No. 10234-2009

IN THE MATTER OF KEVIN ALEXANDER LONG, *[RESPONDENT 2]* and *[RESPONDENT 3]*, solicitors

\- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. D. Glass (in the chair)
Mr. R. J. C. Potter
Mr. D. E. Marlow

Date of Hearing: 19th January 2010

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority by Jonathan Richard Goodwin of Jonathan Goodwin Solicitor Advocate, 17E Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT on 23rd April 2009 that Kevin Alexander Long of Harrogate, North Yorkshire, *[Respondent 2]* of Tollerton, York, North Yorkshire and *[Respondent 3]* of Tollerton, York, North Yorkshire might be required to answer the allegations set out in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations against the Respondents were as follows:-

Allegations against all Respondents

1. That contrary to Rule 6 of the Solicitors' Accounts Rules 1998 ("the 1998 Rules") they failed to ensure compliance with the Rules.

2. that contrary to Rule 7 of the 1998 Rules they failed to rectify breaches promptly upon discovery.

3. that contrary to Rule 19 and/or Rule 20 of the 1998 Rules they retained unpaid professional disbursements in office bank account.

4. that they withdrew money from client account other than as permitted by Rule 22 of the 1998 Rules.

5. they failed to operate an accounting system as required by Rule 29 and Appendix 3 of the 1998 Rules.

6. they failed to keep accounts properly written up as required by Rule 32 of the 1998 Rules.

7. they utilised clients' funds for their own benefit.

8. that contrary to Rule 1 of the 1998 Rules and/or Rule 1 of the Solicitors Practice Rules 1990 ("SPR"), and/or Rule 1 of the Solicitors Code of Conduct 2007 ("SCC"), they failed to act in their clients' best interests.

9. that contrary to Rule 1(c) of the SPR and/or Rule 1 of the SCC they failed to act in the clients' best interests, in that deductions were made from clients' damages.

10. they acted contrary to Rule 1(c) of the SPR and/or Rule 1 of the SCC and/or Section 2A(3) of the Solicitors Introduction and Referral Code ("SIRC"), in that they failed to provide all relevant information to clients upon receipt of referrals, to include the fact of, and the amount paid for the referral.

11. that contrary to Rule 15 of the SPR and/or Rule 2 of the SCC they provided inadequate costs information to clients, and in particular failed to advise clients of the First Respondent's interest in Legal Administrative Services ("LAS"), and the premiums paid in respect of Templeton Insurance Ltd policies which were not explained to the clients.

Allegations against the First Respondent Alone

12. that he misappropriated clients' funds (this was an allegation of dishonesty).

13. that he made representations to a client which were misleading and/or inaccurate, by letter dated 11th June 2007 (it was alleged that his conduct was dishonest, alternatively reckless).

14. he acted in circumstances where his own interests conflicted with those of clients.

15. contrary to Rule 10 of the SPR he failed to account to clients for commissions received.

The application was heard at the Courtroom, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 19th January 2010 when Jonathan Goodwin Solicitor Advocate appeared as the Applicant, Kevin Alexander Long ("Mr Long") did not appear and was not

represented and *[Respondent 2]* and *[Respondent 3]* were represented by Mr Gregory Treverton-Jones of Queen's Counsel.

The evidence before the Tribunal included the admissions of *[Respondent 2]* and *[Respondent 3]*. During the hearing a chronology was handed up to the Tribunal on their behalf.

At the commencement of the hearing the Applicant referred the Tribunal to a bundle of correspondence between himself and Mr Long and the Tribunal and Mr Long, asking the Tribunal to note that Mr Long was aware of the hearing date but had elected not to attend despite the offer of assistance with travel expenses. The Applicant invited the Tribunal to proceed with the matter in Mr Long's absence. Having considered the correspondence and the Applicant's submissions the Tribunal was satisfied that it was right to proceed with the hearing in Mr Long's absence.

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

The Tribunal ORDER that the respondent, KEVIN ALEXANDER LONG of Harrogate, North Yorkshire, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £31,387.76, such costs not be enforced without the consent of the Tribunal.

The Tribunal ORDER that the respondent *[Respondent 2]* of Tollerton, York, North Yorkshire, solicitor, be REPRIMANDED and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not be enforced without the consent of the Tribunal.

The Tribunal ORDER that the respondent *[Respondent 3]* of Tollerton, York, North Yorkshire, solicitor, be REPRIMANDED and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not be enforced without the consent of the Tribunal.

The facts are set out in paragraphs 1 - 41 hereunder:

1. Mr Long, born in 1971, was admitted as a solicitor in 1995. *[Respondent 2]*, born in 1966, was admitted as a solicitor in 2000. *[Respondent 3]*, born in 1962, was admitted as a solicitor in 2002. The name of each Respondent remained on the Roll of Solicitors.

2. At all relevant times the Respondents carried on practice under the style of Alexanders Solicitors Ltd from offices at First Floor, Equinox1, Audby Lane, Weatherby, West Yorkshire LS22 7RD.

3. Alexanders Solicitors Ltd went into administration on or about 20th December 2007, and on 5th March 2008 an Adjudication Panel resolved to intervene into Alexanders Solicitors Ltd and the practice of Mr Long.

4. The Forensic Investigation Department of the SRA carried out an inspection commencing 13th November 2007 and produced a Report dated 23rd January 2008.

5. It was ascertained that the books of account were not in compliance with the 1998 Rules for the reasons set out in the Report namely:

   (a) at the commencement of the investigation, 13th November 2007, the client account ledgers were only written up to 30th November 2006. Some information was recorded on a spreadsheet but this was not in compliance with the 1998 Rules;

   (b) the matter listing produced as at 30th November 2006 detailed 858 open matters at that time. The matter listing included 303 credit balances on office account totalling £407,068.86 and 555 debit balances totalling £167,072.50 resulting in a net credit balance on office account of £239,996.36;

   (c) client funds had been misused in three specific circumstances (as set out in paragraph 11);

   (d) unpaid professional disbursements had been retained in office account; and

   (e) the firm did not operate an accounting system as required by Rule 29 and Appendix 3 of the 1998 Rules.

   The investigation officers were unable to express an opinion as to whether or not there was sufficient cash available in client bank account to meet the firm's total liabilities to clients as at 31st October 2007 but were able to establish that there was a minimum cash shortage in the sum of £214,166.18.

6. The cause of the shortage was particularised in the Report, comprising misuse of clients' funds and unpaid professional disbursements.

7. Whilst not agreeing the amount of the identified shortage on clients' funds, the Respondents did agree that a shortage existed and that this had occurred as a consequence of the failure to pay professional disbursements, despite having received payment in respect of the same from the third party. The Respondents also acknowledged that the firm had failed to repay disbursement funding loans at the conclusion of the case.

8. *[Respondent 2]* and *[Respondent 3]* indicated that they were not aware that the firm had failed to account properly for unpaid professional disbursements until sometime after June 2007 and that they had then reported matters to the SRA.

9. Mr Long accepted that he had known the firm was failing to account for unpaid professional disbursements and said that it was not until he discussed matters with the investigation officers, during the course of their first visit, that he had been aware that treating professional disbursements in this manner was a breach of the 1998 Rules.

10. It was ascertained that unpaid professional disbursements were retained in the office bank account.

11. It was ascertained that there had been misuse of clients' funds in that:

(a) the firm failed to repay disbursement funding loans on individual client matters at the conclusion of the case, or by not making a claim on the ATE insurance policy in failed cases; and

(b) there were improper transfers of funds from client to office bank account.

(c) the firm made deductions from damages due to the clients and stated that the deductions related to disbursements that had not been recovered in full and interest accrued on the funding loan. However, an examination of the files identified that the disbursements had been recovered in full and it was noted that in certain cases the disbursement funding loans had been used to pay referral fees, the client having borne the interest on that part of the loan used to pay the referral fees.

Ms B

12. The Report particularised the matter of Ms B, for whom the firm acted in respect of her claim for personal injury following an accident at work.

13. Following settlement of the claim, the file was transferred to Mr Long to deal with the issue of costs.

14. The client had entered into a loan in the sum of £1,500.00, the period of which was 18 months with interest charged at 16.3% resulting in a total amount repayable at the end of the loan period of £1,866.75.

15. The relevant client ledger showed that the sum of £1,440.00 (£1,500 loan advance less £60 administration fee) was received into client account on 15th June 2006.

16. On the same day, the sum of £470.00 was transferred to office bank account, the entry in the ledger stating "Tfr to office – re pay referral fee". The sum of £450.00 was then paid out of office bank account annotated "Charges", leaving a credit balance in office account of £20.00.

17. On 21st June 2006 a payment of £88.13 was made from client account and the entry in the ledger stated "sign up fee".

18. On 4th July 2006 payments were made as follows:-

Commission to LAS	£560.00
Paid Comm to Templeton	£240.00
IPT paid to Templeton	£ 40.00 (insurance premium tax)

19. LAS was the sole trader business of Mr Long and the files contained no evidence that the client had been made aware that Mr Long's business would receive a commission from Templeton Insurance Ltd ("Templeton"), and as such had an interest in the client taking out the policy, or that the client had agreed to LAS retaining the commission.

20. On 9th August 2006 the sum of £20.00 was paid from office bank account, reducing the credit balance to nil, with the entry in the ledger being "Hospital Notes fee".

21. An analysis of the payments made, utilising funds from the client's disbursement funding loan, showed that £300.00 was used to meet the costs of £20.00 in respect of the hospital notes, £240.00 insurance premium paid to Templeton and £40.00 IPT.

22. A total of £1,098.13 from the client's disbursement funding loan was used to pay £450.00 in respect of a referral fee, the sign up fee of £88.13 and the commission paid to LAS in the sum of £560.00. Such represented 78.5% of the disbursement funding loan as being utilised for overheads of the firm and commission paid to Mr Long's business, LAS.

23. On 19 April 2007 the firm wrote to the client indicating that an offer to settle had been received from the third party in the sum of £1,600.00. The client was told that if she accepted the offer she would receive a net settlement of £1,225.00, the figure being made up of the offer of settlement in the sum of £1,600.00 less interest due in respect of the funding loan, in the sum of £375.00. The claim settled.

24. On 23rd April 2007, the firm wrote to the third party in respect of costs. Correspondence was on the letterhead of "Your: Costs" which was said to be the trading style of the costs recovery department of Alexanders Solicitors Ltd.

25. On 8th May 2007 Legal Costs Negotiators Ltd acting on behalf of the third party, wrote to 'Your : Costs' disputing the level of profit costs claimed and raising points of dispute. A copy of the letter was exhibited to the Report. In it they agreed the success fee and the ATE Premium as claimed and other disbursements were agreed as claimed.

26. Following negotiations, 'Your: Costs' agreed to accept the sum of £4,625.00 "fully inclusive" in respect of costs.

27. By letter dated 11th June 2007, Mr Long wrote to the client enclosing a cheque in the sum of £1,109.54 and explained that the deductions from the damages related to:-

    a) "CCA loan interest and arrangement fees – not recoverable - £350.46,

    b) Irrecoverable shortfall in respect of the ATE Premium - £140.00"

28. In fact the ATE premium had been recovered in full, with Legal Costs Negotiators Ltd having confirmed their agreement to pay it in full and the bill raised by the firm on 6 June 2007 showed receipt of £840.00 in respect of the ATE premium.

Introductions and Referrals

29. The Respondents confirmed to the investigation officer that work conducted by the firm was personal injury work and that it was introduced to the firm through various referrers. None of the client matter files reviewed by the investigation officers included any evidence that the referral arrangement, and in particular the payment of a referral fee, was disclosed to the client.

Allegations against Mr Long Alone

30. Mr Long conceded in discussion with the investigation officers that he knew the firm was failing to account for unpaid professional disbursements and explained that he had credit arrangements with suppliers who had decided to "extend" the credit period.

31. Mr Long conceded that the unpaid professional disbursements were retained in the office bank account to assist with the cash flow of the firm.

32. The handwritten notes prepared by Mr Long exhibited to the Report indicated that Mr Long was aware of the firm's financial difficulties at some point prior to November 2004. Mr Long indicated that the notes related to meetings with his fellow Directors, although *[Respondent 2]* and *[Respondent 3]* maintained that no such meetings took place and suggested that the notes were Mr Long's own thoughts on the finances of the firm.

LAS

33. It was ascertained that Mr Long was the sole owner of LAS. Alexander Solicitors Ltd advised clients to enter into funding arrangements, whereby a loan was taken out by the client and from that loan commission was paid to LAS and an insurance premium was paid to Templeton.

34. In such matters Mr Long, trading as LAS, received 75% of the insurance premium which was paid for from the clients' loan pursuant to an agreement entered into between LAS and Templeton.

35. Mr Long indicated that he had entered into a "hold harmless" agreement with Templeton, whereby LAS would hold a fund on behalf of Templeton and use the fund to settle any claims from the policies taken out through them.

36. The Report indicated that the clients were advised to take out a loan to pay for an insurance policy. In the case of Ms B the limit of the indemnity provided was £50,000.00. However, the clients' potential liability to pay legal costs was instead being indemnified by Mr Long/LAS being a sole trader who was not regulated by the Financial Services Authority to provide insurance services and who held funds substantially lower than the indemnity limit referred to for individual matters.

37. The Report indicated that none of the client matters reviewed contained any evidence that the firm had disclosed the commission paid to Mr Long's sole trader business LAS, or obtained the clients' agreement that the commission could be retained by Mr Long's sole trader business.

38. The Report indicated that LAS did not, in fact, pay out the cost liabilities incurred by some clients and in particular the loans taken out by the client, a large proportion of which had been used to pay referral fees and the "*hold harmless*" commissions to LAS. By way of example, on the matters of C and G, the personal injury claims had not been successful but there was no evidence that the clients' loans had been paid off, or any evidence of a claim for costs being made on the insurance policy.

Cash Withdrawals

39. On 18th January 2007 and 26th February 2007 Mr Long transferred the sum of £4,000.00 and £2,000.00 respectively from the LAS bank account to Alexanders Solicitors Ltd client bank account and cash withdrawals of the same sums were made on those dates.

40. Mr Long was unable to explain the transactions and no subsequent explanation had been received from him.

41. Copies of correspondence between the SRA and the Respondents were before the Tribunal.

The Submissions of the Applicant

42. *[Respondent 2]* and *[Respondent 3]* had admitted the allegations against them. The Applicant would proceed on the basis that the allegations against Mr Long were denied. Having served the appropriate Notices without Counternotice the Applicant would proceed on the documents.

43. The Tribunal had to be satisfied so that it was sure that the allegation of dishonesty against Mr Long was made out. The Tribunal would have regard to the combined tests set out in the case of Twinsectra v Yardley [2002] UKHL 12 to the effect that there was a standard which combined an objective test and a subjective test and which required that before there could be a finding of dishonesty it had to be established that the defendant's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest.

44. Dishonesty was not an essential ingredient of any one of the allegations raised against Mr Long. However, the case was put against him in relation to each allegation where dishonesty was alleged, on the basis that he was dishonest with regard to those allegations. The issue of dishonesty would be a matter for the Tribunal to decide and it would be open to the Tribunal to find any or all of the allegations proved without any element of dishonesty. In the alternative, it was open to the Tribunal to find that Mr Long had acted recklessly.

45. Particulars of dishonesty, or in the alternative recklessness, raised against Mr Long were:-

    (a) the retention of unpaid professional disbursements in office account, to assist cash flow;

    (b) the failure to repay client funding loans at the conclusion of claims;

    (c) the letter written by Mr Long to Ms B which was misleading and/or inaccurate, dated 11 June 2007;

    (d) the withdrawal of monies from client account in the sums of £4,000.00 and £2,000.00.

46. The Tribunal was able to take a view itself as to whether *[Respondent 2]* and *[Respondent 3]* had been reckless regarding the degree of case they had taken. In support of the allegation of recklessness the Applicant referred the Tribunal to the document given by the bookkeeper to *[Respondent 2]* headed "LAS Transactions" dated 20th November 2006 which should have put *[Respondent 2]* on enquiry but she had done nothing. Further in February 2007 the bookkeeper had resigned because Mr Long was not giving her enough information. *[Respondent 2]* persuaded the bookkeeper to stay and had agreed to chase up Mr Long. That should also have put *[Respondent 2]* on notice. Also before the Tribunal were the handwritten notes produced by Mr Long showing that he was aware of the firm's financial difficulties which he had said had been made at a meeting with the other Respondents. *[Respondent 2]* and *[Respondent 3]* had said no such meeting had been held. The Tribunal was also referred however to the finance strategy for the firm dated September 2004 exhibited to *[Respondent 2]*'s supplementary statement. *[Respondent 2]* and *[Respondent 3]* said in their statements that they first became aware of the difficulties in June 2007 but the Applicant submitted that they should have been aware earlier. The Applicant accepted that while he was putting forward, in Mr Long's absence, the points made by Mr Long, he had also made an allegation of dishonesty against Mr Long and it would be a matter for the Tribunal as to what weight they should attach to Mr Long's assertion in relation to the handwritten notes.

47. The Applicant did not allege dishonesty against *[Respondent 2]* and *[Respondent 3]* but had asserted recklessness. This was a small firm and for *[Respondent 2]* and *[Respondent 3]* as solicitors not to pay close attention to the accounts did amount to recklessness. The Tribunal was referred to the case of Weston v The Law Society [1998] EWHC Admin 681 in which it was said:

> "It is important to appreciate that in speaking of "trustworthiness" in that passage the Court had in mind, of course, honesty, but also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it that is violated if one solicitor with a duty to see that the rules are observed fails to do so."

Solicitors had an onerous obligation to comply with the Accounts Rules for the very good reason that they were holding clients' funds. The obligations on solicitors in large practices might be less than the obligation to make enquiries in small firms. In this firm there had been a failure to comply with Rule 29 Appendix 3 of the Solicitors' Accounts Rules which essentially was good guidance for the keeping of accounts. For example there had been no system in place which would deal with chits for the recording of receipts and payments. The Tribunal would have read from the Report the difficulties the bookkeeper experienced. Often books were being written up from cheque book stubs. That in itself was a failure on the part of the three Respondents to have systems in place sufficient to comply with the 1998 Rules.

48. In the case of Twinsectra Lord Hoffman had spoken of the "blinkered approach". There were matters which should have alerted *[Respondent 2]* and *[Respondent 3]* to what was happening. The Applicant adopted the assertion put to the Respondents by the Forensic Investigation Officer namely that there had been a widespread and systematic misuse of clients' funds. This assertion related to the way in which clients'

funds were in office account, the misuse of clients' funds and the way in which professional disbursements were retained in the office bank account.

49. Disbursement funding loans were to assist the client in relation to their claim. These were client's money and should have been in client account and utilised for the clients' claims.

50. In relation to allegation 13, the Tribunal was referred to the letter from Mr Long to Ms B dated 11 June 2007 in which, despite the third party's insurers having agreed to the ATE premium as claimed, Mr Long had referred to an "irrecoverable shortfall" of £140.00 in respect of the premium. In the submission of the Applicant that letter was inaccurate, misleading and untrue and Mr Long knew that to be the position. He had taken a conscious decision to act as he did and that amounted to dishonesty.

51. In relation to introductions and referrals the Applicant submitted that the Respondents had failed to provide appropriate costs information to clients and in particular failed to disclose Mr Long's interest in LAS. Premiums paid in respect of Templeton policies were not explained to the client. Deductions on client funding loans were also not explained to the clients. To their credit *[Respondent 2]* and *[Respondent 3]* accepted this submission.

52. Mr Long had provided no explanation for the cash withdrawals although he did not deny making the payments. The Applicant submitted that Mr Long had misappropriated clients' funds and in so doing had breached the 1998 Rules and acted dishonestly or alternatively recklessly. In the absence of any explanation from Mr Long the Tribunal was entitled to infer that as these funds were in client account they were client funds.

53. The arrangements between the firm and LAS and LAS and Templeton constituted a conflict between Mr Long's interests and those of his clients. There has also been a failure on his part to account to his clients in respect of the commission. None of the files reviewed contained any evidence that clients had been told about these matters or their permission sought for Mr Long or his business to retain commission.

54. In Mr Long's absence the Tribunal was invited to read carefully the response from Mr Long included in the documentation.

55. This was a serious case. Even absent the assertions of recklessness or dishonesty the Applicant would maintain that the matters before the Tribunal were serious having regard to the quite proper obligations on solicitors to ensure compliance with the 1998 Rules for the protection of clients' funds. The Applicant emphasised again the observations made in the case of Weston.

The Submissions on behalf of *[Respondent 2]* and *[Respondent 3]*

56. Mr Treverton-Jones submitted to the Tribunal that part of the mitigation he wished to present would point out failings on the part of Mr Long. Given Mr Long's absence Mr Treverton-Jones invited the Tribunal to consider whether the proper course would be to reach its findings on liability in respect of Mr Long before he addressed them. The Tribunal was satisfied that this was the appropriate course as Mr Long was not

present to respond to any points which might be made on behalf of the other Respondents. The Tribunal therefore reached its findings on the allegations made against Mr Long both alone and those made jointly against all three Respondents which had been admitted by *[Respondent 2]* and *[Respondent 3]* and then proceeded to hear mitigation on behalf of *[Respondent 2]* and *[Respondent 3]*.

57. Mr Treverton-Jones said that *[Respondent 2]* and *[Respondent 3]* did not accept the allegation of recklessness and further submitted that it was not helpful for the Tribunal to debate the issue of recklessness.

58. The Tribunal would have great experience of cases where a firm had been brought down by the greed by one of its members. Such cases were a tragedy for the firm and were also damaging to the reputation of the profession, for the clients and for those partners or members who had not participated in what had occurred. The picture revealed in the documentation in respect of Mr Long was disgraceful and appalling.

59. The Applicant had shown how Mr Long had lied to Ms B. There were in fact four such instances. *[Respondent 2]* and *[Respondent 3]* had known nothing about this and indeed had made sure that those clients had been reimbursed subsequently.

60. The world of *[Respondent 2]* and *[Respondent 3]* had had fallen apart. Assuming that the Tribunal did not feel that any interruption in their ability to practise was necessary it was submitted that there was no need for a financial penalty. Mr Long was not present and where there was any dispute between what he had written and what was asserted by *[Respondent 2]* and *[Respondent 3]* the Tribunal was invited to prefer their version.

61. The Tribunal was asked to note that the firm was equivalent to a firm with two equity partners and one salaried partner i.e. *[Respondent 3]*. Mr Long had been very much in charge with 74% of the shareholding as against the 26% held by *[Respondent 2]*. *[Respondent 3]* had entered the firm as a trainee and had not at any time had a shareholding. The financial systems in the firm had been set up by Mr Long before the other Respondents came into the firm.

62. By 2007 there had been a division of roles as supported by the documentation before the Tribunal. Mr Long was responsible for management and finance and for marketing and liaison with those who provided the work. He ran the finances on a daily basis. The ledgers were held on a separate computer system to which *[Respondent 2]* and *[Respondent 3]* did not have access. Their case was that Mr Long had essentially sole responsibility for the accounting functions. Mr Long had disputed that but the Tribunal was asked to note that the bookkeeper relied upon Mr Long to provide information and explanations in respect of the accounting function.

63. The office manual showed that *[Respondent 2]* included regulatory requirements in her functions. *[Respondent 3]* ran cases on a daily basis. The breakdown of responsibility in the manual clearly showed that finance was Mr Long's responsibility. This was supported by correspondence from the accountants at the time and from the company providing finance for the litigation funding. The statements from various members of staff also confirmed Mr Long's role in this respect and the Tribunal was referred to the relevant documents.

64. This presented a consistent picture. All financial aspects of the claims were dealt with by Mr Long. He did the work at the beginning and end of the cases, he drafted the relevant client care letters and he was seen as a costs "guru" at the end of a case. It was clear that *[Respondent 2]* and *[Respondent 3]* had been lulled into a false sense of security by Mr Long's apparent trustworthiness and expertise and by the Lexcel accreditation process. The Tribunal was referred to their witness statements and the reference to the Lexcel accreditor speaking highly of the systems in place in the firm.

65. Mr Long had committed a number of breaches of trust. *[Respondent 2]* and *[Respondent 3]* had had no knowledge of Mr Long's separate business trading as LAS until the summer of 2007. An insurance company, Templeton, was underwriting the ATE insurance but was effectively giving 75% of the premium back to LAS. For its 25% Templeton was taking no risk but was simply lending its name and insurance qualifications to the business. This was Mr Long's "fiefdom". He ran the ATE insurance in a way which best suited him. He had effectively stolen £140.00 from Ms B.

66. Mr Long had been clever. The firm did in fact deal with an evidence gathering firm called LAS Limited. Mr Long had set up his business as an introducer as "LAS" with all documents and payments sent to him at home. It had therefore been no shock to *[Respondent 2]* and *[Respondent 3]* to see "LAS" on the list of transactions exhibited to the Report as the firm had been dealing legitimately with LAS Limited. This had all been part of Mr Long's deception.

67. The bookkeeper had had concerns about the way in which VAT was being accounted for. She had said to the investigation officer

> "......each quarter, Mr Long would make adjustments to the figures that she provided and it was these adjusted figures that would be put on the VAT return and not the figures that she provided. Ms MG said that she was concerned about the VAT position and had kept copies of the returns in order to prove that she was not responsible for what had been put on the returns."

68. In January and February 2007 Mr Long had made inappropriate cash withdrawals from client account in the sum of £6,000.00. It was possible that he had been effectively "washing" money through client account.

69. In August 2007 Mr Long had taken £7,000.00 out of office account to which he was not entitled.

70. When Mr Long returned to the office he had busied himself finding out about the work in progress. When the company was placed into administration a firm of solicitors controlled by Mr Long's wife then purchased from the Administrators 130 "cherry picked" files in which liability was not an issue or findings had been made in relation to liability worth several hundreds of thousands of pounds. His wife's firm paid £40,000.00 for these files and no doubt made a substantial profit. The Tribunal would have considered the implications of this. Mr Long had also walked off with some of the firm's equipment.

71. At the end of 2007 Mr Long effectively sacked *[Respondent 3]* and *[Respondent 2]* and *[Respondent 3]* left the firm in the way recorded in the chronology. All the staff of the firm must have been adversely affected and presumably lost their jobs.

72. With regard to the shortage, disbursement funding was money loaned to the firm not to the client and should not have been placed in client account. The firm borrowed the money to provide the funding of disbursements ie. it was a cash flow mechanism. The shortage was therefore a book shortage not a real one. There had been no claims on the Compensation Fund and no client had been pursued by the lender although Mr Long had. There would be service suppliers who would be out of pocket but they would not ordinarily be able to obtain payment from the Compensation Fund.

73. The Tribunal was asked to note the steps which had been taken by *[Respondent 2]* and *[Respondent 3]*. On 29th June 2007 they had made a report to the SRA with whom they had cooperated totally. They had sought advice from the Forensic Investigation Officer and acted on it. A further report was made to the SRA on 16th August 2007 and on that date the Mr Long was removed as a signatory on the bank mandate.

74. *[Respondent 2]* and *[Respondent 3]* had then instructed solicitors, Messrs HS, who had gradually uncovered matters and had taken up concerns with Mr Long. The Tribunal was referred to the letter from Messrs HS to Mr Long's solicitors dated 28th September 2007 referring to the fact that Mr Long's operation of LAS appeared to place him in breach of the restrictions in the shareholder's agreement. They further wrote that it seemed clear that Mr Long had taken steps to ensure *[Respondent 2]* and *[Respondent 3]* were unaware of LAS and its dealings. They also referred to an email from Mr Long to Templeton dated 11 May 2006 noting that Templeton had sent through agreements and indemnity documents to be signed by "all the partners of Alexanders". Mr Long had written:-

> "I assume that this was just an error, although if not, then this whole thing is a non starter ..."

In fact Mr Long had never tried to get his co-directors to sign such documents as he wanted to keep the documents from them. All of the above was revealing and supported Mr Treverton-Jones's submissions. Once HS had been instructed all matters came to light.

75. *[Respondent 2]* and *[Respondent 3]* had also instructed accountants and had made sure that clients were reimbursed with an extra sum as a gesture of goodwill.

76. The Tribunal was referred to the agreement for monthly payments to be made by the firm to Mr Smith of Counsel in respect of outstanding fees and also the kind comments of Mr Smith in his letter dated 26th February 2008 in respect of *[Respondent 2]* and *[Respondent 3]* in which he wrote of the difficulties he had had in relation to his fees when dealing with Mr Long.

77. The fundamental point, plainly supported by the material, was that *[Respondent 2]* and *[Respondent 3]* did not know what was going on. There were plainly widespread and serious breaches of the 1998 Rules for which they had to take responsibility as directors but this was a long way away from recklessness which was not a helpful

formulation as it was normally relied on as an ingredient of dishonesty ie. in a case where there was either deliberate dishonesty or someone who could not care less. To set up a breach of the 1998 Rules as reckless muddied the waters. A clearer and cleaner approach was to look at the breaches and assess whether they were serious or trivial and then assess the relative culpability of the individuals in the firm for the breaches. In this case principal culpability must on any view rest with Mr Long not only for the breaches but for the dishonesty which was completely clear in this case.

78. *[Respondent 2]* and *[Respondent 3]* accepted that with hindsight they could and should have done more at an earlier stage and they dearly wished they had done so. They apologised to the Tribunal for the breaches that occurred and for their responsibility for them. Their culpability was however at the bottom end of the scale. They had placed their trust in Mr Long and that trust had been misplaced.

79. Some breaches should have been identified by the reporting accountants and *[Respondent 2]* and *[Respondent 3]* were now wishing to litigate against the accountants.

80. The Tribunal was asked to consider the effect on *[Respondent 2]* and *[Respondent 3]* of these matters.

81. These events, together with the diagnosis of a very serious illness in a family member, had led to the collapse of *[Respondent 2]*'s health. She remained on medication and hoped that this hearing would represent the bottom of the curve. The Tribunal was invited to read the testimonials put forward on behalf of these Respondents including that of *[Respondent 2]*'s sister and of her son. The son's statement was a very moving document. The Tribunal was given details of the effect of this matter on the children of *[Respondent 2]* and *[Respondent 3]*.

82. Both these Respondents had done well in their previous careers. *[Respondent 2]* had been a police officer who had left that service after the birth of her son as she was not able to work part-time in the police force. She had gone to university where she had met *[Respondent 3]* and she had qualified. She had not worked since these events and indeed she and *[Respondent 3]* felt they were tainted and would not be able to obtain work in the private sector. *[Respondent 3]* had previously been in the army and had then been a civilian with the Ministry of Defence. Following redundancy in the 1990s he had also gone to university and had qualified. He was now working within the police service.

83. The Tribunal was referred to the documentation setting out the current financial position of *[Respondent 2]* and *[Respondent 3]*. In particular the Tribunal was asked to note the relative income and expenditure figures and the fact that the firm's debts were secured on their house so there was in effect no equity available to them.

84. Both Respondents had conditions on their practising certificates. The prospects for *[Respondent 2]* in the profession were remote although it was hoped there would be some prospect for *[Respondent 3]* to improve his income. Their representation before the Tribunal was being paid for through professional indemnity insurance.

85. The shame and embarrassment at appearing before the Tribunal referred to by *[Respondent 3]* in his written statement was echoed by *[Respondent 2]* and their apologies to the Tribunal were repeated. They accepted that they had left too much to Mr Long. The software system used by the firm enabled *[Respondent 2]* to log disbursements but she had not asked to see the ledgers. The Lexcel assessment process included a client file audit to check that all was being done properly. *[Respondent 2]* and *[Respondent 3]* had also believed that all was well with the firm's profitability and indeed the accounts had shown that. They bitterly regretted everything that had happened and had tried throughout to behave in the best traditions of the profession.

86. It was submitted that their involvement did not merit any suspension of their ability to practise. They were unable to pay a financial penalty and the Tribunal was asked to take into account that they had suffered immeasurably. The Tribunal would be reluctant to add another financial disadvantage by way of penalty or costs. The Tribunal was asked to consider whether the public interest could be satisfied with a non-financial and non-suspension penalty. This could not be seen as these Respondents "getting away" with anything as they had suffered a great deal, rather the Tribunal would be tempering what it needed to do in the public interest with mercy to them as individuals and as human beings.

Submissions as to Costs

87. Mr Treverton-Jones asked the Tribunal to consider no order for costs against *[Respondent 2]* and *[Respondent 3]* or to order a specific sum, such sum not to be enforced without further order of the Tribunal. This would do justice to the SRA and these two Respondents. The costs were high and the Tribunal was urged not to make a joint and several order but rather to apportion the costs so that each Respondent knew their responsibility. The Tribunal was asked to order that Mr Long pay over 50% of the costs as he was the most guilty and had brought all this upon the others.

88. The Applicant referred the Tribunal to the cases of D'Souza v The Law Society and Merrick v The Law Society. The Applicant adopted Mr Treverton-Jones's suggestion of a costs order not to be enforced without the consent of the Tribunal but invited the Tribunal to make an order in the amount claimed in the schedule submitted, apportioned as the Tribunal should decide. This would preserve the SRA's position.

89. The Applicant said that Mr Long had not seen the schedule and the Tribunal might wish to order that his costs be assessed if not agreed. This however involved further costs and the Tribunal was invited to make an order in a fixed sum. Mr Long had been discharged from bankruptcy in November 2009.

The Findings of the Tribunal

90. *[Respondent 2]* and *[Respondent 3]* had admitted the allegations against them and the Tribunal found those allegations to have been substantiated.

91. Mr Long was not present and the Tribunal would proceed on the basis that he denied the allegations. The Tribunal noted that the Applicant had served the relevant notices. On the basis of the documentation before it the Tribunal was satisfied that all of the

allegations were substantiated against Mr Long. He had committed all of the Regulatory breaches alleged and the Tribunal was satisfied on the basis of the objective and subjective tests set out in the case of Twinsectra v Yardley that he acted dishonestly. Mr Long had not provided any explanation in respect of Ms B. This was not a matter which could have happened by mistake. He had not divulged to clients his interest in LAS. The Tribunal noted the similarity between the name of Mr Long's company and that of LAS Limited with whom the firm dealt legitimately. In relation to the £6,000 Mr Long had provided no satisfactory explanation and the Tribunal was satisfied that this was client money intentionally paid out by Mr Long. The setting up of LAS suggested systematic dishonesty on the part of Mr Long. The Tribunal was satisfied of that dishonesty to the high standard required.

92. The Tribunal having made a finding of dishonesty in respect of Mr Long and in the absence of any mitigation on his part, was satisfied that the appropriate penalty was to strike Mr Long's name off the Roll of Solicitors. Mr Long had behaved with serious dishonesty towards clients and towards *[Respondent 2]* and *[Respondent 3]* and should not be allowed to practise as a solicitor.

93. In relation to *[Respondent 2]* and *[Respondent 3]* the Tribunal noted that they had come late to the law following successful careers in the police and army respectively. There was no suggestion of dishonesty on their part. The matter had been put to the Tribunal as one of recklessness but the Tribunal accepted the submission of Mr Treverton-Jones as to the nature of the allegations and the degree of culpability of *[Respondent 2]* and *[Respondent 3]*. Mr Long had been the prime mover in the activities which had given rise to the proceedings. *[Respondent 2]* and *[Respondent 3]* had been somewhat naive in their approach to his activities. They had a responsibility as solicitors who were running the firm with Mr Long not to take things always at their face value. Where there were warning signs appearing it was their duty to investigate further and to that extent there was a failure on their part. Their failures were however small compared with Mr Long's misdeeds. The Tribunal did not consider it appropriate to impose any limit on the right of *[Respondent 2]* and *[Respondent 3]* to practise. A financial penalty was also not appropriate or necessary given their present financial position and also in particular given the significant steps they had taken to put matters right. It was however appropriate that there should be a penalty to reflect their level of failure in these matters and the Tribunal would reprimand both *[Respondent 2]* and *[Respondent 3]*. The Tribunal considered that in other circumstances *[Respondent 2]* and *[Respondent 3]* had the aptitude and abilities to be a credit to the solicitors' profession and hoped that they would be able to exercise those abilities in the future.

94. In relation to costs the Tribunal had before it details of the financial position of *[Respondent 2]* and *[Respondent 3]* but Mr Long's financial position was not clear to the Tribunal save that Mr Long had indicated that he was unable to afford the train fare to attend the hearing. The Tribunal considered it right to apportion the costs to reflect the relative culpability of the different Respondents and in the particular circumstances of the case would not make a joint and several order. The Tribunal would order Mr Long to pay costs in a fixed sum of £31,387.76 and *[Respondent 2]* and *[Respondent 3]* each to pay £5,000. In the case of each Respondent the Tribunal would order that the costs not be enforced without leave of the Tribunal.

95. The Tribunal Ordered that the Respondent *[Respondent 2]* of Tollerton, York, North Yorkshire, solicitor, be REPRIMANDED and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not be enforced without the consent of the Tribunal.

The Tribunal Ordered that the Respondent *[Respondent 3]* of Tollerton, York, North Yorkshire, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00, such costs not be enforced without the consent of the Tribunal.

The Tribunal Ordered that the Respondent, KEVIN ALEXANDER LONG of Harrogate, North Yorkshire, 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 £31,387.76, such costs not be enforced without the consent of the Tribunal.

Dated this 14th day of April 2010
On behalf of the Tribunal

D Glass
Chairman