

On 3 February 2011, the Solicitors Regulation Authority appealed against the Tribunal's decision on costs. The appeal was dismissed by Mr Justice Mitting. Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin.)

IN THE MATTER OF JOHN PAUL DAVIS and ELAINE MCGLINCHEY, solicitors

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr W M Hartley (in the chair)
Mr N Pearson
Mr G Fisher

Date of Hearing: 5th November 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Margaret Eleanor Bromley of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 OHQ on 16th March 2009 that Paul John Davis of Bracken Wood, 145a Moss Delph Lane, Aughton, Ormskirk, Lancs, L39 5BH (erroneously described in the Rule 5 Statement as of 58 Yew Tree Road, Walton, Liverpool, Merseyside, L9 1AL), solicitor, and Elaine McGlinchey of 58 Yew Tree Road, Walton, Liverpool, Merseyside, L9 1AL (erroneously described in the Rule 5 statement as of Bracken Wood, 145a Moss Delph Lane, Aughton, Ormskirk, Lancs, L39 5BH), solicitor, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should consider appropriate.

The allegations made against Paul John Davis, the First Respondent and Elaine McGlinchey, the Second Respondent, were that they had:

1. Failed to fulfil within a reasonable time (or at all) an undertaking given in the course of practice and/or given outside the course of practice but as solicitors to the Solicitors Disciplinary Tribunal at a hearing on 19th July 2007 contrary to the Solicitors Code of Conduct 2007 ("the Code") Rule 10.05.

2. Contrary to Rule 10.05 of the Code, failed to fulfil within a reasonable time (or at all) undertakings given to Stockport Metropolitan Borough Council in the course of practice:
 - (i) in the matter of Hodgkinson v Stockport MBC and contained in a Tomlin Order dated 9th May 2007;
 - (ii) in the matter of Hargreaves v Stockport MBC and contained in a Tomlin Order dated 9th May 2007.
3. Contrary to Rule 11.02 of the Code, failed to comply with an Order of the Bury County Court dated 24th January 2008 in proceedings between Brady Engineering Consultants Limited and the First Respondent and one other;
4. Failed to comply with directions of The Law Society made under s.44B of the Solicitors Act 1974 on 9th November 2007 relating to a complaint made by Ms B and on 14th September 2007 relating to a complaint made by Mr F.
5. Failed to comply within the stipulated timescale with the directions of an Adjudicator as follows:
 - (i) in the case of Ms B, the directions made by an Adjudicator on 23rd January 2008 that the firm, within seven days;
 - (a) pay Ms B the sum of £1,751.48 in compensation; and
 - (b) waive any claim against Ms B for any of their fees or expenses;
 - (ii) in the case of Mr F, the directions made by an Adjudicator on 13th March 2008 that the firm, within seven days:
 - (a) pay Mr F the sum of £1,315 in compensation;
 - (b) repay in full Mr F's disbursement loan account with Insurance Funding Solutions Limited; and
 - (c) indemnify Mr F in respect of any costs due to Swansea City Council and enforced by them against him.
6. Failed to respond promptly, substantively or at all to correspondence from the SRA and the Legal Complaints Service ("LCS") contrary to Rule 20.03 of the Code.
7. Failed to act in the best interests of their clients and had behaved in a way that was likely to diminish the trust the public places in them and/or in the profession, contrary to Rules 1.04 and 1.08 of the Code.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 5th November 2009 when Margaret Eleanor Bromley appeared as the Applicant and the Respondents appeared in person.

The evidence before the Tribunal included a reply to the allegations by the Second Respondent by way of a letter dated 2nd November 2009 together with attachments. The letter made partial admissions with explanations.

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

The Tribunal Orders that the Respondent, John Paul Davis of Bracken Wood, 145a Moss Delph Lane, Aughton, Ormskirk, Lancashire, L39 5BH, solicitor, be Struck Off the Roll of Solicitors.

The Tribunal Orders that the Respondent, Elaine McGlinchey of 58 Yew Tree Road, Walton, Liverpool, L9 1AL, solicitor, be Struck Off the Roll of Solicitors.

The facts are set out in paragraphs 1-76 hereunder:

1. The First Respondent, born in 1955, was admitted as a solicitor in 1989. As at the date of the hearing his name remained on the Roll of Solicitors.
2. The Second Respondent, born in 1965, was admitted as a solicitor in 1998. As at the date of the hearing her name remained on the Roll of Solicitors.
3. The Respondents had practised in partnership under the style of PD Associates at 3 Kings Dock Street, Liverpool, L1 8JU until September 2006 and subsequently as Amber Legal at Suite 202, The Tea Factory, 82 Wood Street, Liverpool, L1 4DQ until 19th July 2007. On 19th July 2007 the Respondents had both been suspended from practice for a period of two years by an Order of the Tribunal.

Complaint by John Cunningham & Associates

4. John Cunningham & Associates had first complained to The Law Society on 13th November 2006 that the Respondents had failed to comply with an Order of Liverpool County Court dated 21st September 2006 that they should personally pay the costs (assessed at £11,536.86) of Mr N, a client of John Cunningham & Associates who had been one of two defendants in a personal injury action brought by the Respondents acting for the claimant, Ms CN-P, Mr N's sister.
5. At the time of the complaint, disciplinary proceedings had been ongoing against the Respondents and the complaint had been added to those proceedings.
6. The Respondents had admitted the allegation based on the complaint and during their submissions at the hearing on 19th July 2007 had put forward various assertions in mitigation of their breaches of the Rules of professional conduct, including, in relation to that particular matter, that they "indicated that they would give an undertaking to pay the one remaining sum of approximately £11,500".
7. In reliance upon the Respondent's submissions in litigation, including the undertaking given in relation to that matter, the Tribunal had imposed a sanction upon the Respondents of two years suspension from practice.

8. On 14th August 2007 John Cunningham & Associates had contacted the SRA and the Tribunal to complain that the Respondents had not paid the outstanding amount to them and were therefore in breach of the undertaking given to the Tribunal at the hearing. Further letters to the SRA had followed on 13th September 2007, 6th November 2007, 17th December 2007 and 2nd January 2008. On 27th May 2008 the SRA had written to the Respondents raising the matter with them and requesting a full response to the allegation and confirmation that the outstanding sum had been paid.
9. No response had been received and further letters had been written to the Respondents on 11th June 2008 requesting a response to the original allegation and reminding the Respondents of their obligations to reply under Rule 20.03 of the Code.
10. A further letter had been received from John Cunningham & Associates dated 17th June 2008 providing details of the First Respondent's bankruptcy and enclosing inter alia a copy breakdown of the debt owed, as calculated by the High Court Enforcement Office on 6th August 2007. The total was £14,133.60 of which £12,835.12 was due to John Cunningham & Associates/their client, the remainder relating to costs incurred by the High Court Enforcement Office itself.
11. In the absence of any response from the Respondents, a further letter had been written to them on 1st July 2008 confirming that the matter would be referred to the SRA's legal department to be added to disciplinary proceedings against them.

Complaint by Stockport Metropolitan Borough Council

12. The Respondents had acted for two unrelated clients, Ms DH and Ms JH, in two separate housing disrepair claims against Stockport Metropolitan Borough Council ("Stockport Council").
13. Ms JH's claim, issued on 12th August 2003 had been discontinued on 12th July 2004 and a Wasted Costs Order made against the Respondents on 6th October 2004.
14. Ms DH's claim, issued on 26th August 2003, had been discontinued on 24th March 2004 with a finding that "the claimant through her solicitors has behaved unreasonably in pursuing the claim." Costs had been awarded against Ms DH.
15. In addition, costs had been awarded in favour of Stockport Council at various interlocutory applications throughout the two sets of proceedings.
16. No payment of costs had been forthcoming in either case and Stockport Council had decided to pursue all costs as against the Respondents and/or the insurers funding the claims. Requests and subsequent Orders for disclosure of information relating to the insurance policies had not been complied with by the Respondents and Stockport Council had therefore commenced committal proceedings in both cases on 27th February 2007.
17. A hearing on 25th April 2007 in respect of both cases had resulted in an offer from the Respondents to settle the outstanding costs in full, including their clients' costs so long as the Council agreed to assign its right to recover the claimants' costs from the

relevant insurers. The hearing had been adjourned until 9th May 2007 to allow payment to be made.

18. On the same day Stockport Council had sent to the Respondents a schedule of the full amount owing summarised below:

<u>Order</u>	<u>Payment Due</u>	<u>Amount</u>	<u>Interest</u>	
<u>DH</u>				
11.03.2004	25.03.2004	£220.00	£54.97	
24.03.2004	12.04.2004	£1,579.50	£388.43	
21.08.2006	04.09.2006	£1,009.20	£54.64	
02.01.2007	16.01.2007	£581.53	£14.40	
Committal costs		<u>£1,429.21</u>		Total Due
				<u>£5,331.87</u>

<u>Order</u>	<u>Payment Due</u>	<u>Amount</u>	<u>Interest</u>	
<u>JH</u>				
19.04.2005	03.05.2005	£2,704.50	£436.28	
20.09.2006	03.10.2006	491.40	23.48	
02.01.2007	16.01.2007	354.80	8.79	
		1,362.71		
Committal costs		<u>£1,362.71</u>		Total Due
				<u>£5,381.95</u>
				<u>£10,713.83</u>

19. No response had been made until 8th May 2007. Consent Orders had been signed on 9th May 2007 and presented at the adjourned hearing. The Court had required the Orders to be re-drafted as Tomlin Orders and accordingly Stockport Council had re-drafted the same and forwarded them to the Respondents on the same day.
20. Following two threats to reinstate the committal proceedings on 18th and 23rd May 2007, the Tomlin Orders had finally been signed and filed at Court on 24th May 2007.
21. The Tomlin Order in respect of Ms DH's proceedings contained the following undertaking by the Respondents:
- "1. The Claimant Solicitors (Elaine McGinchee and Paul Davis) do pay the sum of £5,331.87 together with the wasted costs of the hearing of the 9th May 2007 of £389.50 totalling £5,721.37.....
 3. The Claimant's Solicitors (Elaine McGinchee and Paul Davis) do hereby undertake to pay the sum of £5,721.37 by no later than 4pm on 31st May 2007."
22. The Tomlin Order in respect of Ms JH's proceedings contained the following undertaking by the Respondents:

- "1. The Claimant Solicitors (Elaine McGinchee and Paul Davis) do pay the sum of £5,381.95 together with the wasted costs of the hearing of the 9th May 2007 of £389.50 totalling £5,771.45.....
3. The Claimant Solicitors (Elaine McGinchee and Paul Davis) do hereby undertake to pay the sum of £5,771.45 by no later than 4pm on 31st May 2007.
23. No payment had been made and Stockport Council had complained to the SRA on 24th December 2007.
24. The SRA had written to the Respondents on 22nd January 2008 seeking their explanations as to the allegations and requiring confirmation that the undertakings had been honoured. No response had been received and the SRA had written again on 11th February 2008. Again, no response had been received

Complaint by Brady Engineering Consultants Limited

25. On 20th February 2008 Brady Engineering Consultants Limited had written to the SRA complaining that the Respondents had failed to comply with an Order of the Bury County Court made against them on 17th January 2008 and asking for confirmation of their home addresses for the purposes of enforcement. The Order made in an action between Brady Engineering Consultants Limited and "Paul John Davis and one other" Ordered that:
- "the Defendants do pay to the claimant the sum of £4,000 in full and final settlement of all claims, interest and costs. Such payment to be made by 4pm on 14th February 2008."
26. The SRA had written to the Respondents on 17th March 2008 raising the issue with them. No response had been received and further letters had been sent on 15th April 2008 seeking an explanation and reminding the Respondents of their duties under Rule 20.03 of the Code.
27. On 15th May 2008 the SRA had written again to the Respondents seeking comments on an enclosed casenote. No comments had been received and on 9th June 2008 the Respondents had been notified that the matter had been referred for adjudication.
28. On 13th June 2008 the Adjudicator had decided to refer the matter to the Tribunal and the Respondents had been notified accordingly.

Complaint by Ms B

29. The Respondents had acted for Ms B under a Conditional Fee Agreement in her claim for housing disrepair against Derwentside District Council. Ms B had purchased after the event insurance commencing on 21st December 2001 from Fastrack Indemnity Limited, funded by a loan provided by Insurance Funding Solutions Limited.
30. Ms B's claim had been settled in 2003 when she had been awarded damages of £1,500. Since that date Ms B had received a cheque for £248.52 and a further cheque

for £500 from the firm. The balance of her damages (£751.48) had remained outstanding.

31. Ms B had written to the LCS on 6th April 2006 seeking their assistance and setting out the problems she had had in attempting to contact the Respondents in order to resolve the issue over the previous three years. Ms B had been initially referred back to the firm to attempt to resolve the complaint through its internal complaints procedure. That had not been successful and Ms B had written to the LCS again on or around 22nd June 2007.
32. The LCS had written to the Respondents on 8th and 20th August 2007 raising Ms B's complaint with them and had followed this up with a telephone call on 30th August 2007, when Julie Lovell of the LCS had been told that the First Respondent would be in later that afternoon. Ms Lovell had telephoned again on two occasions on 5th September 2007. On the first occasion she had been told that the First Respondent was unavailable and on the second there had been no answer.
33. Further letters had been sent to the Respondents' home and work addresses on 6th September 2007. Ms Lovell had telephoned again on 17th and 18th September 2007 and had asked that the First Respondent return her call. A further letter had been sent on 24th September 2007, again to both home and business addresses, but again had failed to elicit a response.
34. On 9th November 2007 Jennifer Whitelock of the LCS had written to the Respondents at home and at work referring to previous correspondence and enclosing a copy of a Decision made under s.44B of the Solicitors Act 1974 requiring the production of all documents in the possession of the firm relating to Ms B's complaint, by 16th November 2007 in order for the complaint to be investigated. No response had been received and no documents had been produced. On 28th November 2007, the Respondents had been notified at all addresses that the matter was being passed to an Adjudicator. The Respondents had been given an opportunity to comment on an enclosed summary of issues. No comments had been received.
35. Ms B had subsequently received a letter from the Respondents dated 18th January 2008 enclosing copies of various forms for signature. No mention had been made of her complaint nor of the ongoing investigation.
36. On 23rd January 2008 an Adjudicator had considered the matter and had directed that the Respondents should within seven days:
 - (i) pay Ms B compensation of £1,751.48 comprising specific compensation of £751.48 damages remaining outstanding and general compensation of £1,000 awarded by the Adjudicator; and
 - (ii) waive any claim against Ms B for any fees or other expenses including interest accrued under the funding loan agreement.
37. The Respondents had been informed of the Adjudicator's Decision by way of a letter of 8th February 2008 to both their home and business addresses and had been asked to confirm by 15th February 2008 that the requisite cheque had been sent to Ms B.

38. No response had been received and further letters had been sent on 15th February 2008 requesting evidence of payment within seven days failing which the matter would be referred to the SRA in order to consider disciplinary proceedings. Again, no response had been received and the matter had been referred to the SRA who had sent a further letter on 19th March 2008.
39. On 23rd April 2008 Alex Sutherland of the SRA had written to the Respondent's home addresses formally raising the issues concerned with Ms B' as case as a matter of potential misconduct. The Respondents had not replied and further letters had been sent on 12th May 2008.
40. On 10th June 2008 the Respondents had been informed that, in the absence of any reply, the matter had been referred to the Tribunal.
41. Still no response had been received. In April 2008 the SRA had contacted the firm's insurers seeking payment and in October 2008 the sums had been paid by the insurers.

Complaint by Mr F

42. The Respondents had acted for Mr F under a Conditional Fee Agreement in relation to a personal injury claim against Welsh Water and the City and County of Swansea ("Swansea Council") in 2002. In April 2002 Mr F had taken out after the event insurance and had entered into a funding loan in order to progress his claim.
43. Mr F had informed the LCS that his last contact with the Second Respondent had been in 2005 and that he had assumed the claim was ongoing.
44. Mr F's claim had been struck out on 16th May 2006 following the Respondents' failure to comply with an Unless Order and on 13th December 2006 Swansea Council had obtained a Default Costs Certificate against Mr F ordering him to pay £2,814.51 in costs within 14 days.
45. On 16th March 2007 Mr F had received an Order dated 22nd February 2007 to attend Court for questioning about his means to pay Swansea Council's judgment debt. In his complaint to the LCS dated 31st March 2007 Mr F had explained that he had attended the Court to enquire about the Order and had been told that it related to fees resulting from the claim he had made against Swansea Council and which he had assumed was continuing.
46. Mr F had said that he had made five telephone calls to the Second Respondent on 19th March 2007 which the receptionist had promised would be returned but which had not been. On 20th March 2007 he had made a further four calls which, again, had been promised to be returned but had not been. Mr F had therefore sent by fax a letter to the Second Respondent enclosing a copy of the Order and seeking urgent information about the status of the claim. Mr F had said that he had received a telephone call from the receptionist at Amber Legal at 10.15 am on 20th March 2007 confirming that the fax had been received. He had been told that he would receive a letter by the following weekend.

47. A loan statement subsequently obtained from Insurance Funding Solutions showed that a balance of £1,886.22 had remained outstanding on Mr F's loan as at 28 February 2007.
48. Mr F had received a letter from the Respondent's firm dated 23rd March 2007 but it had made no reference to the specific circumstances of his claim, nor to his recent correspondence or to the Court Order. Instead it had informed Mr F that the Respondents' firm, then Amber Legal, was to close on 31st March 2007 and suggesting that his file be transferred to St Helens Law.
49. Mr F had subsequently instructed Leo Abse and Cohen Solicitors to deal with his claim and an application had been made to the Court to set aside the Default Costs Certificate. Further telephone calls to the Second Respondent on 30th March and 4th April 2007, and a second letter on 1st April 2007 had failed to elicit any response. Mr F's new solicitors had faxed and posted to the Respondents a signed authorisation form for the release of Mr F's file but the file had not been released.
50. On 31st March 2007 Mr F had filed a complaint with the LCS regarding the inadequate professional service received from the Second Respondent and seeking (a) payment of the costs ordered against him and (b) the release of his file.
51. The LCS had written to the Second Respondent at Amber Legal's address and at her home address on 4th and 25th May 2007 and on 4th and 29th June 2007. No reply had been received. The caseworker had also telephoned the Second Respondent on 1st May, 4th June (two calls), 13th June (two calls), 14th June, 29th June, 18th and 26th July 2007 without response, despite the fact that on several occasions messages had been left explaining the situation.
52. On 30th July 2007 the LCS had telephoned Amber Legal again and had spoken to someone called Mr A who had said that he would try to get the partners to act in retrieving the file and would call back on Wednesday. This had been confirmed in the LCS's fax of 31st July 2007 to Mr A giving the file reference and seeking a response to the initial letter of 4th May. On 22nd August 2007 the LCS had telephoned again and had been told by Mr A that the file request was with the partners and that he would remind them. Mr A had also informed the caseworker that Amber Legal was closing down.
53. In the absence of any substantive response or explanation for the delay, a direction requiring the production of the file had been obtained against Amber Legal under s.44B of the Solicitors Act 1974. On 14th September 2007 a copy of that direction had been sent to the Second Respondent. No response had been received.
54. On 9th November 2007 the caseworker had spoken to Mr A when he had promised to revert by "next Friday last chance". This had been following another letter faxed to Mr A dated 16th November 2007. Further attendance notes of 30th November 2007, 10th January, 11th January and 25th January 2008 had shown indications that the matter was in hand but ultimately neither the file nor a response to the allegations had been forthcoming. On 30th January 2008 the LCS had written to the Second Respondent at Amber Legal and to her home address requesting a response within eight days failing which an agent would be appointed to collect all papers relating to the complaint. The

letter to the Second Respondent's home address had been returned marked "Not at this address". No response had been received and an agent had been appointed on 1st February 2008.

55. On 12th February, Mr H had prepared a letter report on the complaint of inadequate professional service which had been sent to the Second Respondent at Amber Legal and to her home address for her comments. Mr F had returned his comments on 24th February 2008. The Second Respondent had failed to respond.
56. On 18th February the LCS had written again to the Second Respondent at both addresses and on 3rd March she had been informed that the papers had been passed to an Adjudicator.
57. On 13th March 2008 the Adjudicator had directed that the Respondent's firm should within seven days:
 - (i) pay to Mr F £1,315 compensation, comprising specific damages of £65 Court fee to set aside the costs certificate and £1,250 general compensation;
 - (ii) repay in full Mr F's loan account (as the after the event insurance was refusing to pay, the case having been struck out due to the solicitor's conduct); and
 - (iii) indemnify Mr F in respect of any costs due to Swansea Council in this case and enforced by them against him.
58. The Second Respondent had been informed of the decision on 14th March 2008 by letters sent to both Amber Legal and to her home address. No attempts had been made to pay the compensation despite a further reminder letter of 21st March 2008 again sent to both addresses.
59. The matter had been referred to the SRA's Conduct Investigation Unit who had written to the Second Respondent by Recorded Delivery on 31st January 2008. The letter had made it clear that the LCS investigation was still on-going.
60. There had been no response to that letter and the SRA had written again on 18th February 2008, again by Recorded Delivery. No reply had been received and the SRA had written again on 8th April 2008 informing the Second Respondent that they would be preparing a Report for adjudication.
61. The LCS had instructed agents to obtain Mr F's file and it had finally been obtained by them at the end of April 2008 and sent on to Mr F on 1st May 2008.
62. On 26th June 2008 the SRA had attempted to telephone the Second Respondent and left messages for her. The Second Respondent had returned those calls the following day. During the conversation, the Second Respondent had said that she could not afford to post the file to the SRA or to LCS and had explained that her failure to reply to either was due to "limited funds". She had assured the caseworker that she would respond to the correspondence.

63. On 17th July 2008 the SRA had written to the Second Respondent with revised allegations. No response had been received. In August 2008 the case had been allocated to a new caseworker at the SRA who had written again on 9th September 2008 and subsequently on 1st October 2008. Again no response had been received.
64. The sums due to Mr F under the Adjudicator's award had remained unpaid until November 2008 when they had been met by Amber Legal's insurers following an approach by the SRA.

Storage of files with File-Safe Limited

65. The Respondents' firm had entered into an arrangement with File-Safe Limited ("File-Safe"), a document storage company, for the storage of some 380 boxes of client files and other documents in July 2005. On 13th March 2008 File-Safe had written to the SRA complaining that their invoices had not been paid since August 2007 and the amount owed to them then amounted to £1,547.92. File-Safe had indicated in its letter that the Respondents had not replied to any of their correspondence and that it was not prepared to let the situation continue.
66. The SRA had written to the Respondents on 8th April 2008 raising this issue with them and asking for confirmation that steps had been taken to ensure the security of client papers. No response had been received and the SRA had written again on 16th April 2008.
67. On or around 14th May 2008 Ms Kearns of the SRA had spoken to Mr A at the Respondent's former offices when he had indicated that he was trying to resolve the issue. Ms Kearns had confirmed the details of their conversation in a letter of 15th May 2008 along with corresponding letters to the Respondents.
68. On 19th May 2008 the caseworker had received a telephone message from the Second Respondent explaining that the matter was being dealt with and that a letter would be sent to File-Safe (and copied to the SRA) "in the next couple of days".
69. Ms Kearns had chased the Second Respondent by letter dated 21st May 2008 but no response had been received. The SRA had written again to each of the Respondents on 5th June 2008.
70. On 17th July 2008, Ms Kearns had confirmed to Mr B of File-Safe that her colleague had spoken to the Second Respondent, who had explained that neither she nor her former partner disputed the debt but that they were not in a position to pay the money owed until legal costs had been collected on former Amber Legal matters.
71. On 18th July 2008 Mr B had sent an e-mail to the SRA stating that he was not satisfied with this explanation. He had also explained that File-Safe was being taken over on 12th September 2008 by a competitor. Mr B had confirmed that "Amber Legal's boxes will not be kept".
72. At that point, and with client files appearing to be in imminent danger, Ms Kearns had prepared a casenote recommending that an intervention take place into Amber Legal in order to safeguard the former client files.

73. Following disclosure of that case note, the SRA had received a telephone call from the Second Respondent on 7th August 2008 advising that the outstanding invoices would be paid and the files removed from storage during the week commencing 25th August 2008. That had been confirmed in their letter to the SRA dated 8th August 2008.
74. On 14th August 2008 Mr B had confirmed that he had spoken to the Respondents' solicitors and that agreement had been reached regarding the outstanding fees and the removal of the files. In light of that, a supplemental note had been produced for the Adjudication Panel recommending that the matter of the intervention be stood over until September in order to allow payments to be made and the files to be collected.
75. On 19th August 2008 the panel had resolved to stand over the issue of intervention and had directed that the Respondents provide written evidence within one month that the fees had been paid and the files transferred. The conduct of the Respondents was referred to the Tribunal.
76. On 9th January 2009 the Second Respondent had contacted the SRA to confirm that the files were safe and that File-Safe were doing "one final sweep" to ensure that they had located all the files.

The submissions of the Applicant

77. In relation to the first allegation the Applicant explained that during a formal disciplinary hearing on 19th July 2007 in proceedings brought against them by their regulatory body, the Respondents as solicitors had made submissions in mitigation of their admitted misconduct, including giving an undertaking to the Tribunal "to pay the one remaining sum of approximately £11,500" as required by the outstanding judgment of Liverpool County Court dated 21st September 2006.
78. In reliance upon the Respondents' submissions, including that undertaking, the Tribunal had imposed a sanction of two years suspension from practice, which came to an end in July 2009.
79. The Respondents had not complied with the undertaking. Since the hearing in July 2007 no money at all had been paid to John Cunningham & Associates and no explanation had been provided for the delay and failure to comply. The Applicant submitted that was a clear breach of Rule 10.05 of the Code.
80. Turning to the second allegation, the Applicant explained that the Respondents had entered into two Tomlin Orders dated 9th May 2007, each including an undertaking that the Respondents would by 31st May 2007 pay the sums of £5,721.37 and £5,771.45 to Stockport Metropolitan Borough Council.
81. The undertakings had been given by the Respondents as solicitors in the course of practice in the settlement of Court proceedings. Under Rule 10.05 of the Code the Respondents had been required to fulfil the undertakings within a reasonable time.
82. Dealing with allegation 3, the Applicant explained that an Order had been obtained against the Respondents in Bury County Court on 17th January 2008 requiring the

Respondents to pay £4,000 to Brady Engineering Consultants Ltd by 14th February 2008. In breach of Rule 11.02 of the Code, and despite several letters from the SRA, the Respondents had not complied with the Court Order.

83. Turning to allegation 4, the Applicant explained that a direction had been made under s.44B of the Solicitors Act 1974 on 9th November 2007 requiring the Respondents to produce all documents relevant to a complaint made by Ms B within seven days. The Respondents had been notified on the same day and yet, despite several reminders, the Respondents had not produced the required document to the SRA.
84. A direction had been made under s.44B of the Solicitors Act 1974 on 14th September 2007 requiring production of the client file relating to Mr F within seven days. The Respondents had not complied with that direction and agents had been instructed, by the LCS to retrieve it. The file had finally been received at the end of April 2008, over seven months after the s.44B Order had been made.
85. Turning to allegation 5, the Applicant explained that on 23rd January 2008 a Decision of the Adjudicator had directed the Respondents' firm within seven days, to pay compensation amounting to £1,751.48 to Ms B and to waive any claim for any of their fees or other expenses. The Respondents had been informed of the Adjudicator's Decision on 8th February 2008 but had failed to comply within the stipulated timescale.
86. Moreover, on 13th March 2008, an Adjudicator had directed the Respondents' firm within seven days to pay compensation to Mr F in the sum of £1,315, to pay LF's loan account in full and to indemnify Mr F against any costs due to Swansea City Council and enforced against him. The decision had been communicated on 14th March 2008 and the Respondents had failed to comply within the stipulated timescale.
87. In relation to allegation 6, the Applicant submitted that contrary to their obligations under Rule 20.03 of the Code, from the date of their disciplinary hearing on 19th July 2007 until the present date, the Respondents had failed to respond (and had continued to fail to respond) substantively and/or promptly to correspondence and telephone calls from the LCS/SRA in matters relating to John Cunningham & Associates, Stockport MBC, Brady Engineering Consultants Ltd, Ms B and File-Safe. The Second Respondent had also failed to respond promptly, substantively or at all to the numerous letters and telephone messages relating to Mr F's complaint. The Applicant submitted that was a clear breach of Rule 20.03.
88. Finally in relation to allegation 7, the Applicant submitted that in failing to comply with professional undertakings, failing to comply with Court Orders, failing to comply with directions of The Law Society made under s.44B of the Solicitors Act 1974, failing to comply with the directions of an Adjudicator and failing to cooperate with their regulatory body, the Respondents had consistently failed to act in the best interests of their clients and had acted in a way that was likely to diminish the trust the public placed in them and/or in the profession contrary to Rule 1.04 and 1.06 of the Code.
89. The Applicant also asked the Tribunal to make an Order for costs fixed in the sum of £12,933.65.

The submissions and mitigation of the Respondents

90. The Second Respondent gave the Tribunal details of her professional history and of her current financial circumstances. She referred the Tribunal to her letter in reply to the allegations dated 2nd November 2009 and to the documents attached to that letter. The Second Respondent stressed that both Respondents had given undertakings to the Tribunal in good faith on 19th July 2007 believing that they would be able to comply with those undertakings because of their promised employment with St Helen's Law. However, that employment had not happened and because of their suspension they had had difficulties in recovering costs due to their previous firm.
91. The Second Respondent referred the Tribunal to the details of her reply dated 2nd November 2009. She explained that their clients, DH and JH, had both been insured for adverse costs with Fastrack Indemnity Limited, now in Receivership. However, the Second Respondent said that had that company continued to trade none of the problems with Stockport Council would have occurred.
92. Moreover, the Second Respondent explained that Abbey Legal, acting as agents for Lloyds, who had underwritten Fastrack Indemnity Limited had failed to pay costs' orders as they should have done. She explained that both she and the First Respondent had given the Tribunal undertakings on the basis that those costs' orders would be paid.
93. The First Respondent explained that although the orders had made them liable for costs as the rights of recovery had been assigned to them, they had believed that they would be in a position to recover those costs. Fastrack Limited had gone into liquidation and some cases had been struck out with no orders for costs. The Respondents had continued to act for clients purely to assist them.
94. The Second Respondent explained that Brady Engineering had been paid in December 2008 according to the contractual payment terms. Unfortunately, the Respondents had not been able to pay File-Safe's invoices immediately. Moreover, compensation Orders had not been paid because of the Respondents' lack of funds although subsequently their firm's professional indemnity insurers had paid those compensation orders.
95. The Second Respondent admitted that she had failed to reply to correspondence because she had been unable to face opening the relevant files and dealing with that correspondence. She explained that she was in receipt of Job Seekers allowance and that the First Respondent had been made bankrupt.

The decision of the Tribunal

96. Having considered all the evidence and the submissions of the Applicant and of the First and Second Respondents, the Tribunal found all the seven allegations proved. Both Respondents had in effect made admissions to the allegations but had both put forward mitigating circumstances. The Tribunal considered that the case was a very sad one for the Respondents. Unfortunately, they had lost sight of the fundamental importance of undertakings given by solicitors. The Tribunal stressed that when giving an undertaking it was not enough for a solicitor to think that it could be complied with; but it was absolutely essential that any undertaking given by a

solicitor was strictly complied with. Moreover the Respondents had failed on many occasions to respond both to their Regulator and to the LCS. The Tribunal considered such failures to be extremely serious.

97. Both for the protection of the public and in order to maintain the reputation of the profession, it was absolutely essential that solicitors should cooperate both with their Regulator and with the LCS in an open and speedy way. Any lack of cooperation or delaying cooperation lessened the effectiveness of professional regulation leading to an undermining of public confidence in solicitors.
98. The Tribunal noted that the Second Respondent had previously appeared before it on 23rd September 2003 and that both Respondents had appeared before it on 19th July 2007. In 2003 the Second Respondent had admitted failing to deal promptly and substantively with correspondence from the Office of the Supervision of Solicitors. The Second Respondent had been fined £1,000 with costs of £1,491.08 on that occasion. In 2007 both Respondents had been suspended for two years following failures to comply with orders and to respond to correspondence. On that occasion the Tribunal had commented that in dealing with some 28 allegations the Respondents failures and the dissatisfaction of clients must have led to serious damage to the good reputation of the Respondents' firm and inevitably that led to damage to the good reputation of the solicitors' profession as a whole.
99. In the present circumstances where there had been failures to comply with undertakings, to comply with Court Orders, to comply with directions of The Law Society, to comply with the directions of an Adjudicator within stipulated timescales and failures to respond to correspondence from the SRA and the LCS, the Tribunal was satisfied that both for the protection of the public and in order to maintain the reputation of the profession, both Respondents should be removed from the Roll of Solicitors and it so Ordered. In the light of the Respondents' financial circumstances however the Tribunal made no Orders as to costs.

Dated this 9th day of April 2010
On behalf of the Tribunal

W M Hartley
Chairman