No. 10150-2008

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF STEPHEN BENEDICT JOHN BARTH, *[RESPONDENT 2]*, and *[RESPONDENT 3]*, solicitors (Respondents)

Upon the application Mr George Marriott
On behalf of the Solicitors Regulation Authority

Mr D J Leverton (in the chair)
Mr A H B Holmes
Mr S Marquez

Date of Hearing: 25th March 2010

FINDINGS AND DECISION

Appearances

George Marriott appeared for the Applicant.

[Respondent 2] and *[Respondent 3]* were represented by Mr Tony Guise, solicitor and partner of Guise Solicitors, 1 Alie Street, London, E1 8DE.

The application to the Tribunal on behalf of the Solicitors Regulation Authority ("SRA") was made on 1st December 2008. A supplementary application had been made on 25th September 2009.

Allegations

The allegations against the First Respondent, Stephen Benedict John Barth, were that he:

1. Failed to comply with a notice given under s.44B Solicitors Act 1974;

2. Failed to comply with undertakings;

3. Failed to reply to correspondence from solicitors;

4. Provided statements which he knew or ought to have known were misleading;

5. Failed to maintain files and records and therefore failed to act in a client's best interests and failed to provide a proper standard of work, contrary to Rule 1(c) and (d) Solicitors Practice Rules;

6. Failed to deliver bills within a reasonable time following the conclusion of a matter;

7. Failed to keep accounts records properly written up in accordance with Rule 32 of the Solicitors Accounts Rules 1998 ("SAR");

8. Delayed in transferring money to office account from client account contrary to Rule 19(3) SAR;

9. Maintained overdrawn client ledgers contrary to Rule 22 SAR;

10. Allowed his client account to be used as a banking facility contrary to Rule 15 SAR;

11. Failed to deal promptly and substantively with the SRA up to 30th June 2007;

12. Failed to deal with the SRA in an open, prompt and cooperative manner after 1st July 2007, contrary to Rule 20.03 Solicitors Code of Conduct 2007;

13. Improperly transferred monies from client account to office account contrary to Rule 22 SAR;

14. Failed to follow The Law Society's guidelines on money laundering.

It was the Applicant's case that Mr Barth had been dishonest in connection with allegations 2, 4, 9, 10 and 14.

The allegations against the Second Respondent, *[Respondent 2]*, were that she:

1. Failed to comply with a notice given under s.44B Solicitors Act 1974;

2. Failed to keep accounts records properly written up in accordance with Rule 32 SAR;

3. Delayed in transferring money to office account from client account contrary to Rule 19(3) SAR;

4. Maintained overdrawn client ledgers contrary to Rule 22 SAR;

5. Allowed her client account to be used as a banking facility contrary to Rule 15 SAR;

6. Improperly transferred monies from client account to office account contrary to Rule 22 SAR;

7. Failed to comply with Rule 6 SAR;

8. (Withdrawn with the agreement of *[Respondent 2]* and the consent of the Tribunal.)

9. Failed adequately to supervise the First Respondent, contrary to Rule 5.01 Solicitors Code of Conduct ("SCOC");

10. Transferred costs without first delivering a bill or written notification of costs to the client, contrary to Rule 19(2) SAR;

11. Providing misleading information concerning costs, contrary to Rule 2.03 SCOC;

12. Maintained suspense ledgers for longer than justifiable, contrary to Rule 32(19) SAR.

The allegations against the Third Respondent *[Respondent 3]*, were that he:

1. Failed to comply with a notice given under s.44B Solicitors Act 1974;

2. Failed to keep account records properly written up in accordance with Rule 32 SAR;

3. Delayed in transferring money to office account from client account contrary to Rule 19(3) SAR;

4. Maintained overdrawn client ledgers contrary to Rule 22 SAR;

5. Allowed his client account to be used as a banking facility;

6. Improperly transferred monies from client account to office account contrary to Rule 22 SAR;

7. Failed to comply with Rule 6 SAR;

8. (Withdrawn with the agreement of *[Respondent 3]*and the consent of the Tribunal;)

9. Failed adequately to supervise the First Respondent, contrary to Rule 5.01 SCOC;

10. Transferred costs without first delivering a bill or written notification of costs to the client, contrary to Rule 19(2) SAR;

11. Providing misleading information concerning costs, contrary to Rule 2.03 SCOC;

12. Maintained suspense ledgers for longer than justifiable, contrary to Rule 32(19) SAR.

In the absence of Mr Barth the Tribunal was satisfied that he had been properly served and given notice of the hearing. He had been served in particular with Civil Evidence Act Notices and had provided no counternotice.

[Respondent 2] and *[Respondent 3]* admitted the facts and the allegations against them.

Factual background

1. Mr Barth, born in 1954, was admitted as a solicitor in 1979. *[Respondent 2]*, born in 1953, was admitted as a solicitor in 1980. *[Respondent 3]*, born in 1955, was admitted as a solicitor in 1980. Their names remained on the Roll.

2. At the material times they were partners in Jenkins, O'Dowd & Barth (now known as Jenkins Law) ("the firm") whose practising address was 384 Garrett Road, London, SW18 4HP.

3. Mr Barth, who did not hold a practising certificate, retired from the firm in October 2006. *[Respondent 2]* and *[Respondent 3]* did hold practising certificates and continued to practise as partners in Jenkins Law.

4. Mr Barth had been responsible for commercial conveyancing, *[Respondent 2]* had been responsible for wills and probate and *[Respondent 3]* conducted residential conveyancing.

5. The SRA had received a number of complaints which stemmed from 17 conveyancing transactions of which Mr Barth had conduct. In each case Mr Barth had acted for the sellers of properties and had failed to discharge his undertaking to discharge outstanding mortgages to ensure that purchasers obtained title free of financial charges.

6. On 6th March 2006, the SRA requested the firm's files and ledgers relating to nine of the matters in which complaints arose pursuant to s.44B of the Solicitors Act 1974.

7. The SRA received the files in piecemeal fashion and by 30th March they had received all of the transaction files, but client ledgers that related to only two of the matters. The ledgers were finally received by the SRA on 4th April 2006.

8. Some of the files were incomplete and it appeared that standard documents were missing. Mr Barth did not respond to two enquiries about this but he did write on 7th November 2007 stating that the complete files had been sent to the SRA.

9. When the SRA raised the issue of his delay in complying with the s.44B request Mr Barth in his letter of 17th April explained that he had been subject to pressure of work and the stress of having to deal with the SRA, which served also to explain the misfiling of missing documents.

10. The SRA served a further s.44B notice on Mr Barth on 30th March 2007 with which he complied with on 11th April 2007.

11. On 24th October 2007 the SRA served a further s.44B notice upon *[Respondent 2]* and *[Respondent 3]* in respect of four of Mr Barth's files. The deadline for compliance was 29th October 2007 when the SRA's Forensic Investigation Officer ("FIO") would be attending the firm's offices.

12. The files were not sent. The SRA wrote reminders in November and December 2007. One of the files was sent to the SRA with a letter dated 18th December 2007 which informed the SRA that a requested file was being held by another solicitor and that a copy had been requested on the same date but it had not proved possible to locate the other two requested files.

13. On 11th March *[Respondent 2]* sent "all the relevant papers" in respect of the file requested from the other solicitors to the SRA which pointed out on 24th April that the whole of the file was required. On 25th March 2008 *[Respondent 2]* and *[Respondent 3]* located and provided another file. After the involvement of the SRA the complainant had provided a number of the missing documents and when Mr Barth's representative wrote to the SRA about these issues in April 2007, it was conceded that where a number of flats in a single building had been sold, only one file had been opened. There had been poor file management, owing to stress on the part of Mr Barth, which had led to complacency and delay in attention to post-completion matters. It had been accepted that Mr Barth had not acted in accordance with the firm's office manual.

14. The FIO investigated seventeen conveyancing transactions of which Mr Barth had conduct on behalf of the client, GR. GR bought properties at auction (through one of his companies) with the assistance of a lender; the properties being converted into flats and then sold on. Ten of GR's companies were involved in the transactions investigated.

15. In each of the flat sale transactions Mr Barth gave an undertaking in response to requisitions on title that he would redeem or discharge mortgages or charges to the extent that they related to the particular flat on or before completion and would provide Forms DS1 and DS3 or the receipted charges or confirmation that notice of release or discharge in electronic form had been given to the Land Registry as soon as they were received. In the absence of reference to a specific time for compliance with the undertaking there was an implied term that it would be performed within a reasonable time, having regard to its nature.

16. The Tribunal had been invited to consider two particular sale transactions where the proceeds of sale were largely passed to GR and no part had been used to discharge any outstanding financial charges, despite assurances given to the purchasers' solicitors that moneys were being sent to the seller's lender. In one case completion took place on 29th October 2004 but it was not until a substantial exchange of correspondence had taken place that the DS1 was supplied by the seller's lender and passed to the purchaser's solicitor on 22nd April 2005, when Mr Barth's covering letter created the false impression that any delay was due to the lender.

17. The SRA addressed enquiry to Mr Barth to which he responded on 23rd September 2005 that he had received the DS1 from the lender on or about 28th April 2005 and the delay had been due to his having to wait for the correct redemption figure. The file revealed that the figure had not been requested until 22nd April 2005. A legal representative of the Respondent wrote to the SRA on 17th April 2006 explaining that Mr Barth had been experiencing personal and professional difficulties. He had been exhausted and "burnt out". He had buried his head in the sand and hoped it would go away. His failure to comply with an undertaking within a reasonable period had been because he was too mentally exhausted to conclude post completion matters.

18. In the second transaction the sale had been completed on 25th April 2007. The balance on the ledger was paid to GR. No money was paid to GR's lender. The usual undertaking had been given. A restriction had been registered. There had not been compliance with the undertaking to provide a receipt or discharge.

19. In his letter to the SRA of 17th April Mr Barth enclosed copies of invoices for the transactions under investigation with an explanation that some of the bills appeared excessive because they related to a number of transactions involving the same property. He stated that monies were only ever transferred to office account once the bill had been issued. The bookkeeper prepared the transfers and kept a record and then the funds were periodically transferred by a partner, based on the bookkeeper's calculations. This practice led to bulk transfers rather than individual identifiable transfers. In two transactions no bill had been rendered and in some cases bills had been rendered a long time after completion.

20. An explanation of individual transfers which made up the bulk of payments had been supplied as was an explanation of the procedure in place between the firm and the bookkeeper and how that could have led to delays. There had been no disbursements included on the invoices as these were paid either from client account or were of a nominal value and not charged to the client. The delays in submitting bills to the client and the delays in the actual transfer of payments was due to the Respondent becoming "burnt out" and unable to cope with the pressures of work. The apparent lack of disbursements was attributed to the fact that few arose in connection with sale transactions.

21. The Tribunal had before it a number of transactions where, for example, a single invoice related to the sale of a number of properties and was not broken down to show costs for individual transactions. The invoice had been dated 20th October 2006 but one sale transaction had been completed on 27th October 2004. The transfer for costs had been made on 8th November 2006. The money did not move from the firm's client account to the office account until 14th November 2006.

22. In other matters a transfer of costs from client to office account had been made where there was no evidence that the client had been provided with written notification of the costs before the transfer of funds and where a bill had not been drawn until a long time after the completion of the transaction.

23. The FIO had expressed particular concern about large sums of money being paid into client account by a GR company and paid out to another GR company which did not relate to a particular transaction.

24. By way of example in one case the sale price had been £230,000. Further credits totalling £3,415,000 had been recorded on a ledger which related to the sale. On 27th October 2004, P, a GR company, had paid £55,000 into the client acount in addition to the purchase price paid by GH Law on behalf of the purchaser. On the same day a transfer of £76,000 was made in favour of E, another GR property. On 16th November 2004 P paid in £600,000 and on the same day £810,000 was transferred out. On 17th December 2004 P paid in £950,000 and on the same day two transfers were made in favour of the other GR company, £120,000 and £1,000,000. On 9th February 2005 P paid £750,000 into the client account and on the same day a transfer was made in favour of E, another GR company of £750,000. Neither P nor the other GR company was a party to the sale transaction.

25. There were eight other transaction ledgers before the Tribunal recording the payment in of large sums of money to client account by P, being over and above the purchase price of the transaction to which the ledger upon which these unrelated transactions were recorded and large sums were paid out to another GR company. The sums paid in totalled £5,243,000. There were substantial payments out and in some cases there was an overpayment leaving a substantial shortfall on client account. In some cases exemplified the payments out were not recorded in the ledger at all.

26. It was the SRA's case that the Respondents had used client money for a purpose other than that particular client's matter and that the Respondents allowed the client account to be used as a banking facility and in so doing the Respondents had ignored the Law Society's guidelines on money laundering.

27. During an interview with the SRA on 31st October 2007 *[Respondent 2]* and *[Respondent 3]* indicated that GR had been a client of the firm for about 12 years and was by far the firm's biggest client. Mr Barth had acted for him and his companies. They had subsequently come to accept that the firm's client account had been used as a banking facility. They had been unaware of that taking place at the time.

28. *[Respondent 2]* and *[Respondent 3]* had explained that GR and his companies dealt with properties throughout south London and the credit facilities available to GR probably exceeded £50 million. The sums received by the firm from GR or his institutional lenders frequently amounted to millions of pounds. *[Respondent 2]* and *[Respondent 3]* were aware of this and the sight of large sums passing in and out of the firm's client account did not cause them concern in this context.

29. The Report highlighted a further eight transactions where there had been delays in compliance with undertakings given by Mr Barth. The length of the delays ranged from four months to over a year.

30. The FIO also reported on the improper use of the client account by allowing GR's companies to make transfers to each other through the firm's client account without any connection with a specific conveyancing transaction. The FIO reported that these types of transfers involved a minimum of £8.6 million (this figure being in addition to the figure referred to in paragraph 25 above).

31. When asked, GR's explanation had been that the transfers were made for his "own business purposes". No response had been made by or on behalf of Mr Barth.

32. The Second and Third Respondents' legal representative had explained to the SRA that since GR was severely disabled many of his instructions would have been given by telephone to the First Respondent. The files provided to the SRA did not contain any written authorisation for the transfers made.

33. On 21st July 2008 an FIO commenced an investigation into Jenkins Law. The Second and Third Respondents explained that prior to Mr Barth's retirement on 12th December 2007, he had been, in effect, the managing partner and had been responsible for the majority of the financial and management matters.

34. *[Respondent 2]* and *[Respondent 3]* explained that following Mr Barth's departure from the firm they became aware of misuse of client funds in relation to transactions conducted by Mr Barth. They had been liaising with their professional indemnity insurers who had advised them to seek Mr Barth's assistance wherever possible. Mr Barth had been attending the office approximately twice a week.

35. The FIO's Report identified a number of improper transfers had been made because of a lack of accurate and timeous billing. A number of bills had not been recorded in the firm's bill book. Moneys received had not been used to pay a disbursement and money had been transferred from client to office account which either was not due, and/or no bill had been delivered to the client. The FIO's report set out concerns relating to financial transactions in other conveyancing matters of which Mr Barth had had conduct.

36. When initially questioned by the SRA *[Respondent 2]* and *[Respondent 3]* had been unable to provide any explanation as all of the transfers had been made in relation to matters which had been conducted by Mr Barth.

37. It was the Applicant's case that *[Respondent 2]* and *[Respondent 3]* had failed adequately to supervise Mr Barth. Bulk bills had been raised on a number of files on 5th October 2007. These bills were not recorded on the relevant client ledgers until 1st March 2008 and the relevant sums were transferred from client to office account on 30th April 2008. *[Respondent 2]* and *[Respondent 3]* were not able to confirm that the invoices had been sent to the clients before the transfers were executed.

38. The FIO identified three suspense ledgers entitled "Wills Misc", Z Con Gen Misc", and "L. Misc". These suspense ledgers had been active since 1st June 2003, 12th December 2001 and 30th June 1998 respectively. The suspense ledgers contained old balances in office account which had not been applied to the relevant client ledgers. The maximum balances held at any time on "L.Misc" was £405.01 on the office side, on "Wills Misc" £7,854.75 on the office side and on "Z Con Gen Misc" £383,908.37 on client side.

39. *[Respondent 2]* and *[Respondent 3]* had accepted that the moneys held on the suspense ledgers had to be applied to the relevant client ledgers particularly where moneys belonged to clients. It was the Applicant's case that the maintenance of a suspense ledger for over eight years could not be justified.

40. The FIO had noted that the firm charged between £25 and £30 plus VAT for each telegraphic transfer of funds it processed. The firm's bank charged £15 per telegraphic transfer. The firm's client care letters made no reference to fees being payable for telegraphic transfers. *[Respondent 3]* had explained that the higher amount represented inclusion of the firm's administrative fee for implementing the transfer. In the year April 2007 to March 2008 TT fees were charged on 417 occasions. Both *[Respondent 2]* and *[Respondent 3]* accepted that the sum of £20 or £30 should not have been included as a "disbursement" on their invoice but should have been shown as a profit cost.

41. The firm's invoices for conveyancing work contained a charge of £10 to £30 for petty disbursements incurred by the firm such as charges for postage, telephone, faxes and

copying. *[Respondent 2]* and *[Respondent 3]* accepted that such a charge was a profit cost and not a "disbursement".

42. The documents reviewed by the Tribunal included: the reports of the SRA's FIOs; the witness statement of *[Respondent 2]*; the witness statement of *[Respondent 3]*; and the written character evidence.

Witnesses

43. *[Respondent 2]* having taken the Oath made a statement to the Tribunal.

Findings as to fact and law

The First Respondent, Mr Barth

44. The Tribunal was satisfied that allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 were substantiated by the facts, which were not disputed by Mr Barth, set out above.

45. Further, the Tribunal having applied the two-part test set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12 found that in failing to comply with undertakings and in providing statements that were misleading to his knowledge, in maintaining overdrawn client ledgers, in allowing his client, GR and his companies, to use client account as a banking facility where moneys were paid in and paid out without Mr Barth or his firm handling such moneys in connection with any conveyancing or other transaction on behalf of the client, Mr Barth's conduct was dishonest by the standards of reasonable and honest people. Further, in failing to have proper regard to or to follow The Law Society's guidelines relating to the prevention of money laundering, Mr Barth turned at best a blind eye to what was going on and in doing so was dishonest by the standards of reasonable and honest people. The Tribunal had before it certain explanations and mitigating factors put forward by or on behalf of Mr Barth. It was the Tribunal's view that none of these served to explain Mr Barth's actions or served to exonerate him in any way nor did they provide an explanation that would enable the Tribunal to conclude that Mr Barth had an honest belief that what he was doing was not dishonest by those same standards. The Tribunal was therefore satisfied so that it was sure that the Respondent did not have an honest belief that his actions were acceptable or would not have been regarded other than as dishonest by reasonable and honest people and therefore that he knew that what he was doing was dishonest by those same standards.

46. The Second Respondent, *[Respondent 2]*, and the Third Respondent, *[Respondent 3]*, admitted all of the allegations made against them and the Tribunal therefore found them to have been substantiated.

Mitigation

47 The Tribunal had noted that Mr Barth's solicitor had addressed a letter to the Tribunal dated 8th December 2009 in which it was confirmed that Mr Barth would not be attending the hearing and that he had informed the SRA that he would submit to a voluntary strike off.

48. The Tribunal took into account *[Respondent 2]*'s oral statement and noted in particular her assertion that her clients relied heavily upon her and her request that she not be prevented from practising so that an orderly winding up or transfer of her clients' affairs could be achieved before the firm closed as it had to in the autumn of 2010.

49. *[Respondent 3]* and Mr Barth had been at university together and *[Respondent 2]* met *[Respondent 3]* while studying at the College of Law. The three Respondents qualified as solicitors and by the time the material events had taken place they had known each other for in excess of 30 years. They had built up a practice which had enjoyed modest success over the years and had not been involved in any form of regulatory difficulty.

50. In about 1998 Mr Barth had separated from his wife and had become more and more immersed in his work, staying at the office very late into the night. He opened the post in the morning and was in control of the firm's administrative business. It was easier therefore for him to disguise from his partners what he was doing.

51. *[Respondent 2]* and *[Respondent 3]* had made their best efforts to comply with the s.44(B) notice served upon them, but Mr Barth had recently retired from the firm and it had become apparent that his files were in a chaotic state. There had been considerable demands for the supply of papers by the administrators of a number of GR's companies which had passed into administration owing to the effects of the economic recession. At the same time a number of solicitors to whom Mr Barth had given undertakings, which he had not honoured, had commenced proceedings to enforce those undertakings. There had been an arbitration in which *[Respondent 2]* and *[Respondent 3]* had been unsuccessful in defeating an aggregation argument. All of these issues were coming to a head at the same time as the commencement of the FIO's investigation.

52. *[Respondent 2]* and *[Respondent 3]* accepted their responsibility for keeping accounts and records. They had proper systems in place but even in the best run firms it was possible for a fee earner to circumvent those systems. All of the breaches had arisen in connection with Mr Barth's matters.

53. Mr Barth and his solicitor had not advanced any medical evidence in to support his claim to be suffering from stress. The breaches identified by the FIO had been caused by Mr Barth and not by the other two Respondents. All overdrawn funds had been replaced. The firm of Jenkins Law had always filed unqualified Accountant's Reports.

54. With regard to the use of client account as a banking facility, Mr Barth's client, GR and his companies, had a very large scale business involving property dealing. His business model had been to buy properties capable of being converted into flats and then carrying out the work of converting the property into flats and selling them on to buyers for whom he arranged mortgages. Legal fees, removal expenses and the cost of furnishing the flats were funded by way of second loans from GR or his companies secured by a second charge on the property. Such second charges were provided on condition that the purchaser instructed a solicitor nominated by GR. It was felt that

this arrangement led to a greater indulgence of Mr Barth's tardiness in providing DS1s than might otherwise have been the case.

55. GR and/or his companies had the benefit of banking facilities of up to £50 million. At any one time he would have up to 150 properties for sale with a similar number of properties held as part of his estate and other properties in the process of being purchased. As a result of this large scale activity, large sums of money flowed in and out of client account and the paying in and paying out of very large sums of money was not unusual and did not arouse any suspicion on the part of *[Respondent 2]* or *[Respondent 3]*. Such movement of moneys appeared to be entirely consistent with the client's business and the legal work conducted on his behalf. Despite being asked to do so, GR had not provided any explanation for his inter-company transfers.

56. Neither *[Respondent 2]* nor *[Respondent 3]* had any intention to further money laundering activities and they did not believe that money laundering had in fact taken place.

57. *[Respondent 2]* and *[Respondent 3]* accepted their responsibility for the breach of Rule 6 of the Solicitors Accounts Rules. They also accepted that their supervision regime could have been more robust. They held meetings every day in which their respective caseloads were discussed and they took steps to ensure that each of the three partners was familiar with the others' clients. *[Respondent 2]* and *[Respondent 3]* had been aware that Mr Barth had been acting for a well established client dealing in high value commercial conveyancing.

58. Following Mr Barth's retirement from the firm, he had, upon the insistence of the professional indemnity insurers, returned to the firm for the purpose of concluding work on his files. During that period he prepared bills to conclude his matters. Bills had been prepared in 2008 but had been dated 2007 so as to enable the work in progress for which he billed to fall into the financial period leading up to his retirement so that he would derive the benefit.

59. *[Respondent 2]* had not incorrectly described certain profit costs charged in the firm's conveyancing invoices as disbursements as she did not undertake that sort of work.

60. It was accepted that suspense ledgers had been maintained for longer than was acceptable and those suspense ledgers had been closed. They had been a legacy of Mr Barth's management of the firm and the Respondents had ceased to adopt that practice.

61. *[Respondent 2]* and *[Respondent 3]* had been ruined by their erstwhile friend's mismanagement of the GR connection. They faced substantial claims by those to whom Mr Barth gave undertakings which he did not honour. They had been forced to enter into IVAs leading to the sale of their properties. In effect they had been working for some years not for profit but to make money with which to repay the enormous debts created by Mr Barth's conduct.

62. The firm's cashiers, a firm of chartered accountants, and its reporting accountants who were paid very substantial fees, had not given any warning about Mr Barth's activities.

63. Because of the actions of Mr Barth no insurer would provide the firm with professional indemnity insurance for the 2008/2009 insurance year. As a result the firm was in its second year of being insured in the Assigned Risks Pool at extortionate cost. The firm could not remain in the Assigned Risks Pool for more than two years and because of its inability to secure professional indemnity insurance the firm would have to close at the end of September 2010. Thereafter, *[Respondent 2]* and *[Respondent 3]* would have to seek paid employment.

64. The Tribunal was invited to give due weight to the fact that *[Respondent 2]* and *[Respondent 3]* had cooperated fully with the SRA from the outset. They had made early admissions. They had cooperated fully with visits by an FIO in 2007, 2008 and 2009. No issues had been identified following the 2009 visit.

65. *[Respondent 2]* and *[Respondent 3]* had suffered enormously financially and physically. *[Respondent 2]*'s health had suffered.

66. Conditions had been placed on *[Respondent 2]*'s and *[Respondent 3]*'s practising certificates that they should not take any trainees and that they should attend a management course. They had complied. The Tribunal was invited to conclude that this reflected the regulator's view that the issues which were the subject of the disciplinary proceedings had been wholly unconnected with the way in which *[Respondent 2]* and *[Respondent 3]* personally ran their practice. They did not represent a danger to the public and they had done nothing that would cause harm to the good reputation of the solicitors' profession.

67. *[Respondent 2]* and *[Respondent 3]* proposed to effect an orderly closure of the firm in September 2010.

68. The matters before the Tribunal had been hanging over the heads of *[Respondent 2]* and *[Respondent 3]* for almost four years.

69. *[Respondent 2]* and *[Respondent 3]* very much regretted the distress, inconvenience and anxiety which Mr Barth's conduct had caused and apologised to the Tribunal for being unable to put a halt to that conduct.

70. The Tribunal was invited to give due weight to the written testimonials which supported *[Respondent 2]* and *[Respondent 3]* confirming them to be solicitors of integrity, probity and trustworthiness. The Tribunal was invited, in particular, not to make an Order that would prevent *[Respondent 2]* and *[Respondent 3]* from effecting the orderly closure of their practice in the best interests of their clients.

Sanction and Reasons

71. The Tribunal had found all of the allegations against Mr Barth to have been substantiated. They also as set out above found that he had been dishonest. The Tribunal considered that in order to protect the public and maintain the good reputation of the solicitors' profession it was appropriate and proportionate to order that Mr Barth be struck off the Roll of Solicitors.

72. With regard to *[Respondent 2]* and *[Respondent 3]*, the Tribunal found all of the allegations against them to have been substantiated and gave them credit for the fact that they had admitted the allegations. The Tribunal was of the view that they had been the victims of their former partner's nefarious activities and were not personally culpable for the serious matters which had occurred. They were, of course, liable as partners and they themselves had accepted that they had not exercised an appropriate level of supervision over Mr Barth. However, the Tribunal was mindful of the fact that Mr Barth had been well known to and trusted by *[Respondent 2]* and *[Respondent 3]* over a long period of time. The Tribunal had also taken into account the very difficult position in which *[Respondent 2]* and *[Respondent 3]* had found themselves. The Tribunal was of the view that a substantial fine would demonstrate to the public and to the solicitors' profession that the failures and breaches of *[Respondent 2]* and *[Respondent 3]* would not be tolerated and the Tribunal Ordered that *[Respondent 2]* and *[Respondent 3]*each to pay a fine of £15,000.

Costs

73. The Tribunal accepted the figure for costs provided by the Applicant and fixed the Applicant's costs in the sum of £67,806.23. It was right that the Respondents should pay the Applicant's costs. The Tribunal's Orders for costs were made on a several basis and were intended to reflect the respective Respondents' levels of culpability. The Tribunal Ordered Mr Barth to pay £47,806.23 and Ordered *[Respondent 2]* and *[Respondent 3]* to pay £10,000 each.

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

75. The Tribunal Ordered that the Respondent, Stephen Benedict John Barth, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £47,806.23.

76. The Tribunal Ordered that the Respondent, *[Respondent 2]*, solicitor, do pay a fine of £15,000.00, such penalty to be forfeited to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.

77. The Tribunal Ordered that the Respondent, *[Respondent 3]*, solicitor, do pay a fine of £15,000.00, such penalty to be forfeited to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.

Dated this 17th day of May 2010
On behalf of the Tribunal

D J Leverton
Chairman