No. 10140-2008

On 3 March 2011, Mr Ghanti appealed against the Tribunal's decision on findings, sanction and costs. The appeal was dismissed with costs by Lord Justice Pill and Mr Justice Mackay. Ghanti v Solicitors Regulation Authority [2011] EWHC 810 (Admin.)

IN THE MATTER OF OMER MOHAMMED GHANTI and JASVIR-SINGH SOHI, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J. C. Chesterton (in the chair)
Mr J. N. Barnecutt
Mrs V. Murray-Chandra

Date of Hearing: 19th, 20th, 23rd October 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was made on behalf of the Solicitors Regulation Authority (SRA) by Ian Ryan a partner in the firm of Finers Stephens Innocent LLP, 179 Great Portland Street, London W1W 5LS, on 17 November 2008 that Omar Mohammed Ghanti and Jasvir-Singh Sohi, solicitors, might be required to answer the allegations contained in the statement that accompanied the application and such Order might be made as the Tribunal should think right.

The allegations against Jasvir-Singh Sohi (the Second Respondent) were all withdrawn. The Second Respondent entered into a regulatory settlement agreement with the SRA.

The allegations against Omar Mohammed Ghanti (the First Respondent) were that he had:-

1. Failed to provide clients with written notification of costs as required by Rule 19(2) of the Solicitors' Accounts Rules 1998.

2. The allegation was withdrawn.

3. Failed to inform clients of the required costs information contrary to Rule 15 of the Solicitors Practice Rules 1990.

4. Transferred sums from client account for costs that he had known he could not justify thereby deliberately overcharging his clients.

5. Acted where there had been a conflict or potential conflict of interest between his clients.

6. Deliberately and improperly utilised funds that should have remained in client account for his own benefit and/or the benefit of a third party, in breach of an undertaking given by the firm.

7. The application was heard at the Courtroom, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7SN when Ian Ryan appeared as the Applicant and the First Respondent, who was present, was represented by Sean Larkin of Counsel.

8. The evidence before the Tribunal included Further and Better Particulars of the allegations, dated 25 September 2009, limited admissions and testimonials.

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

The Tribunal Ordered that the Respondent, Omer Mohammed Ghanti of c/o de Maids Solicitors, 2 Park Court Mews, Park Place, Cardiff, CF10 3DQ, solicitor be STRUCK OFF the Roll of Solicitors.

The Respondent to file and serve by 12 noon on Thursday 22 October 2009 a statement of means supported by full documentation and the question of costs to be adjourned until 10.00 a.m. Friday 23 October 2009.

The Tribunal ordered that the Respondent Omer Mohammed Ghanti of c/o de Maids Solicitors, 2 Park Court Mews, Park Place, Cardiff, CF10 3DQ solicitor, do pay the costs of and incidental to this application and enquiry fixed in the sum of £85,000; such Order not to be enforced without leave of the Tribunal.

The facts are set out at paragraphs 1 to 19 hereunder.

1. The First Respondent, born in 1966, was admitted as a solicitor in 1997. His name remained on the Roll of Solicitors as at the date of the hearing.

2. The Second Respondent, born in 1971, was admitted in 2000. His name remains on the Roll.

3. The First and Second Respondents had carried on practice under the style of Cromwell Solicitors LLP ("the Firm") at 38 Bennetts Hill, Birmingham B2 5SN, until the Second Respondent had left the firm on 1 February 2007. The First Respondent had then carried on in practice under the same style with his wife until she had left the firm on 24 June 2007.

4. Upon due notice to the First Respondent, an Investigation Officer of The Law Society had carried out an inspection into the Respondents' books of account and had produced a report dated 25 July 2007 ("the Report").

5. The Investigation Officer had identified that the books of account had not been in compliance with the Solicitors Accounts Rules 1998 as there had been a cash shortage of £709,615.11 which had arisen on a number of matters.

6. The matters, the subject of the Report and of the costs draftsman's report, had been considered by an Adjudication Panel of the SRA on 20 September 2007 when a decision had been made, inter alia, to refer the Respondents' conduct to the Solicitors Disciplinary Tribunal ("SDT"). The matter had been further considered by an Adjudication Panel on 22 November 2007 when a decision had been made to intervene into the First Respondent's practice as he had been the only remaining member of the Firm, and to refer his conduct in relation to the Band Hatton matter to the SDT. The intervention had been effected on 27 November 2007.

Allegations 1-3

7. The Investigation Officer had discovered that on a number of matters, clients' funds had been, in effect, borrowed and paid into office account without a bill, or before a bill had been delivered to the client. A number of such matters had been exemplified in the Report.

8. The Investigation Officer had discovered that it had been standard practice for the Firm to charge telegraphic transfers to clients as disbursements, despite the fact that the firm had been including its own charges in the amount charged to client, something that had not been made clear in correspondence to those clients. The Investigation Officer had estimated that the Firm had made approximately £8,000 secret profit as a result of the practice in a 12 month period.

Allegations 4 and 5

9. The Investigation Officer had inspected and subsequently seized, pursuant to Section 44B, the file of Mr and Mrs G in respect of the proposed sale of L&EC Limited.

10. A costs draftsman, Nick Shelley, had been instructed to assess a bill raised on that file on 10 April 2007 in support of a transfer from client to office account of £302,000 made on the same date.

11. The costs draftsman had prepared reports dated 1 August 2007 and 25 July 2008. In summary, the reports had concluded that the First Respondent had overcharged the clients concerned by approximately £169,000.

12. The costs draftsman had also discovered an attendance note on the file in which the First Respondent had agreed to communicate only with Mrs G (rather than with both his clients, Mr and Mrs G) at her request, thereby continuing to act in a situation where there had been a clear conflict of interest between his clients.

Allegation 6

13. The Firm had been instructed to represent Mr and Mrs P in relation to a partnership dispute with other members of their extended family.

14. On 19 February 2007, the sum of £260,000 had been paid into the firm's bank account to be held to the order of Band Hatton solicitors.

15. On 19 October 2007, Band Hatton had made a complaint to the SRA that those monies had not been returned, despite requests.

16. On 25 November 2007, the First Respondent had written to the SRA, through his solicitors, confirming that he had "inadvertently transferred" the monies to a third party's bank account.

General

17. An explanation had been sought from the Respondents by the SRA on 9 August 2007.

18. The First Respondent had replied on 20 August 2007 but had later written indicating that his initial reply should be disregarded.

19. Between 9 September 2007 and 22 October 2007 the First Respondent had provided his reply in 4 instalments with supporting appendices. Although not sent in sequence, those replies had formed a consolidated response to the Report.

Initial Application by the First Respondent's Representative

20. Counsel for the First Respondent submitted that neither the Firm's accountant's report of June 2008 nor the evidence of Robert Stowell were admissible. In respect of the former, because the Firm's accountant's report did not relate to allegation 1 as pleaded. In respect of the latter, because the statement was irrelevant to the allegation of overcharging as pleaded. Counsel explained his difficulties in working without some files that the Respondent's previous solicitors had a lien on. He stressed that the allegations related to overcharging and not to the fabrication of invoices.

21. The Applicant opposed the application on the basis that Mr Stowell's statement had been served within the time limit set down by the Tribunal and that Counsel's points were appropriate for cross examination. The Applicant stressed that the role of the Tribunal was to seek the truth for the protection of the public and that Mr Stowell's statement was relevant.

22. The Applicant also noted that the Firm's Accountant's Report had been compiled from the Firm's own records. Although it had been viewed as evidence it was not relied on because of the First Respondent's admissions.

The Decision of the Tribunal

23. Having considered the submissions of the Applicant and on behalf of the First Respondent, the Tribunal allowed both the accountant's report and the statement by

Mr Stowell to be admitted. The Tribunal stressed that as an expert Tribunal, to which submissions would be made on the evidence at the appropriate time, it was able to give appropriate weight to all the evidence before it. The accountant's report was the First Respondent's own document, filed by the First Respondent in accordance with the Solicitors' Accounts Rules and as such was properly before the Tribunal. Mr Stowell's statement was relevant in certain respects and the Tribunal would give weight to it as appropriate. The Tribunal noted that there was no allegation before it that the First Respondent had invented a security consultant and obviously the Tribunal would not find as proved an allegation that was not before it.

The Applicant's Submissions and Evidence

24. In opening, the Applicant took the Tribunal through the allegations and the facts. Inter alia, he referred to the interim forensic investigation report dated 25 July 2007 and to the Shelley Reports of 1 August 2007 and of 25 July2008.

25. Mr D. Bailey gave evidence about his visit to the First Respondent's firm in May 2007 and the subsequent interim report dated 25 July 2007. He explained that following a complaint by Mr G disputing the firm's bill, the relevant files had been taken under Section 44B and a costs draftsman, Nick Shelley, had been instructed to assess the bill raised.

26. Referring to his contemporaneous notes of his initial interview on 15 May 2007, Mr Bailey confirmed its contents and further that neither KM, a colleague in the firm, nor IP had been referred to during that interview. Mr Bailey explained that when he had asked the First Respondent if there were any other matters that he wished to raise at that stage, the First Respondent had asked his accountant to leave the meeting and had spoken to Mr Bailey privately about Mr and Mrs G and Messrs A and A. Mr Bailey referred to his notes of those conversations that were before the Tribunal, explaining that in relation to the matter of Mr and Mrs G, his typed notes incorporated the First Respondent's amendments.

27. In cross examination, Mr Bailey agreed that there had been discussions relating to mortgage fraud involving Mr A.

28. The Applicant confirmed to the Tribunal that the Second Allegation involving Mr A had been withdrawn as against both Respondents.

29. Mr Bailey explained that he had not seen and it would not be normal practice for investigators to see, responses to the forensic investigation reports. He confirmed that the Band Hatton monies had not featured in his initial investigation. Mr Bailey said that he had not told anyone at the firm to transfer £260,000 to a DDA account.

30. In re-examination, Mr Bailey confirmed that his memorandum of 2 November 2007 to Sarah Bartlett dealt with intervention matters, in particular the P partnership dispute and Band Hatton. He insisted that the First Respondent had not been cooperative, would not provide him with relevant bank statements (although he did not know why) and had asked him to leave the premises.

31. In response to a question from the Tribunal, Mr Bailey explained that he had been asked to accompany Ms Carneiro to the firm on 1 November 2007 to uplift the P files under a Section 44B notice.

32. In further submissions the Applicant explained that the Band Hatton matter was the subject of allegation 6. He referred to the statement of J. J. Wilby dated 20 August 2009. There was to be no live evidence. It was not disputed that Band Hatton had sent the firm £260,000 to be held in their client account, to Band Hatton's strict order, pending completion of the partnership dissolution agreements. The Applicant also referred to the First Respondent's explanations in Messrs Murdoch's letter of 21 November 2007 (Messrs Murdochs were the First Respondent's former legal representatives).

33. The First Respondent had said that one of the files audited by officials from The Law Society had been the P file in which some £260,000 had been held in client account. The First Respondent had been informed, in or around July 2007, that those funds should be transferred to a DDA account. The First Respondent had signed an authority for that to be done on 18 July 2007.

34. However, on or around 18 July 2007, according to the First Respondent, KM had informed him that he wanted to transfer some funds on a property deal. On 19 July 2007 the First Respondent had signed a TT form that he had not read. It transpired that the First Respondent had transferred the P settlement money to a company that he claimed he had never heard of.

35. In respect of allegation 6, the transfer of the P settlement monies, the Applicant submitted that the First Respondent had behaved dishonestly or at the very least had been grossly reckless as to his actions. Further, the Applicant submitted that the First Respondent's explanation, as detailed in Messrs Murdoch's letter of 21 November 2007, was completely unbelievable. The Applicant referred to the details of the correspondence between the Firm and Mr Wilby of Band Hatton as set out in Mr Wilby's statement of 20 August 2009. The Applicant submitted that the First Respondent's letter and emails promising payment had been disingenuous and misleading. The First Respondent had been aware that his firm did not have the funds and he had been acting dishonestly in corresponding in such terms with Band Hatton. Moreover, as a solicitor, the First Respondent was a custodian of client's funds and not to read a transfer form had been grossly reckless.

36. Nick Shelley gave evidence about his original report of 1 August 2007 and about his further report of 25 July 2008. He explained that he had been asked by the SRA to review the files delivered to him and to comment on the amount charged and the way that costs had been billed. His assessment related to the work conducted in arriving at invoice 2069, dated 31 March 2007, for £302,072.02. Mr Shelley had been unable to find details of the nature of the instructions and details of what the solicitor had done to comply with those instructions. Although he had determined that a contingency fee agreement had been appropriate in principle and that £400 per hour would not have been unreasonable for a senior fee earner, if there had been a substantial risk that the solicitor would not get paid at all, (i.e. provided that monies held under the Proceeds of Crime Act were released to the clients, Mr and Mrs G) the bill which Mr Shelley had assessed had been nearly 3 times the maximum amount he would have expected

to see given the agreement, the number of hours recorded and the possibility that fees for other work should have been charged for under an existing conventional retainer. For example, he had noted that fees for a management buyout had been raised on 11 February 2005 in the total sum of £33,802.71, as a separate bill and payment, as had charges for a software licence on 19 May 2005.

37. Mr Shelley explained that from attendance notes on the files, he had concluded that total attendances had been 197 hours and 18 minutes, which at £400 an hour was £80,000. However, in his letter of 24 April 2007, the First Respondent had said that some 1,175 chargeable hours in total, over a period of some 2½ years, had been spent, resulting in a bill of £470,000. Mr Shelley said that his assessment of the work evidenced on the files resulted in a final bill of £80,000 plus VAT together with £10,000 plus VAT as a broad brush figure to represent a possible fee for the work not charged elsewhere.

38. In relation to the fees payable for security services, those fees would be disbursements and could never be subsumed within the profit costs element of a solicitor's bill.

39. Turning to his second report dated 25 July 2008, Mr Shelley explained that the Applicant had sent him 5 lever arch files, being full copies of the solicitor's files which he had seen before and new material, consisting of correspondence between the firm and Mr and Mrs G's solicitors. Mr Shelley had been asked to review the copies of the Firm's files and to advise whether anything was missing and whether there were any documents in the files that had not been there previously. Also to examine the new material and to assess whether it affected the conclusions in his first report. In the event, an additional attendance note for 20 hours and 40 minutes had brought the time records up to a total of 218 hours, a revised figure of £88,000 giving a total maximum figure of £98,000 as compared to the total actually charged of £257,082.

40. In cross examination, Mr Shelley confirmed that he had been aware that the matter was confidential and that most attendance notes had been handwritten. He explained how the percentage uplift could be calculated based on the solicitor's assessment of risk and confirmed that fees from a security company should be included on the solicitor's bill as a disbursement. Mr Shelley explained that conflict was not his field of expertise.

Closing Submissions of the Applicant

41. The Applicant referred the Tribunal to the facts relating to L&EC Limited in the forensic investigation report and to the relevant bank statements showing the movement of the monies. He noted that the payment of £302,000 on 10 April 2007 by telephone transfer had put the Firm's office account into credit and had thus allowed for a number of payments out, including one for £180,000, to be made thereafter.

42. The Applicant referred the Tribunal to the correspondence relating to Mr and Mrs G's complaint. He also referred the Tribunal to the Firm's bank statements and submitted that if the Firm had transferred funds to pay the private security Firm that had rendered a bill for £384,000, there was no record of such payments by the Firm. Moreover, in November 2006, the Firm's office account had been some £280,000

overdrawn. The Applicant submitted that the First Respondent's claims to have made payments to a security firm were not credible upon the basis of the evidence. He submitted that the evidence of the costs draftsman, Mr Shelley, indicated that the highest figure that could be justified for the work for Mr and Mrs G was some £98,000. £302,000 had been transferred from client account to office account on 10 April 2007 in respect of an invoice dated 31 March 2007. However, the invoice had not been sent to the clients until 24 April 2007. The Applicant further submitted that the transfer of £302,000 could not be justified in any way by the First Respondent. The Applicant noted that in his letter to his clients, Mr and Mrs G, dated 24 April 2007, enclosing their bill, the First Respondent had said that the bill of costs was interim and that the total outstanding balance owed was £552,250 including VAT, i.e. 1,175 chargeable hours at £400 per hour amounting to £470,000 plus VAT. The Applicant noted that nowhere in that letter did the First Respondent refer to the payment as including charges due to a security firm. In the light of the letter of 24 April 2007, the Applicant submitted that the First Respondent's explanation was not credible.

43. The Applicant informed the Tribunal that Mr Stowell was not required to give live evidence as there was to be no cross examination of him on behalf of the First Respondent.

44. Turning to allegation 5, the Applicant referred the Tribunal to the attendance notes found on the files of Mr and Mrs G by Mr Shelley. The note of 15 April 2005 had recorded that the First Respondent had accepted instructions from Mrs G not to communicate with her in writing "as a result of her husband not knowing about her brother-in-law's involvement". The First Respondent had noted that "she has informed me that she does not wish any details to be recorded [save] to say the time that has been spent should be made clear to her." In a further note the First Respondent had written "all information relayed to Mrs G as agreed" and that "Mrs G wishes to keep details away from Mr G". The Applicant referred the Tribunal to principle 15.01 in the 8th edition and to the agreed note of the conversation between the First Respondent and the Investigating Officer, Mr Bailey, dealing with the instructions from Mrs G. The Applicant submitted that Mrs G's instructions had presented the First Respondent with a clear conflict situation and that he should have refused to proceed on that basis.

45. The Applicant referred the Tribunal to the case of *Twinsectra v Yardley* and submitted that both in the Band Hatton matter, where the First Respondent had failed to tell Band Hatton what had happened for some weeks, and in the case of Mr and Mrs G, the First Respondent had acted dishonestly by the standards of honest people and that he had been aware that what he was doing would be regarded as dishonest by those standards.

Submissions on behalf of the First Respondent in relation to the Allegation of Conflict

46. Counsel referred the Tribunal to the details relating to Mr and Mrs G given by the First Respondent to Mr Bailey in the account on 15 May 2007, to the First Respondent's letter of 25 June 2007 to the Legal Complaints Service and to the attendance notes of 15 April 2005 and 7-30 May 2005. Counsel submitted that

whether or not conflict arose was not a question of non-disclosure but was a question of whether acting in that way positively harmed the other client. He further submitted that on the face of the papers there was no conflict at all and therefore no case to answer.

Submissions of the Applicant

47. The Applicant referred the Tribunal again to the relevant pages in the 8th edition of the Guide to the Professional Conduct of Solicitors at page 313 and submitted that given the responsibilities of a solicitor, there was a case to answer in relation to conflict.

The Decision of the Tribunal

48. The Tribunal indicated that having considered the submissions of the Applicant and on behalf of the First Respondent it was satisfied that there was a case to answer in relation to the issue of conflict.

Further Submissions on behalf of the First Respondent

49. Counsel confirmed that no evidence was to be called other than character evidence. The First Respondent had accepted that he had signed the transfer in July relating to the Band Hatton monies but that he had not been aware, at that time, of the significance of the transfer.

50. Counsel formally adduced some 35 character references on behalf of the First Respondent. Counsel referred to the case of *Bryant and Bench v The Law Society [2007]* EWHC 3043 Admin, in which the Court agreed that character references that provided cogent evidence of positive good character were of direct relevance of the issue of dishonesty.

51. Turning to the first allegation with reference to Client T, Counsel submitted that the First Respondent had not been involved and that the transfer of 28 October 2005 had been signed by the Second Respondent. Moreover, that Client T had explained her receipt of £5,000 in cash in her letter of 20 August 2007. Moreover, there was an undated letter of authority.

52. Turning to the matter of Mr and Mrs G, Counsel submitted that in the absence of oral evidence, the relevant correspondence had to be accepted at its face value. He referred to the letter of 16 February 2005 from the First Respondent to Mr and Mrs G which related to the work to be done both by the First Respondent and by the security people. Counsel noted that the letter stated that payment by Mr and Mrs G was conditional upon funds being released. Counsel submitted that Mr and Mrs G entered that arrangement with the First Respondent and the security people with their eyes wide open. The First Respondent's two letters of 18 February 2005 confirmed the security agreement and his letter of 10 March 2005 again referred to it. Counsel also referred to the First Respondent's letter to Mr and Mrs G of 19 May 2006 which noted that the services of the security people had been concluded.

53. Counsel noted that May 2006 marked the end of the firm's attendance notes. The firm had not undertaken further work. The monies had been released in March 2007.

The First Respondent had purchased Mr and Mrs G's debt to their security people. Counsel referred to the letter of 25 October 2006 in which the First Respondent told Mrs G what was happening. The First Respondent's letter of 8 January 2007 referred to work from December 2003 to October 2006 with the sum of £1,807.49 covering the work done from May to October 2006.

54. Counsel accepted that the letter of 24 April 2007, enclosing the interim bill of costs, did not refer to the assignment of the debt owed by Mr and Mrs G to the security people. Counsel referred to all the issues that the First Respondent had been faced with around that particular time. However, Counsel submitted that the work done by the firm for Mr and Mrs G, together with their debt to the security people, had resulted in the total bill. Counsel submitted that the wording of paragraph 32 of the letter of 24 April 2007, enclosing the bill, was just an innocent error on the part of the First Respondent. He submitted that it was necessary to look at the correspondence between the First Respondent and Mr and Mrs G in its totality and not just at paragraph 32 which referred to the Firm spending 1,175 chargeable hours over 2½ years at £400 per hour. Counsel referred to the First Respondent's interview with Mr Bailey in May 2007 when the First Respondent had referred to 210 billable hours and a debt to the security firm of £384,000. He also referred to letters dated 4 June and 25 June 2007 from the First Respondent to the Legal Complaints Service setting out the background to Mr and Mrs G's matters in detail. Counsel noted that no reference to fees for security services had been made in the First Respondent's letter of 2 April 2007 to DAS solicitors, Mr and Mrs G's new solicitors. Again Counsel stressed that this had been of the events taking place at the First Respondent's firm over the relevant period. Counsel submitted that allegation 4, relating to Mr and Mrs G, had not been made out to the requisite standard.

55. Turning to allegation 6, the Band Hatton matter. Counsel noted that the transfer had been made in the middle of an ongoing inspection. He referred to Messrs Murdoch's letter of 21 November 2007 to the SRA which had set out the First Respondent's explanation of the events. Counsel stressed that the First Respondent had relied on his colleague and on his bookkeeper and had not read the transfer form. With hindsight, Counsel explained, that the First Respondent accepted that he should have checked the transfer form. The First Respondent had made the transfer himself at Barclays Bank on Bennetts Hill using his passport. He had believed that it was a matter involving his colleague but it had transpired that the First Respondent had inadvertently transferred the P settlement money to a company that he had never heard of or knew anything about. The First Respondent had known nothing about the P settlement either. The First Respondent had accepted that he should have told Mr Wilby at Band Hatton that the files and the money were missing. However he had sought unsuccessfully to get the monies back. Counsel conceded that the First Respondent might have been negligent to a certain degree but that he had not been dishonest.

The Decision of the Tribunal

56. Having considered all the evidence and the submissions of the Applicant and on behalf of the Respondent and having applied the higher standard of proof, the Tribunal made the following findings as against the First Respondent. As to allegation 1, which the First Respondent had admitted in part, the Tribunal found the

allegation relating to clients B, V and T proved as against the First Respondent as a principal of the Firm. Allegation 2 had been withdrawn and allegation 3 had been allowed to lie on the file. As to allegation 5, acting in circumstances of a conflict or a potential conflict, the Tribunal found the allegation proved. However, the Tribunal noted that it was not the most serious conflict.

57. As to allegation 4, the Tribunal found the allegation proved and was satisfied, so that it was sure, that the First Respondent had been dishonest in deliberately overcharging his clients, Mr and Mrs G. The Tribunal found it inconceivable that an experienced solicitor would write a 7 page letter with 34 paragraphs enclosing a bill and referring to 1,175 chargeable hours in total, over a period of 2½ years at £400 per hour without mentioning that a debt to a security company was included in the calculations. The Tribunal had found Mr Shelley an extremely helpful witness and accepted the conclusions of his reports dated 1 August 2007 and 21 July 2008; that the Firm's time records for Mr and Mrs G totalled 218 hours and moreover that it would have been reasonable for the solicitor to charge £88,000 plus VAT (220 hours at £400 per hour).

58. The Tribunal had not been provided with any evidence whatsoever of any payment by the First Respondent's firm to the security firm. In any event, no such sum could be claimed as part of a solicitor's profit costs; any sum paid would be part of the solicitor's disbursements. Given that the Tribunal was told that the First Respondent had not expected Mr and Mrs G's funds ever to be released, it appeared inconceivable to the Tribunal that the First Respondent would have settled a debt of what he claimed was some £340,000 on their behalf.

59. As to allegation 6, the Tribunal found that the First Respondent had utilised funds that should have remained in client account. However, the Tribunal had not been satisfied, so that it was sure, that in signing the transfer form, the First Respondent had been acting dishonestly. Nevertheless, a solicitor is responsible for safeguarding clients' monies and in signing the transfer, as the First Respondent admitted that he did, without considering the details on the form, the Tribunal considered that the First Respondent had been grossly reckless. Moreover, the Tribunal considered that the First Respondent's subsequent dealings with the matter had been shocking in that he had failed to make timely, honest and open disclosure of what had happened to Band Hatton.

60. Finally, the Tribunal noted that there had been a large number of issues that had cried out for explanations to assist the Tribunal. However, the First Respondent had not given oral evidence and therefore it had not been possible to test the many suggestions put forward on behalf of the First Respondent by his Counsel. The Tribunal had paid great attention to the letters from Messrs Murdochs sent on behalf of the First Respondent but, as evidence, they had to be weighed against contemporaneous documentation, particularly the First Respondent's letter of 24 April 2007, sent with the bill to Mr G.

Mitigation on behalf of the First Respondent

61. Counsel gave details of the First Respondent's professional history and that of his firm, including its difficulties caused by the involvement of one of its employees in mortgage fraud and the departure of the head of the insolvency department and its

staff; the most profitable department in the firm. From February 2007, the First Respondent had been constantly fire-fighting and his firm, which at its peak, had employed some 50 staff, had closed in September 2007. Counsel referred the Tribunal again to the First Respondent's testimonials and also referred to his health problems.

Application for Costs

62. The Applicant referred to the schedule of costs dated 19 October 2009 submitted in respect of the First Respondent only, in the total sum of £104,261.95. The Applicant submitted that it had been a complex and serious case brought by the regulator in the public interest. He explained that costs had been incurred by the First Respondent requiring disclosure of all the Legal Complaints Service files, the P files and the SRA's files. A trainee in his firm had worked on all the disclosure material. Moreover, it had been necessary to prove every allegation, resulting in the need for Further and Better Particulars of an allegation relating to breaches of the Solicitors Accounts Rules when the First Respondent would be liable in any event as a principal of the Firm. All witnesses had been on standby until the Friday before the hearing. The lack of any statement in response by the First Respondent had meant that it had not been possible to narrow the issues. The Applicant sought an Order for fixed costs.

63. Counsel for the Respondent challenged what he considered to be the excessive amount of time claimed for issues relating to disclosure. Counsel insisted that the First Respondent's requests had been reasonable and necessary to establish the details of the case against him.

64. Turning to the means of the First Respondent, Counsel explained that the First Respondent's income barely covered his outgoings and that he had no capital. Counsel referred the Tribunal to the decision in *D'Souza v The Law Society [2009]* EWHC 2193 (Admin).

The Decision of the Tribunal as to both Penalty and Costs

65. In view of the Tribunal's findings in relation to extremely serious allegations against the First Respondent, including a finding of dishonesty, the Tribunal considered that a strike off was the appropriate penalty, both for the protection of the public and to maintain the reputation of the profession. As to costs, having taken note of the case of *D'Souza v The Law Society*, the Tribunal adjourned the costs issue to enable the First Respondent to prepare a full statement as to his means with supporting documentation.

The Hearing as to Costs on 23 October 2009

The Applicant gave details as to claims on the compensation fund and explained that a claim in relation to the P settlement monies of £260,000 was to be handled by the Firm's indemnity insurers. Although Mr and Mrs G had indicated that they intended to make a claim, no claim had yet been made. The Applicant gave details as to the costs of intervention in the Firm and explained that there would be no surplus monies for the First Respondent. In the event that the Tribunal found the First Respondent to be in a poor financial position, the Applicant asked for an Order for fixed costs, not to be enforced without leave.

66. The First Respondent gave oral evidence to the Tribunal as to his means relying on his detailed statement and supporting documentation.

67. Counsel for the First Respondent addressed the Tribunal further on costs and submitted that the costs should be formally assessed so as to allow proper and appropriate scrutiny. He stressed that the First Respondent was unable to pay costs and that the D'Souza case did not envisage an Order to be made not to be enforced without leave. Counsel sought to distinguish the costs position in the case of *Merrick v The Law Society* in that the actions of the Appellant in that case had forced the Respondent to appeal and accordingly to incur further costs.

The Decision of the Tribunal as to Costs

68. Having considered all the additional evidence and the parties' submissions, the Tribunal considered that it first had to decide whether, in the particular circumstances, the Applicant was entitled to an Order for costs. The Tribunal found that the proceedings had been properly brought and accordingly an Order for costs in favour of the Applicant was appropriate. Secondly, as to amount, the Tribunal was satisfied that costs should be fixed at £85,000 having considered the representations as to reasonableness from both parties. Finally, the Tribunal was satisfied that, after enquiry, the First Respondent was not currently in a position to satisfy a costs Order. Accordingly, an Order would be made for costs to be paid but its enforcement not to be pursued without leave of the Tribunal. The Tribunal explained that such leave was to be dependent upon the financial circumstances of the First Respondent. The Tribunal was satisfied that costs of £85,000 had been properly incurred by the regulator and it would be inappropriate for the profession as a whole to continue to bear those costs if the First Respondent was ever in a position to discharge them.

Dated this 19th day of March 2010
On behalf of the Tribunal

J. C. Chesterton
Chairman