solicitors had been kept fully aware of developments as the LCD consultation document had been posted on the Claims Direct intranet as had CD's response to the consultation.

165. In relation to the vetting fees the First Respondent insisted that after the sale of the vetting business to Claims Direct, Poole & Co had retained an obligation to the panel solicitors to do the vetting and had sub-contracted the carrying out of that work to Claims Direct. He explained that his own view at the time had been that the sub contracting arrangement had been unnecessary because Claims Direct had been providing a genuine and valuable service that could have been provided directly to the panel solicitors. Because of his interest, the First Respondent had not been involved in the company's decision about how to handle the vetting and now considered the sub-contracting approach to have been an unnecessary veneer.

166. The First Respondent maintained that the Training and Support fees of £5000 had

been reasonable and not franchise fees. He explained what had been involved including that staff from Poole & Co would attend panel firms and provide in-house training and inspection by reviewing files, assisting in negotiations and speaking with defendant insurers. Moreover, while the basic £5,000.00 fee had included two fee earners on the CLT course, firms with more staff would pay a graduated fee, some up to £20,000.

167. The First Respondent also maintained that the £395.00 fee to MLSS had not been a referral fee and that he had never spoken about selling files. It had been an average fee to cover the fact-finding and other work of the Claims Managers.

168. In relation to the sale of Poole & Co, the First Respondent agreed that he had put forward a clear and unqualified intention to remove the relationship between his firm and Claims Direct and he maintained that he had fulfilled the intention in the Prospectus and had disposed of his firm. He said that such intention had been fulfilled by the sale to the Second Respondent which although it had contained an opt-out provision had been binding on both parties once signed. The First Respondent agreed that in reality there had been no disposal of 90% of the profits of the firm pending the payment by the Second Respondent of the full purchase price.

169. The First Respondent insisted that ceasing to be a partner in Poole & Co had not been the key to the receipt of £9.75 Million. While not saying that he had not seen it, the First Respondent said that he could not recall seeing the Advice of Counsel who had drafted the Agreement for the sale of Poole & Co. That Advice had said that during the period prior to the Opt-In:

> ".....Mr Poole will remain in law either a sole practitioner ...or else a partner with [RESPONDENT 2]..."

170. In relation to the allegation of failing to disclose in the Prospectus the benefits that he would receive, the First Respondent explained that he had employed experienced people to deal with the floatation of Claims Direct. He had believed that he should have been able to rely on the expert advice both from experienced professional directors on the Board and from the professional advisors. While he accepted the criticism of Mr Justice Norris, that the Prospectus had been literally accurate but had not gone far enough, the First Respondent did not accept that he had been at fault although he said that with the benefit of hindsight or of better advice, he would have dealt with matters differently.

171. The First Respondent insisted that in relation to any of the allegations he had never acted with any intention to be dishonest.

Witnesses called by the First Respondent

172. Peter Carroll, a former Franchisee of Claims Direct and now solely responsible for the liquidation of Claims Direct PLC in Administrative Receivership and in Voluntary Liquidation gave evidence relying on his statement of 24 June 2010.

173. In cross-examination, inter alia, Mr Carroll explained the development and flotation of Claims Direct from the point of view of Franchisees and their knowledge of the

development of the ATE insurance model and the recovery of premiums. He explained that he had heard what he had been told was a tape recording of Mr Harris talking with the First Respondent, Mr Lee and Mr Raincock. Mr Carroll had recognised the voices other than Mr Harris whom he had not met. Consequently, he had believed that Mr Harris had indicated that an ATE insurance premium of about £1,500.00 would have been acceptable and recoverable.

174. Mr Carroll said that he did not believe that the standard letter to existing clients, attached to the letter dated 1 October 1999 from Claims Direct, had been sent out until about March 2000. He confirmed that there had been considerable uncertainty among Franchisees as to whether ATE premiums would be recoverable. Mr Carroll stressed that he and other claims managers had spent considerable time investigating claims before those claims had been sent on to panel solicitors together with the results of those investigations hence the fee of £395.00.

175. Robert Andrews, a solicitor who had been employed by Poole & Co from March 2000 to the end of August 2003 gave evidence relying on his statement dated 24 June 2010.

176. Gregory Daniel Fairley, a former accounts manager with both Poole & Co and Firmlegal gave evidence relying on his statement of 23 June 2010. He explained that [RESPONDENT 2] had told him that he was the sole proprietor of Poole & Co but confirmed that he had been unaware that the First Respondent had been retaining profits.

Closing Submissions on behalf of the Applicant

177. Leading Counsel acknowledged that in the main the key events and conduct had taken place some ten years before this hearing but submitted that the Tribunal and the parties had the benefit of all the key documents which had formed the basis of the evidence in support of the allegations.

178. Moreover, Leading Counsel reminded the Tribunal that the Norris Judgment had deal with much of the evidence relating to some of the allegations. He submitted that while the Tribunal was not bound by Mr Justice Norris' decisions or his views, his Judgment, given his experience and the fullness of the trial, should be borne firmly in mind. Further Leading Counsel submitted that the First Respondent had not produced any evidence to justify any departure from the Judge's conclusions.

179. Leading Counsel took the Tribunal through the evidence in relation to each of the generic charges, maintaining the allegations of dishonesty as set out in charges 1 to 6.

The First Respondent's Closing Submissions

180. The First Respondent relied upon his detailed written Closing Submissions extending to some 215 paragraphs. He made submissions as to the nine charges, the approach that the Tribunal should take in relation to the Judgment of Mr Justice Norris, the relevance and importance of the Disqualification Undertaking and the effect of delay on the quality and availability of the evidence before the Tribunal.

The Tribunal's Findings as to Fact and Law

Charge One: Failure to provide any or any proper advice in relation to the recoverability of CDDP premiums and making misleading public statements. (Allegations 1, 2, 3, 6, 12, 13 and 18 as against the First Respondent only)

Charge Two: Transfer of cases from 30% arrangement to CDPP. (Allegations 1, 2, 6, 11 and 15 as against the First Respondent only)

Charge Three: Misleading statements to the National Franchise Association (NFA). (Allegations 1, 3, 6 and 16 as against the First Respondent only)

181. The Tribunal dealt with charges 1 to 3 and their respective allegations together. As a matter of law the Tribunal stated that it treated the Disqualification Undertaking given by the First Respondent not as an admission of those matters but as a statement that those matters would not be disputed in proceedings under the CDDA. Having considered all the evidence and the detailed submissions on behalf of the Applicant and by the First Respondent, the Tribunal found that the First Respondent had made representations that the ATE insurance premium should be recoverable before the implementation of the relevant rules.

182. The Tribunal was also satisfied that there had been a failure to give clear advice to clients using the 30% deduction scheme with regard to the effect of a transfer to the new ATE insurance scheme in circumstances where their claims had been worth less than £3,500.00.

183. The Tribunal noted and accepted as supportive of its finding in particular the evidence of the letter dated 1 October 1999 to Claims Direct Franchisees together with the attached draft letter to existing clients. The Tribunal was satisfied that the correspondence showed a clear intention on the part of the First Respondent that the draft letter to existing clients should and would be sent.

184. The Tribunal noted the evidence and submissions in relation as to when that draft letter had been sent to existing clients, including Mr Carroll's assertion that it had not been until March 2000. However, the Tribunal found the existence of the ex gratia scheme extremely persuasive. It noted the clear evidence of an ex gratia scheme being required in order to maintain the viability of Claims Direct, from a Paper prepared by the First Respondent for the Board of Directors of Claims Direct PLC dated 18 August 2000.

185. The Tribunal noted that the Paper referred to there being a number of clients who had purchased ATE insurance before 1 April 2000 when recovery of premiums became possible. The First Respondent stated within his Paper that he believed that some 8,000 clients might be affected by a failure to recover the cost of their ATE insurance premiums.

186. The Tribunal went on to consider whether the First Respondent's statements and his omissions amounted to misrepresentations. The Tribunal was satisfied that the information that the Respondent had had at the relevant time had indicated, at best, that recovery from insurers of ATE premiums was unlikely to be retrospective.

187. In particular the Tribunal noted the evidence provided by four key documents to establish that position. Firstly, the note of the conference with James Goudie QC and Andrew Gordon-Saker that had taken place on 14 June 1999 and in which the First Respondent had been advised that pending the implementation of the Access to Justice Bill, the ATE insurance premium would be payable out of the client's damages.

188. Secondly, the letter, dated 19 July 1999, from Helen Smith of the Lord Chancellor's Department in which Ms Smith had clearly indicated that "it will be extremely unlikely that recoverability will be back-dated." Thirdly, the letter from the First Respondent to Peter Carroll, dated 17 August 1999, in which the First Respondent had stated "the Access to Justice Bill is most unlikely to be retrospective."

189. The fourth document was the LCD Consultation Document that had been produced in September 1999 and had included a clear proposal that "The recoverability of the insurance premium should not be retrospective but should apply only to policies entered into after the coming into force of the relevant section of the Act."

190. The Tribunal did not find the First Respondent a credible witness and did not accept his evidence that he had believed that the premiums would be recoverable because given his admitted knowledge of the documentary position such belief was not credible. The Tribunal did not accept the Respondent's evidence relating to the Access to Justice Act that he had been confused as to the distinction between implementation and enactment. As a Solicitor, with the benefit of advice on this issue from leading and junior counsel, the Tribunal found that he had been fully aware of the significance of implementation provisions for both statutes and statutory instruments.

191. The Tribunal fully considered the evidence given by Mr Harris and by the First Respondent relating to claims of an assurance given by Mr Harris as to both the retrospective recoverability of premiums and the acceptable level of premiums. The Tribunal found Mr Harris a credible witness. However, while the Tribunal could not be certain, beyond reasonable doubt, that no conversation had ever taken place, it noted that even upon the basis of the statement from Ian Lee, taken at its highest evidential level, given that the witness had not appeared and been subject to cross-examination, Mr Lee had only confirmed that Mr Harris "gave the nod" with regard to the level of premium and not to its retrospective recoverability.

192. The Tribunal found that the First Respondent had made representations to Franchisees and to clients that ATE insurance premiums, incurred before the relevant provision of the Access to Justice Act had been implemented, "should" be recoverable, when he had known that it was extremely unlikely that they would be so recoverable. In so doing the Tribunal found that he had been aware that what he had been saying was untrue; misrepresentations made dishonestly.

193. The Tribunal was also concerned about the First Respondent's failure to inform relevant groups of Franchisees and of clients of material information and in that way making misrepresentations of the true position by way of omissions. In particular, the Tribunal found the First Respondent's representation to the National Franchisee Association that no specific guidance had been received from the Lord Chancellor's

Department to have been untrue and a misrepresentation.

194. Having found that the First Respondent had knowingly made misrepresentations to specific groups, namely existing clients of Claims Direct and to the National Franchise Association, the Tribunal considered that it was probable that such representations had been made to the wider public. However, the Tribunal was not satisfied so that it was sure as to exactly what had been said to the wider public. The Tribunal noted that it could not be certain that the telephone scripts had been used as alleged. In addition, the Tribunal noted that the Claims Direct manual, relied upon as evidence of a wider misrepresentation, was dated March 2000, one month before the introduction of ATE insurance premium recoverability.

195. Having found that the First Respondent had made misrepresentations to existing clients of Claims Direct, the Tribunal considered the professional conduct rules and found that the misrepresentations had not been made in the course of the First Respondent's practice as a solicitor.

196. The Tribunal considered it to have been highly likely that Poole and Co's own clients had been affected by the misrepresentations but the Tribunal was not certain so that it could be sure. Accordingly, the Tribunal did not find a breach of Solicitors' Practice Rule 1(a) or 1(c). However, in that Rule 1 (d) extends to practice outside one's role as a solicitor, the Tribunal found the First Respondent in breach of that Practice Rule.

197. In considering the misrepresentations made by the First Respondent the Tribunal took into account the Judgment in Twinsectra v Yardley [2002] UKHL 12. The Tribunal was satisfied that when making the misrepresentations, the First Respondent had known that such untrue statements were dishonest by the standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest.

Charge Four - Introduction and Referral Fees. (Allegations 1, 3, 7, 8, 9 and 16 as against the First Respondent only)

198. Having considered all the evidence relating to the Vetting Fee of £72.50, the Tribunal was not satisfied that it had provided proper value for the services rendered and found it to have been a referral fee. While not a breach of the rules against referral fees when the payments had been between solicitors, subsequently, Poole & Co had sold the vetting part of its business to Claims Direct for £9.75m. However, following that sale, Poole and Co had continued to invoice panel solicitors in respect of work then undertaken, not by Poole & Co but by Claims Direct. The Tribunal found that to have been a wholly artificial device to hide the true recipient of the fees. Such fees had effectively been referral fees paid by panel solicitors to Claims Direct.

199. On the basis of the evidence, the Tribunal found the annual Training and Support Fees of £5000 to have been excessive in that the actual training cost had been some £1000 and the on- site training and monitoring had not justified the additional £4,000, or in firms with a greater number of Claims Direct cases, the even greater training fees. The Tribunal found the Training and Support Fees to have been, in reality, referral fees paid to Claims Direct.

200. Turning to the fees of £395 paid to Medico Legal Support Systems, the MLSS fee, having considered all the evidence, the Tribunal adopted the findings of Chief Master Hurst, who had heard full argument in the Claims Direct test cases, as to whether the payments to MLSS had represented valid disbursements. Chief Master Hurst had clearly found that the payment of £395 plus VAT had been the price that panel solicitors had had to pay for the work. Moreover, the Tribunal accepted the Board Minutes of a meeting of Claims Direct on 10 February 1999 during which the First Respondent had referred to having identified a further 600 cases that could possibly be sold for the "current standard fee of £395.". In addition, the Tribunal, having heard and considered the evidence on the point, did not consider that a standard fee could have been appropriate in every case. In all the circumstances the Tribunal found the fees to MLSS to have been referral fees.

201. The Tribunal expressed its concern about the lack of clarity as to the true recipient of the vetting fees paid by panel solicitors following the sale of the vetting business by Poole & Co to Claims Direct. However, having considered all the evidence, including the documents exchanged between the First Respondent and his Regulator at that time in which referral fees had been described as a grey area, the Tribunal could not be certain so that it was sure that the First Respondent had been fully involved in that decision.

202. In all the circumstances the Tribunal was not satisfied that the second part of the Twinsectra test was established and accordingly did not find dishonesty proved in relation to the allegations linked to introduction and referral fees. Neither did the Tribunal find the charge of inducement proved.

203. However, the Tribunal did find breaches of Practice Rules 1(a) and 1(d) and moreover that the First Respondent had accepted referrals of business and paid referral fees in breach of the Solicitors Introduction and Referral Code 1990 and Rule 3 of the Solicitors Practice Rules.

Charge Five - Contract for sale of Poole & Co - misleading investors and underwriters to the float (allegations 1, 3 and 4 against both Respondents and 16 against the First Respondent only)

204. The Tribunal was satisfied that the Prospectus for the floatation of Claims Direct had made a public promise that the First Respondent intended to remove the related party relationship by divesting himself of Poole and Co. The Tribunal also noted that once that had happened, the First Respondent was to have been and was paid £9.75m for the vetting business. The Tribunal did not accept the evidence of the First Respondent that an intention to effect a disposal would satisfy that public promise.

205. The Tribunal was not satisfied that the Sale Agreement dated 18 August 2000 between the First Respondent and the Second Respondent had properly divested the First Respondent of his interest in Poole and Co. In particular the Tribunal noted Counsel's Further Advice of 17 August 2000 in effect that even after the sale the First Respondent would remain in law either a sole practitioner or else a partner with the Second Respondent. The Tribunal did not accept the evidence of the First Respondent that he had considered that a binding sale had taken place and that he having disposed of his interest he had no longer been involved in the firm.

206. The Tribunal found as proved breaches of Solicitors' Practice Rules 1(a) and 1(d) as against both Respondents. Indeed the Second Respondent admitted the allegations. The Tribunal was also satisfied that in entering into what was not a true or bona fide disposal, the First Respondent's conduct was dishonest by the standards of reasonable and honest people and that he himself had realised that by those standards his conduct was dishonest.

Charge Six - Misleading prospectus - failing to disclose the benefits which the First Respondent (and Mr Sullman) would derive from the initial public offering (Allegations 1 and 2 as against both Respondents and 4 and 16 as against the First Respondent only)

207. The Tribunal was satisfied that the First Respondent had failed to properly discharge his responsibility to make fair and candid disclosure of the substantial personal gain that he would make from the floatation of Claims Direct.

208. The Tribunal took notice of and adopted the findings of Mr Justice Norris with regard to "...a reader of the Claims Direct prospectus would not have appreciated that the ...directors were personally realising £50 million." And "...the literal truth in the Prospectus contained a substantial misrepresentation of the reality."

209. The Tribunal did not accept the First Respondent's submissions that most investors knew, because of extensive Press coverage and otherwise, that he and Mr Sullman had been going to benefit and therefore there had been no failure to provide information. Neither did the Tribunal accept that the First Respondent was not liable because he had received advice from other professionals in relation to his responsibility to disclose.

210. The Tribunal considered that the huge amounts of money that Mr Sullman and the First Respondent were to receive must have been at the forefront of their minds. It did not accept the evidence of the First Respondent that he had not been seeking to hide anything and that he had believed that he had been making fair and candid disclosure. While the Tribunal did not find a breach of Rule 1(d) in that the First Respondent had not been acting in his capacity of a solicitor, it did find the First Respondent to be in breach of Rule 1(a) of the Solicitors' Practice Rules.

211. The Tribunal also found the First Respondent to have been dishonest in that in failing to disclose the substantial benefits that he was to receive his conduct was dishonest by the standards of reasonable and honest people and the Tribunal was also satisfied that he himself had realised that by those standards that his conduct was dishonest.

Charge Seven - Failure to account (Allegation 10 as against the First Respondent only)

212. The Tribunal found the allegation relating to a failure to account substantiated on the evidence. Indeed the allegation was admitted.

Charge Eight - Improper transfer - PB £190 (Allegations 2 and 11 as against the First Respondent only)

213. The Tribunal found the allegations relating to an improper transfer substantiated on the evidence. Again the allegations were admitted.

Charge Nine - Telegraphic transfer fees - secret profits (allegation 5 against both Respondents)

214. The Tribunal found the allegations relating to undisclosed profits from telegraphic transfers substantiated on the evidence. Again the allegations were admitted by both Respondents. The Tribunal noted that the error had been widespread and that at the material time the relevant guidance had yet to be published in the Law Society's Gazette.

Allegations 19, 20 and 21 as against the Second Respondent only

215. The Tribunal found the allegations both admitted and substantiated on the facts.

Mitigation by the Second Respondent

216. The Second Respondent referred the Tribunal to the detailed admissions and mitigation in his Response dated 23rd December 2009. He provided the Tribunal with further details of his professional history and personal and financial circumstances.

217. The Second Respondent apologised to the Tribunal and explained that when the opportunity to purchase Poole & Co had arisen he had only been qualified for one year. At the time he had thought that he was dealing with good people and that it was an exciting prospect. He now realised that he had been extremely naive and foolish.

218. The Second Respondent asked the Tribunal to take into account that the material events had taken place some 10 years ago and he had been living with the allegations including of dishonesty since 2004. He stressed that he had co-operated fully and had made early admissions. The First Respondent gave the Tribunal details of what he referred to as the dreadful impact on his life and health and that of his family arising from his involvement with the First Respondent.

The Tribunal's decision as to sanction and costs in relation to the Second Respondent

219. The Tribunal noted that the Second Respondent had made early admissions in respect of the allegations brought against him some years ago. It accepted that those allegations were less serious than others in the proceedings. The Tribunal also accepted that at the material time, he had been relatively young, naive and lacking in experience. While not disregarding the seriousness of the allegations, given the delay, over which the Second Respondent had had no control, the Tribunal considered that the appropriate penalty was a fine of £5,000 and it so ordered.

220. The Tribunal also considered that the Second Respondent should make a contribution to what would be the very high costs of the case. In all the circumstances, including his financial circumstances, the Tribunal considered an appropriate contribution to be £5,000 and it so ordered.

Mitigation by the First Respondent

21. While accepting the Tribunal's findings, the First Respondent asked the Tribunal to take into account that those findings largely related to its consideration of his role in Claims Direct. In mitigation he reminded the Tribunal that he had put in place an ex gratia payment scheme and that he had practiced for some 22 years without any complaints as to his work as a solicitor.

The Tribunal's decision as to sanction in relation to the First Respondent

222. In the light of its findings as to dishonesty, the Tribunal considered that in order to maintain the reputation of the Profession in which probity and honesty were paramount, the appropriate penalty was that the First Respondent be struck off the Roll of Solicitors and it so ordered.

Application for Costs

223. In the light of the Tribunal's decision as to the costs liability of the Second Respondent, Leading Counsel sought an order for the balance of the costs as against the First Respondent. The Applicant's Schedule of Costs showed a total claim of £242,311.77.

224. The First Respondent submitted an affidavit as to his means including how his payments from the floatation of Claims Direct had been utilised. He also gave oral evidence of his financial position. The First Respondent was subject to cross-examination by Leading Counsel on behalf of the Applicant. He was also asked some additional questions by the Tribunal.

225. The Tribunal was also assisted by a witness statement, with exhibits, from Ian John Beim, a professional investigator, instructed by the Applicant to undertake enquiries into the financial status of the First Respondent.

Decision as to Costs

226. Having considered all the evidence relating to the financial position of the First Respondent, the Tribunal was not satisfied, particularly in the light of the documentation relating to Grosvenor Park 2002 Film LLP, that it had information to justify any departure from its normal order.

227. On the face of the available documentation the First Respondent appeared to have assets valued at some £6 million. Although the First Respondent had offered an explanation and maintained that he did not in fact have such assets, his assertions had not been evidenced by way of documents. The Tribunal noted that his Affidavit contained very little documentary evidence to support his assertions as to what happened to some £20 million. In all the circumstances the Tribunal was not satisfied that the First Respondent was without means and ordered him to pay the costs and to make an interim payment of costs in the sum of £100,000.00 by 4.00pm on the 7th January 2011.

The Orders of the Tribunal

228. The Tribunal Ordered that the Respondent, Colin David Poole of Firmlegal Solicitors, Netley Hall, Dorrington, Shrewbury, Shropshire, SY5 7JZ, solicitor, be Struck Off the Roll of Solicitors.

The issue of costs is to be adjourned until 3 December 2010. Mr. Poole is to file and serve a full affidavit of means, within 21 days. Such affidavit must include full details of all monies received by him relating to, or arising from, his involvement with Claims Direct.

229. The Tribunal Ordered that the Respondent Colin David Poole of Firmlegal Solicitors, Netley Hall, Dorrington, Shrewbury, Shropshire, SY5 7JZ, 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 and it further Ordered that the Respondent do make an interim payment of costs in the sum of £100,000.00 by 4.00 pm on 7th January 2011.

230. The Tribunal Ordered that the Respondent, [RESPONDENT 2] of Bennett`s Solicitors, Westmead House, Westmead, Farnborough, GU14 7LP, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay a contribution towards the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 11th day of February 2010
On behalf of the Tribunal

E Richards
Chairman