The First Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was dismissed by the Administrative Court on 21 March 2014. Lord Justice Moses dismissed the First Respondent's appeal and ordered him to pay the Solicitors Regulation Authority's costs of resisting the appeal on an indemnity basis, summarily assessed at £192,378.94. Mireskandari v Solicitors Regulation Authority [2014] EWHC 1351 (Admin).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 10411-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
SHAHROKH MIRESKANDARI	First Respondent
CAROLINE SARA TURBIN	Second Respondent
RESPONDENT 3 – NAME REDACTED	Third Respondent

Before:

Miss J. Devonish (in the chair)
Mr A. H. B. Holmes
Mr G. Fisher

Date of Hearing: 1-21 April 2011, 28 May-1 June 2012 and 11-21 June 2012

Appearances

Hodge Malek QC and Andrew Tabachnik, Counsel of 4-5 Gray's Inn Square, Gray's Inn, London (instructed by Russell-Cooke LLP, 2 Putney Hill, London SW15 6AB) for the Applicant.

The First Respondent appeared in person and was not represented at the substantive hearing, except on Day 1 of the hearing by Michael Booth QC on an application for adjournment [1–21 April 2011] and on Day 11 by Mr Buckley, Solicitor of Bowden, Cheshire. The First Respondent did not attend and was not represented at the resumed substantive hearing on 30 May–1 June 2012 and 11–21 June 2012 except that he was represented on 13 June 2012 on his adjournment application by Richard Lissack QC of The Outer Temple, 222 Strand, London WC2R 1BA and Marc Beaumont, Counsel of Windsor Chambers, Castle Hill House, 12 Castle Hill, Windsor, Berkshire SL4 1PD.

The Second Respondent appeared in person and was not represented, except on Day 1 of the hearing by Nicholas Mather, Counsel, of Furnival Chambers, 30-32 Furnival Street, London, EC4A 1JQ on an application for adjournment.

Mr Siward Atkins, Counsel of Maitland Chambers, 7 Stone Buildings, Lincoln's Inn, London WC2A 3SZ (instructed by Jameson & Hill, 72/74 Fore Street, Hertford, Hertfordshire SG14 1BY) for the Third Respondent.

JUDGMENT

INDEX

Allegations

First Respondent

1. The allegations against the First Respondent were that:

Post-admission conduct

1.1 In breach of Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) of the Solicitors' Accounts Rules 1998 ("SAR") and the Solicitors' Code of Conduct 2007 ("SCC") Rules 1.02, 1.04 and 1.06, he transferred (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the office account of Dean & Dean ("the firm") in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G [Client G2], and/or despite being a principal failed to ensure that the firm did not act as aforesaid;

1.2 In breach of SCC Rules 1.01, 1.02 and 1.06, he gave a false impression to the court and/or another solicitor (in a telephone conversation and in correspondence) that the firm retained the £200,000 which was to be held to the order of the court, at times when it had been paid away, and/or failed to correct the aforesaid false impressions given to the court and/or another solicitor;

1.3 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, he misused client monies held by the firm (on behalf of Mr R) [Client R2] in a designated deposit account by transferring the same to the office account, and/or despite being a principal failed to ensure that the firm did not act as aforesaid;

1.4 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, he improperly retained client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements and/or despite being a principal failed to ensure that the firm did not act as aforesaid;

1.5 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01, he transferred monies from client account for "anticipated disbursements" in respect of two clients (Mr D and Ms Q) [Client D and Client Q], and/or despite being a principal failed to ensure that the firm did not act as aforesaid;

1.6 In breach of SCC Rules 1.01, 1.02, 1.03, 1.04, 1.06 and/or 3.01, he procured a letter dated 17 May 2009 from Mr D [Client D] on the basis of false representations as to his intention to repay a particular sum (which was not then paid) and/or following the exertion of "pressure" on Mr D;

1.7 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04 and 1.06 he paid staff salaries direct from client account in October and November 2008 and/or despite being the principal failed to ensure that the firm did not act as aforesaid;

1.8 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.01, 102, 1.03, 1.04 and 1.06, he removed from client account the sum of £60,947.54

purportedly in respect of negotiations relating to disputed Counsel's fees but without any legitimate basis for so doing and/or despite being a principal failed to ensure that the firm did not act as aforesaid;

1.9 In breach of SAR Rule 7, he failed to remedy, properly or at all, the resulting cash shortages described at allegations 1.1, 1.3, 1.4, 1.5, 1.7, and 1.8;

1.10 As a principal of the firm, pursuant to SAR Rule 6 he was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account);

1.11 In breach of the Solicitors' Practice Rules 1990 ("SPR") Rules 1(a), 1(c) and 1(d), he (a) participated in an improper scheme to create reconstructed photographs of the injuries of a former client (Client V) and to release them to the media and the Home Secretary as genuine photographs of her injuries and (b) falsely informed Ms Melanie Riley (a public relations consultant) that the photographs he gave her were police photographs when he knew they were reconstructions;

1.12 In breach of SPR Rules 1(a), 1(c), 1(d) and 1(f), he made a witness statement, in proceedings brought by Ms Riley's firm relating to the matters at allegation 1.11, in which he gave untrue evidence to the effect that (i) the idea to secure reconstructions was Ms Riley's and that he had had little involvement therein and (ii) "Ms Riley at all times knew how the photographs had been produced";

1.13 In breach of SCC Rules 1.02, 1.06 and 10.05, he made promises of payment of outstanding fees to Richard Spearman QC, which he did not intend to and/or did not in fact honour within a reasonable period or at all and gave instructions for Mr Spearman QC (and a junior) to do further work representing (falsely) that they would be paid for earlier work;

1.14 In breach of SCC Rules 1.02 and 1.06, he failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008 of at least £900,000;

1.15 In breach of SCC Rules 1.02, 1.04, 1.06 and 3.01, he accepted a £100,000 loan from a client without having insisted that the client (GMH) [Client G4/G5] took independent legal advice in advance;

1.16 If the sum referred to in allegation 1.15 was not a loan, he misled the Second Respondent (and thereby caused her to mislead the SRA's officers) that it was, in breach of SCC Rules 1.01, 1.02 and 1.06;

1.17 In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2007/8;

1.18 In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2008/9;

1.19 In breach of SPR Rules 1(a), 1(c) and 1(d), he used Philip Brown & Co as a facade in relation to legal proceedings in London for a Mr R;

1.20 In breach of SCC Rules 1.01, 1.02, 1.03, 1.04 and 1.06, he continued to act as a solicitor, notwithstanding representations to the court, the SRA and others that he was on sabbatical;

1.21 In breach of SCC Rules 1.01, 1.02, 1.03, 1.04 and 1.06, he purported to assign his interest in the firm to a friend and former principal in the firm with the intention of frustrating an intervention, when the true position was that clients' informed consent to transfer of their files and monies had not been obtained and/or the latter was to hold the First Respondent's interest as nominee and to his order;

1.22 In breach of SCC Rules 1.01, 1.02 and 1.06, he failed to comply with an order of the Jersey Court to pay costs to Sinels, sought (without any basis) to pay the same by instalments and dispatched a series of cheques which when presented were all dishonoured;

1.23 In breach of SCC Rules 1.01, 1.02, 1.04 and 1.06 and/or in breach of SPR Rules 1(a), 1(c), 1(d) and 1(f) he has attracted serious adverse judicial comment and has been subject to serious adverse findings in relation to the conduct of litigation, thereby undermining public confidence in the legal system and the solicitors' profession and demonstrating a failure to uphold the standards to be expected of a solicitor in conducting litigation as well as a lack of integrity, in the following respects:

1.23.1 He directed the AA [A5] litigation, which was described by Coulson J and Mackay J as "an appalling piece of litigation" amounting to "an abuse of the process of the court by the proposed applicants, Dean and Dean";

1.23.2 He presented to his client and sought to defend throughout the AA [A5] litigation a bill of costs which was reduced to £99,449.65 from £444,705 (i.e. to just over 22% of the amount claimed) by the costs judge;

1.23.3 He dishonestly wrote an e-mail dated 20 January 2009 to the Employment Tribunal, the contents of which (as was found by Blackburne J in a Judgment dated 9 February 2009) "deliberately set out to mislead", made serious allegations which were "groundless" and gave a "distorted and inaccurate impression of the position";

1.23.4 He was responsible for Forbes J and Stadlen J being misled in material respects (as was found by Pitchford J in a Judgment dated 6 November 2008) when, respectively, granting without notice (and continuing) an interim injunction against the Law Society stopping its investigation of the firm;

1.23.5 He pursued a challenge to Intervention Notices served on him which (as Henderson J concluded in a Judgment dated 4 September 2009) was "from its inception a hopeless one" and where his "conduct of the proceedings has throughout been unreasonable to a high degree";

1.24 In breach of SCC Rules 1.01, 1.02 and 1.06, he put forward materially false evidence in his second witness statement in judicial review proceedings (CO/9641/2008) and/or in a letter dated 31 October 2008 from RadcliffesLeBrasseur to the court on behalf of the firm;

Pre-admission conduct

1.25 Prior to his admission to the Roll of Solicitors:

1.25.1 He applied for and secured from the Law Society a certificate of exemption from the Common Professional Examination ("CPE") and a certificate of completion of the academic stage of training on the basis of misrepresentations as to his academic credentials;

1.25.2 He applied for and secured from the Law Society a one-year reduction in his training period on the basis of documents which contained misrepresentations;

1.25.3 He applied for and secured from the Law Society admission to the Roll of Solicitors based on the matters set out at allegations 1.25.1 and 1.25.2 and by failing to disclose that he had been convicted of criminal offences in the United States.

Second Respondent

2. The allegations against the Second Respondent were that:

2.1 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and 22(1) and the SCC Rules 1.02, 1.04 1.06, despite being a principal, she failed to ensure that the firm did not transfer (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the firm's office account in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G [Client G2];

2.2 In breach of SCC Rules 1.01, 1.02 and 1.06, she gave a false impression to the court and/or another, solicitor (in correspondence) that the firm retained the £200,000 which was to be held to the order of the court, at times when it had been paid away and/or failed at any time to correct the aforesaid false impression given to the court and/or another, solicitor;

2.3 In breach of SCC Rules 1.01, 1.02 and 1.06, she gave false evidence (in paragraph 113 of her Response dated 29 June 2009 to the Statement of David Middleton dated 14 May 2009) in support of her challenge to the Intervention Notice served on her by claiming that she had overheard conversation between the First Respondent and Mr Boardman;

2.4 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, despite being a principal she failed to ensure that the firm did not misuse client monies held by the firm (on behalf of Mr R) [Client R2] in a designated deposit account by transferring the same to the office account;

2.5 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, despite being a principal she failed to ensure that the firm did not improperly retain client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements;

2.6 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01 despite being the principal she failed to ensure that the firm did not transfer monies from client account for "anticipated disbursements" in respect of two clients (D and Q);

2.7 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04 and 1.06, despite being a principal she failed to ensure that the firm did not pay staff salaries direct from client account in October and November 2008;

2.8 In breach of SAR Rule 7, she failed to remedy, promptly or at all, the resulting cash shortages described at allegations 2.1, 2.4, 2.5, 2.6 and 2.7;

2.9 As a principal of the firm, pursuant to SAR Rule 6, she was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account);

2.10 In breach of SCC Rules 1.02 and 1.06, she failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008, of at least £900,000;

2.11 In breach of SCC Rules 1.02, 1.03, 1.04, 1.06 and/or 3.01, she transferred the sum of £100,000 from client account to office account on 7 November 2008 recklessly and/or without having made appropriate enquiries as to the propriety of the transfer;

2.12 In breach of SCC Rules 1.02 and 1.06, she gave SRA investigators inconsistent and misleading explanations relating to the 7 November 2008 transfer of £100,000 from client to office account, in particular as to (a) whether she spoke to the client (Mr AH) [Client H] on 7 November 2008 prior to the making of the transfer and/or (b) whether she discussed the aforesaid transfer with the First Respondent before sanctioning the same. One or the other account must be false (if indeed either were true);

2.13 In breach of SCC Rules 1.01, 1.02 and 1.06, she failed to comply with an order of the Jersey Court to pay costs to Sinels, sought (without any basis) to pay the same by instalments and dispatched a series of cheques which when presented were all dishonoured;

2.14 In breach of Rules 1.01, 1.02 and 1.06 of the SCC, she acquiesced in the First Respondent putting forward materially false evidence in his second witness statement in judicial review proceedings (CO/9641/2008) and/or in a letter dated 31 October 2008 to the court from RadcliffesLeBrasseur on behalf of the firm.

Third Respondent

3. The allegations against the Third Respondent were that:

3.1 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and 22(1) and the SCC Rules 1.02, 1.04 1.06, despite being a principal, he failed to ensure that the firm did not transfer (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the firm's office account in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G [Client G2];

3.2 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, despite being a principal he failed to ensure that the firm did not misuse client monies held by the firm (on behalf of Mr R) [Client R2] in a designated deposit account by transferring the same to the office account;

3.3 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, despite being a principal he failed to ensure that the firm did not improperly retain client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements;

3.4 In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01 despite being a principal he failed to ensure that the firm did not transfer monies from client account for "anticipated disbursements" in respect of two clients (D and Q) [Client D and Client Q];

3.5 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04, 1.06, despite being a principal he failed to ensure that the firm did not pay staff salaries direct from client account in October and November 2008;

3.6 In breach of SAR Rules 1(a), 1(c), 6, 15, 19, and/or 22(1) and SCC Rules 1.01, 1.02, 1.03, 1.04, 1.06, despite being a principal he failed to ensure that the firm did not remove from client account the sum of £60,947.54 purportedly in respect of negotiations relating to disputed Counsel's fees but without any legitimate basis for so doing;

3.7 In breach of SAR Rule 7, he failed to remedy, properly or at all, the resulting cash shortages described at allegations 3.1-3.6 inclusive;

3.8 As a principal of the firm, pursuant to SAR Rule 6, he was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account);

3.9 In breach of SCC Rules 1.02 and 1.06, he failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008 of at least £900,000;

3.10 In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2008/9.

4. Dishonesty on the part of the First Respondent was alleged in respect of allegations 1.1-1.9, 1.11-1.14 and 1.16-1.25.

5. Dishonesty on the part of the Second Respondent was alleged in respect of allegations 2.2, 2.3, 2.12 and 2.14 and recklessness on her part was alleged in respect of allegations 2.10, 2.11 and 2.13.

6. Recklessness on the part of the Third Respondent was alleged in respect of allegation 3.10.

7. In the alternative, it was open to the Tribunal to find that the First and/or Second and/or Third Respondents had acted in breach of the rules as alleged to an extent that did not involve dishonesty and/or recklessness in one or more allegation.

Documents

8. The Tribunal reviewed all of the documents submitted by the Applicant and the First, Second and Third Respondents, which included:

Applicant:

Documents

- Application dated 21 December 2009
- Rule 5 Statement dated 21 December 2009
- First Forensic Investigation ("FI") Report dated 11 December 2008
- Second FI Report dated 22 May 2009
- Interview transcripts – various dates
- Schedule 1 (Allegations against the Respondents) dated 18 June 2012
- Schedule 2 (The First Respondent's allegations of abuse) dated 15 June 2012
- Chronology
- Authorities – various
- Correspondence – various dates
- Newspaper articles – various dates
- Ventura Court documentation
- Files 1 – 45 including all previous proceedings/applications in the High Court, the Chancery Division, the Employment Tribunal and before the Tribunal
- Skeleton Arguments – various dates
- Skeleton Argument dated 13 June 2012 for the further adjournment application on 13 June 2012 (in private)
- Medical Reports – various dates

Witness Statements

- Witness Statement of Client V dated 14 August 2008
- First Witness Statement of Ms Melanie Riley and Exhibit MR1 – MR3 dated 14 August 2008
- Second Witness Statement of Ms Melanie Riley and Exhibit MR4 dated 10 March 2011
- First Witness Statement of Ms Lorna Rhodes dated 14 August 2008
- Second Witness Statement of Ms Lorna Rhodes and Exhibit LR1 dated 14 March 2011

- First Witness Statement of Mr Richard Spearman QC and Exhibit RS1 dated 16 February 2011
- Second Witness Statement of Mr Richard Spearman QC and Exhibit RS2 dated 15 March 2011
- Witness Statement of Mr George Cousins and Exhibit GC1 dated 3 March 2011
- Statement of Ms Kathleen O'Donnell dated 17 April 2009
- Witness Statement of Ms Emma Tomlinson and Exhibit ET1 dated 7 March 2011
- Witness Statement of Mr David Shaw dated 10 March 2011
- First Witness Statement of Mr John Mercer and Exhibit JM1 dated 22 May 2009
- Second Witness Statement of Mr John Mercer dated 10 March 2011
- Witness Statement of Ms Tracy Townsend dated 10 March 2011
- Witness Statement of Ms Maureen Beatty dated 11 March 2011
- Witness Statement of Mr Colin Beatty dated 11 March 2011
- Witness Statement of Mr Mark Boardman and Exhibit MB1 dated 11 March 2011
- Witness Statement of Mr Alexander Hill-Smith and Exhibit CLIENT HS1 dated 14 March 2011
- Witness Statement of Client D and Exhibit AD1 dated 14 March 2011
- Witness Statement of Cambiz Kiudeh and Exhibit CK1 dated 15 March 2011
- Witness Statement of Ms Kay Georgiou and Exhibit KG1 dated 15 March 2011
- First Witness Statement of Mr David Middleton (Judicial Review proceedings) dated 17 October 2008
- Second Witness Statement of Mr David Middleton and Exhibits DJM 1 and 2 (Contested intervention proceedings) dated 14 May 2009
- Third Witness Statement of Mr David Middleton and Exhibit DJM 1 dated 15 March 2011
- Witness Statement of Mr Antony Townsend dated 15 March 2011
- Witness Statement of Mr Barrington Mayne and Exhibit BM1 dated 15 March 2011
- Witness Statement of Justice Elizabeth Baron and Exhibit EAB1 dated 14 March 2011
- First Witness Statement of Ms Jessica Asher and Exhibit JXA1 dated 8 March 2011
- Second Witness Statement of Ms Jessica Asher and Exhibit JXA2 dated 18 March 2011

<u>Orders and Judgments</u>

- Judgment of Master Seager-Berry dated September 2005
- Order of Forbes J dated 10 October 2008
- Order of Stadlen J dated 13 October 2008
- Order of Slade J dated 5 November 2008

- Judgment of Pitchford J dated 6 November 2008
- Orders and Judgment of Blackburne J dated 9 and 10 February 2009 and 27 March 2009
- Orders of Henderson J dated 9 and 10 July 2009
- Judgment of Henderson J dated 4 September 2009
- Judgment of Supperstone J dated 18 April 2011
- Order of Aikens LJ dated 29 June 2011
- Order of Hickinbottom J dated 8 June 2012

First Respondent:

Documents

- Response to the Rule 5 Statement undated
- Statement of the First Respondent (Judicial Review proceedings) dated 31 October 2008
- Statement of the First Respondent (Intervention Proceedings) dated 23 December 2008
- Statement of the First Respondent and Exhibit SM5 dated 29 June 2009
- First Respondent's Skeleton Submissions undated
- First Respondent's First Chronology undated
- First Witness Statement of the First Respondent dated 25 February 2011
- Second Witness Statement of the First Respondent dated 15 March 2011
- Skeleton Argument dated 12 June 2012 for the further adjournment application on 13 June 2012 (in private)

Witness Statements/Declarations

- Declaration of Mr Lawrence Greenbaum dated 9 November 2008
- Witness Statement of Mr Anthony ("Tony") Don Richardson and supporting evidence dated 15 March 2011
- Witness Statement of Client Q dated 14 March 2011
- Witness Statement of Mr Mohammed Quayyum dated 14 March 2011
- Witness Statement of Mr Ahmad Asgarian dated 14 March 2011
- Witness Statement of Mr Daniel Stephenson dated 14 March 2011
- Witness Statement of Mr Laurence Howard Davis dated 15 March 2011
- Witness Statement of Mr Daryoush Mireskandari unsigned and undated
- Witness Statement of Mr John Baker dated 15 March 2011
- Witness Statement of Ms Shala Rahbari dated 2 March 2011
- Witness Statement of Mr Gordon Livingstone dated 1 March 2011

- Witness Statement of Mr Victor Ferreira dated 13 March 2011
- Witness Statement of Mr Donald Herbert dated 3 April 2011 (filed out of time)
- Witness Statement of Client G dated 31 March 2011 (filed out of time)
- Witness Statement of Client H dated 31 March 2011 (filed out of time)
- Witness Statement of Ms Melody Norris undated and unsigned (filed out of time)
- Witness Statement of Mr Nigel Carter dated 31 March 2011 (filed out of time)

Second Respondent:

- First Witness Statement of the Second Respondent dated 17 June 2009
- Second Respondent's Response to the FI Report of 22 May 2009 undated
- Second Respondent's Response to the Statement(s) of D Middleton undated
- Second Witness Statement of the Second Respondent unsigned and dated 15 March 2011

Third Respondent:

- Position Statement of the Third Respondent undated
- Witness Statement of the Third Respondent and Annexes "A" to "I" dated 13 September 2010
- Skeleton Argument dated 13 June 2012

Preliminary Matter (1)

The Tribunal's Decision on Preliminary Matter (1)

9. The Tribunal noted the likelihood that the press would be in attendance at the proceedings and that many of the allegations involved former clients of the firm. The Tribunal directed that the clients' initials only should be used and that if, inadvertently, a client's proper name was used, the press were directed not to name any client.

Preliminary Matter (2)

The Tribunal's Decision on Preliminary Matter (2)

10. In relation to the Second Respondent's application to sever, this had been made very late and the Tribunal considered that it would be prejudicial to the First Respondent if granted. The Tribunal considered that the cases should be tried together as the evidence covered the same ground and material and to sever them could lead to conflicting factual findings. That application was refused.

11. In relation to the application to adjourn, the Tribunal had listened very carefully to all that had been said and had considered the Practice Note. The Tribunal found that the Second Respondent had had ample opportunity to consider the papers. The allegations had first been canvassed in 2009 and she had had the benefit of possession of the Rule 5 Statement and the twenty-six files since April 2010.

12. The Second Respondent's written response to the allegations had not disputed many of the facts that formed the basis of the case and the Tribunal considered that she would have time to marshal her thoughts during the proceedings. Whilst certain witness statements had only been served recently, many of them were not relevant to the Second Respondent and of the five served on 23 March 2011, only two were of direct relevance to her.

13. The Tribunal did not perceive an injustice. The Tribunal was experienced at ensuring that litigants in person had every opportunity to present their case. The Tribunal refused the application for adjournment.

Preliminary Matter (3)

The Tribunal's Decision on Preliminary Matter (3)

14. The Tribunal had listened carefully to the submissions of Leading Counsel on behalf of the First Respondent and of the Applicant and had regard to key documents and the Skeleton Arguments from both parties.

15. The main thrust of the adjournment application was the First Respondent's lack of readiness as a direct result of not having had sufficient time to deal with inspection of documents. The Tribunal had been careful not to accept on a wholesale basis the arguments in other proceedings in which similar applications and arguments had been made.

16. The Tribunal noted that this was the fifth adjournment application to date in these proceedings. The issues in the case had been live since 2008 and twenty-four lever arch files of evidence had been available since April 2009.

17. The Tribunal considered that the First Respondent had failed to engage with the investigation process and had missed opportunities to inspect documents. Another key ground of the adjournment application had been the misfeasance and conspiracy proceedings before the High Court which had only been issued on 1 March 2011. Applications for adjournment had previously been considered by other divisions of the Tribunal on 27 January and 9 March 2011. The Tribunal had had the benefit of seeing the pleadings in those proceedings, but nothing had led it to the conclusion that it should depart from the previous views or decisions.

18. It was important to be fair to all parties in the proceedings and the Tribunal considered it to be in the interests of justice to proceed with the matter with due expedition. The chronology presented by the First Respondent had demonstrated that the case was trial-ready. The adjournment was therefore refused.

Preliminary Matter (4)

The Tribunal's Decision on Preliminary Matter (4)

19. The Tribunal had been placed in a very uncomfortable position. To avoid derailment of the hearing, the 60–90 day adjournment was refused. The Tribunal noted that both Leading Counsel had suggested adjourning Day 2 and it accepted that Mr Booth required instructions. The Tribunal hoped that the solicitor instructed on 30 March 2011 would enable Mr Booth to act if the hearing was adjourned to 10am on Day 3 and so directed.

Preliminary Matter (5)

20. A request was made by Reynolds Porter Chamberlain Solicitors on behalf of Associated Newspapers ("AN") by way of a letter dated 5 April 2011 for a copy of the Rule 5 Statement. Mr Malek said that the Applicant was only willing to provide a redacted copy with names anonymised and only then if the Tribunal so directed. Since 2008, there had been a libel case between the First Respondent and AN.

The Tribunal's Decision on Preliminary Matter (5)

21. The Tribunal stated that the Rule 5 Statement was accepted as a public document in the public domain. In these particular proceedings however, the Tribunal accepted the submissions of the First Respondent and the Second Respondent and was concerned that the Third Respondent had not been present to make representations. The Tribunal decided not to direct the Applicant to release a copy of the Rule 5 Statement to AN even in redacted form until the conclusion of the proceedings and the application was refused.

Preliminary Matter (6)

22. The First Respondent stated that in relation to the Tribunal, there seemed to be an absolute perception of bias. The Applicant did not want the First Respondent to have a fair hearing. The First Respondent expressed concern regarding Antony Townsend giving evidence and whether the Tribunal would seek to protect him. He also referred the Tribunal to the High Court proceedings involving Mr Isaacs and that he had said on tape that the Tribunal was a "rubber stamp" for the Applicant.

23. In response to a question from the Tribunal, Mr Malek stated that a recusal application would have the same effect as an adjournment application and that the First Respondent wanted the Tribunal to recuse itself for bias.

24. This was the second time it had been suggested that these proceedings should be heard somewhere else; on 27 January 2011, Mr Oliver QC on behalf of the First Respondent had requested that the case should be heard in Scotland.

The Tribunal's Decision on Preliminary Matter (6)

25. The Tribunal had carefully considered all of the representations and documents referred to. The Tribunal stated that the position was that it was an unbiased Tribunal. It had no knowledge of matters raised by the First Respondent and had only become aware of them upon reading the papers. The Tribunal was an independent body and was not funded by the Applicant. Disciplinary matters would be dealt with fairly by the Tribunal. The Tribunal would not be influenced by the Applicant or the press.

26. This division of the Tribunal would not recuse itself and would not transfer the matter to an alternative jurisdiction. The First Respondent would receive a fair hearing. The application was refused.

Factual Background

27. The First Respondent was admitted as a solicitor on 3 July 2000. His name remained on the Roll of Solicitors.

28. Following completion of his articles with the firm of Tehrani & Co (the principal of which, at the time, was Mr Tehrani), the First Respondent had been engaged by that firm as an Associate. The firm had changed its name to Dean & Dean ("the firm") on 7 March 2002. The Law Society was notified that the First Respondent had formally become a partner in the firm as from 1 November 2005. Mr Tehrani had remained a partner in the firm until 1 November 2006.

29. As from 1 November 2006 until (at the very earliest) 1 December 2008, the First Respondent had been the principal and owner (sole or very substantial majority holder) of the equity in the firm. There was a dispute as to whether this position had changed towards the end of 2008 when the First Respondent had purported to (a) take a three-month sabbatical as from 6 November 2008 and (b) give his interest in the firm to his long-time friend and associate Mr Tehrani as from the beginning of December 2008.

30. The Second Respondent was admitted as a solicitor on 2 January 1992. Her name remained on the Roll of Solicitors. She was held out as a partner in the firm at all times from 16 October 2007.

31. The Third Respondent was admitted as a solicitor on 1 March 1974. His name remained on the Roll of Solicitors. He was held out as a partner in the firm at all times between 1 November 2006 and his resignation as at 14 November 2008.

The Investigation and Intervention into the Practice of the First and Second Respondents

32. On 8 October 2008 Notices had been served seeking documents relating to certain client files and the accounting records of the firm. Late on 10 October 2008, the firm had secured a without notice injunction from Forbes J stopping the inspection. That injunction had been continued by Stadlen J on 13 October 2008. On 5 November 2008, Slade J had refused the firm's application for an adjournment of its own application for permission and disclosure and the firm had been ordered to pay costs of £5,356.24.

33. On 6 November 2008 Pitchford J had refused the firm's application for Judicial Review and had set aside the injunctions. The essence of his reasoning had been that (a) the firm had no arguable basis for challenging the issue of the Notices because there had been ample basis for suspicion which justified the same and that (b) the injunctions had been procured on the basis of the Court having been misled in material respects. The firm had been ordered to pay costs on an indemnity basis and £70,000 on account of such costs within fourteen days. It had also been ordered to comply with the Notices.

34. The Law Society had power to intervene in relation to a solicitor where it had "reason to suspect dishonesty on the part of…a solicitor"(paragraph 1(1)(a)(i) of Schedule 1 to the Solicitors Act 1974 ("SA 1974") and where it was satisfied that a solicitor had failed to comply with the rules made by virtue of section 32 of the SA 1974, namely the SAR.

35. The Law Society had resolved to intervene into the First Respondent's practice on 12 December 2008 on the ground that it had reason to suspect dishonesty on his part in connection with his practice. It had further resolved to intervene into the practices of the First and Second Respondents on 17 December 2008 on the grounds of

breaches of the SAR. Notice of these resolutions had been given on 15 December 2008 and 18 December 2008 respectively. The basis upon which these resolutions had been made was set out in the FI Report dated 11 December 2008 and two Case Notes.

36. The First Respondent had challenged the Intervention Notices served on him in the High Court by a Part 8 claim form (action: HC08CO3730) issued on 23 December 2008. Likewise, the Second Respondent had challenged the Intervention Notice served on her in the High Court by a Part 8 claim form (action: HCO8CO3759) issued on 29 December 2008. Thereafter:

36.1 On 7 July 2009 the First Respondent had applied to Henderson J for an adjournment of the trial. This application had itself been adjourned to 9 July 2009;

36.2 On 8 July 2009 the Court of Appeal had heard and dismissed with costs summarily assessed at £20,000 the First Respondent's appeal against refusal by Blackburne J on 8 May 2009 to extend time to comply with an unless order made on 27 March 2009;

36.3 On 9 July 2009 the First Respondent had pursued his application to Henderson J for an adjournment of the trial. The application had been dismissed with costs summarily assessed at £20,700. Henderson J had indicated that the trial would commence on the following Monday, 13 July 2009;

36.4 On 10 July 2009, the First Respondent had served notice of discontinuance;

36.5 Also on 10 July 2009 Henderson J had heard and dismissed an application by the Second Respondent for adjournment of the trial so far as it related to her. On the following working day, 13 July 2009, the Second Respondent had served a notice of discontinuance. On 15 July 2009, the Second Respondent had been ordered to pay the SRA's costs of the action and had been ordered to make an interim payment in respect of such costs in the sum of £100,000 by 4pm on 29 July 2009. No part of that sum was paid by the Second Respondent. On 17 September 2009 the Second Respondent was adjudicated bankrupt on the petition of Sinels in respect of a Judgment debt owed to them;

36.6 The SRA's applications for indemnity costs and a payment on account against the First Respondent were heard on 21 and 22 July 2009. By a Judgment dated 4 September 2009, Henderson J had acceded to those applications and had ordered the First Respondent to pay the costs of his challenge to the Intervention Notices on an indemnity basis and make a payment on account in the sum of £300,000. The First Respondent failed to comply with any of the various costs orders against him or the firm in the period November 2008 to September 2009 in the three sets of proceedings he and the firm had brought against the Applicant.

36.7 Notwithstanding a number of formal opportunities to do so over an extended period, the First Respondent had not provided an explanation for his conduct:

36.7.1 He had been invited to interview during the inspection but had declined on health grounds;

36.7.2 On 10 February 2009 Blackburne J had ordered the First Respondent to provide by 4 pm on 17 March 2009 particulars of his challenge to the Intervention Notices, including the basis (if so alleged) for contending that

(a) there had been and were no grounds to suspect dishonesty on his part and (b) there had been no SAR breaches. The First Respondent failed to comply. On 27 March 2009, Blackburne J had made an "unless" order which had required compliance with the order of 10 February 2009 by 4 pm on 24 April 2009. The First Respondent failed to comply. His subsequent application for an extension of time had been refused by Blackburne J and his appeal against that refusal had been dismissed by the Court of Appeal;

36.7.3 On 5 February 2009 the Applicant had written to the First Respondent seeking amongst other things his explanation in respect of the matters set out in the first FI Report. No substantive response had been forthcoming;

36.7.4 At the 8 June 2009 pre-trial review in respect of his challenge to the Intervention Notices, the First Respondent had been given permission to serve evidence in reply to "new material contained within the evidence served by the Applicant". Amongst other things, this had permitted the First Respondent to respond to new material within the second FI Report. The First Respondent had served a very lengthy witness statement on 29 June 2009 which had failed to take the opportunity afforded by Henderson J's Order dated 8 June 2009. That witness statement had been described by Henderson J in his Judgment dated 4 September 2009 as "truly deplorable".

36.7.5 In relation to certain specific allegations:

(1) The Applicant had invited comment by letter dated 3 October 2008 on the First Respondent's conviction and qualifications. A response had been received from the First Respondent's then solicitors;

(2) By letter dated 24 October 2008 the Applicant had invited the First Respondent to comment on Mr R Spearman QC's complaint. No substantive response had been received save to threaten an injunction against the Applicant by letter dated 31 October 2008.

G2

37. The case of Client G2 concerned allegations 1.1–1.2 in relation to the First Respondent, 2.1-2.3 in relation to the Second Respondent and 3.1 in relation to the Third Respondent.

38. The chronology was as follows:

38.1 At a hearing on 5 October 2007 the court (HHJ Byers) had directed that £200,000 security for bail should be paid into the firm's client account as the court had been unable to hold it;

38.2 An attendance note dated 22 October 2007 of a meeting between the First Respondent and G2's brother had referred to the former having raised the issue of "outstanding costs on all the matters" and had stated that "we needed £200,000 on account immediately";

38.3 On 25 October 2007, £200,000 had been paid into client account on behalf of G2 for the purposes of her obtaining bail, so that she could travel to Russia. The sum had been reflected in the client's ledger;

38.4 Between 26 October 2007 and 23 November 2007 there had been transfers from the client account to the office account which had been made up of the whole of the £200,000 plus an additional £50,000. The sums had been used to settle the firm's costs and disbursements;

38.5 G2 had changed solicitors from the firm to Boardman Solicitors in or around mid-December 2007. The issue had then arisen as to what should happen to the £200,000 which was meant to be in the firm's client account and held to the order of the court as bail security;

38.6 The firm's letter dated 13 March 2008 had asserted that on 24 January 2008, during a telephone conversation between the First Respondent and Mr Boardman, Mr Boardman had informed the First Respondent that provided the firm was prepared to continue holding those funds that was fine by him. But according to an immediate response from Boardman Solicitors in their letter dated 14 March 2008 that was false. In the same letter Mr Boardman stated that he had suggested the money be paid in to court. In the Second Respondent's unsigned 'Response to the Statement of D Middleton', she had claimed for the first time that she had "overheard this conversation" because it had been conducted by speakerphone;

38.7 At a hearing in the Crown Court on 13 March 2008 attended by the firm's NH, the court (HHJ Byers) had been informed that the security had still been lodged with the firm. The Judge had indicated that the £200,000 should either be paid in to court or other solicitors should hold it to the order of the court;

38.8 On 13 March 2008 the Second Respondent on behalf of the firm wrote to Boardman Solicitors and referred to the alleged conversation on 24 January 2008 and noted that Boardman Solicitors had instructed counsel that the £200,000 held by the firm to the order of the Court should either have been paid into Court, or transferred to another firm of solicitors;

38.9 On 14 March 2008 Boardman Solicitors wrote to the firm (the Second Respondent) and referred to the £200,000 plus accrued interest and disputed any lien. The letter stated "if you are intending to suggest that Mr Boardman consented to your retaining the bail security in your client account that is false";

38.10 On 14 March 2008 the Second Respondent on behalf of the firm wrote to the court (HHJ Byers) and resisted the transfer of the £200,000 held in the firm's client account on the grounds that it had wanted to keep that money within the ambit of a freezing order that the firm had obtained. It had therefore requested that the firm be permitted to continue to hold the money as surety and this would be held to the court's order. The court had not agreed;

38.11 The Second Respondent's evidence was that the First Respondent had approved the letters she had written;

38.12 On 3 April 2008 the firm's office account had been credited with £250,000 from Weybridging Limited, a firm which provided secured loans. From this money, on

17 April 2008, £200,000 had been used to fund the payment of £200,000 into court in respect of G2's bail security. According to the Second Respondent's account to the investigators, this had been a personal loan to the First Respondent;

38.13 On 15 April 2008, the First Respondent had instructed Barclays Bank to issue a banker's draft in the sum of £200,000 in favour of HMCS [Her Majesty's Courts Service] and to debit the office account.

R2

39. The case of Client R2 concerned allegations 1.3 in relation to the First Respondent, 2.4 in relation to the Second Respondent and 3.2 in relation to the Third Respondent.

40. The chronology was as follows:

40.1 In divorce proceedings between R2 (the firm's client) and Mrs B (client of Kay Georgiou Solicitors) on 16 April 2008, it was ordered by the court that the proceeds of a Lamborghini car in the sum of £345,000 should be held in a joint solicitors' account and should be used to defray R2's maintenance obligations, including mortgage payments on the matrimonial home;

40.2 By letter dated 27 June 2008, the firm had sought consent from Kay Georgiou Solicitors for £123,500 to be withdrawn from the joint solicitors' account to enable a separate designated deposit account ("DDA") to be opened specifically to cover mortgage payments with the Royal Bank of Canada ("RBC"). Kay Georgiou Solicitors had agreed and on 4 July 2008 a second DDA and had been opened and £123,500 had been transferred to that account;

40.3 The firm, by letter dated 30 June 2008, had given an undertaking to RBC regarding the £123,500;

40.4 Between 4 July 2008 and 28 August 2008 the client's DDA had been debited with transfers to the firm's office account using the £123,500 and these had been described as "Loan to office (Authorisation from client)";

40.5 No authorisations had been found on the files from the client R2, Mrs B, Kay Georgiou Solicitors or the RBC;

40.6 On 14 July 2008 the office account had been £322,000 overdrawn, and without the £123,500 it would have been £445,000 overdrawn. This would have exceeded the overdraft facility (£225,000) by £226,619.79.

Client money improperly retained in office account

41. Particulars of allegations 1.4 in relation to the First Respondent, 2.5 in relation to the Second Respondent and 3.3 in relation to the Third Respondent.

Unpaid professional disbursements – £28,545 and £4,217.50 (on the firm's schedule)

42. Monies had been transferred from client account to office account purportedly in respect of professional disbursements. Cheques had been drawn on the office account but had been held back and not presented for payment.

43. By the time the Applicant's inspection had begun in early November 2008, £28,545 had been transferred from client account to office account in respect of professional disbursements but cheques for those disbursements had not been sent. This was notwithstanding that the relevant transfers from client to office account had been effected on dates between April and the end of September 2008. Further client to office transfers of £4,217.50 from October 2008 where the cheques had not been sent out were also discovered. The cheques were sent out on 17 November 2008.

44. The firm's accountant's report for the period to 31 May 2008 referred to a similar issue and its potential seriousness.

Additional unpaid professional disbursements – £10,615.07 (not on the firm's schedule)

45. The Applicant discovered a further five such items. No explanation had been received as to why the five items had been omitted from the firm's schedule provided on 14 November 2008.

Transfers from client account for "anticipated disbursements"

46. Particulars of allegations 1.5–1.6 in relation to the First Respondent, 2.6 in relation to the Second Respondent and 3.4 in relation to the Third Respondent.

Improper transfer from client account to office account – £19,994 (Client D)

47. On 22 July 2008 the sum of £19,994 was transferred from client to office account, in respect of "anticipated disbursements".

48. A transfer of client funds as against "anticipated disbursements" was improper and in breach of Rule 22 of the SAR because the money in question was not "properly required".

49. In the course of the intervention, a bill signed by the First Respondent was discovered. The firm's transfer records referred to "SM" against the relevant transaction.

50. There was no evidence to show that disbursements in the relevant amounts had duly been incurred and paid by the firm. Client D had made a claim for a full refund of the £40,000 he had paid to the firm on 17 July 2008 on the basis that no work had been carried out on his behalf. The Solicitors Compensation Fund faced a claim in respect of the monies paid by Client D to the firm.

51. The First Respondent asserted in his witness statement dated 29 June 2009 that the firm had been authorised to take the funds and any monies on account for any reason.

52. A transfer from client account for "anticipated disbursements" was, even if the client had consented, in substance a loan from client to solicitor. Pursuant to Rule 3.01 of the SCC and note 41 of the accompanying guidance, it was essential that the client should have been advised to take independent legal advice before the transaction had proceeded.

53. A letter from Client D dated 17 May 2009 addressed to the Legal Complaints Service ("LCS") purported to withdraw his complaint against the firm. Client D wrote to the LCS on 13 July 2009 disclosing further serious allegations of professional misconduct

and breaches by the First Respondent. Client D alleged that his letter dated 17 May 2009 had been procured on the basis of representations as to the First Respondent's intention to repay the relevant money. The 13 July 2009 letter had confirmed that Client D had not consented at the material time to the use of his monies for "anticipated disbursements" and/or as a loan to the firm.

Improper transfer from client account to office account – £18,170.20 (client Q)

54. On 8 September 2008 a transfer was made from client to office account, seemingly including a sum of £18,170.20 against "anticipated disbursements". The manuscript record of client to office account transfers showed the initials "SM" recorded against this transfer. On 9 December 2008 the Second Respondent provided the Applicant's investigators with a revised version of the bill purportedly dated 8 September 2008 which showed the £18,170.20 as a consultancy fee instead of "anticipated disbursements". In addition, during the intervention, the Applicant had come across a further version signed by the First Respondent and another unsigned version, neither of which referred to "anticipated disbursements" or a consultancy fee.

55. There was no evidence as to either disbursements or a consultancy fee in the sum of £18,170.20 having been incurred in respect of this client.

56. The First Respondent had exhibited to his witness statement dated 29 June 2009, a statement dated 23 June 2009 from Client Q in which it was asserted that the firm "had the authorisation to take any funds from any of my monies they were holding in their client account" and accordingly "all monies taken were done so with my explicit authority".

57. Because a transfer from client account for "anticipated disbursements" was, even if the client had consented, in substance a loan from client to solicitor pursuant to Rule 3.01 of the SCC and note 41 of the accompanying guidance, it was essential that the First Respondent should have insisted that Client Q took independent legal advice before the transaction had proceeded.

Payment of staff salaries from client account

58. Particulars of allegations 1.7 in relation to the First Respondent, 2.7 in relation to the Second Respondent and 3.5 in relation to the Third Respondent.

59. On 2 October 2008 the office account was overdrawn by £502,362.68 (against a facility of £475,000). On that day, without any written signed instruction, the firm had paid directly from the client account £20,574.07 in staff salaries.

60. On 3 November 2008 the office account was overdrawn by £489,487.21 (the facility remained at £475,000). On that day, again without any written signed instruction, the firm had paid directly from the client account £27,262.97 in staff salaries.

61. As was apparent from the Client Account Cash Book entries the amounts in salaries had been allocated to numerous individual accounts in the clients' ledger.

Improper charge to client in relation to allegedly reducing Counsels' fees

62. Particulars of allegations 1.8 in relation to the First Respondent and 3.6 in relation to

the Third Respondent. The Second Respondent had not been held out as a partner in the firm at the material time so no allegation had been made against her in this regard.

63. The chronology was as follows:

63.1 Mr Hill-Smith was instructed by the firm in respect of litigation on behalf of a client, G4/G5;

63.2 On 5 July 2007 the sum of £120,000 had been credited to the client ledger as part of settlement of the proceedings. On 18 July 2007 a further sum of £200,000 had been paid out from the court, which made a total settlement of £320,000. By 23 October 2007 the whole of this sum had been transferred out of client account in satisfaction of the firm's own fees and disbursements. None of that sum had been used to pay Mr Hill-Smith's fees;

63.3 On 5 July 2007, Mr Hill-Smith had issued his fee note for £95,627.44 due to him under a CFA agreed with the firm;

63.4 On 10 July 2007 the firm had had a meeting with counsel seeking a reduction in fees but in the end no reduction was agreed. The outcome of that meeting was reported back to the First Respondent;

63.5 On 11 July 2007 Mr Hill-Smith pointed out by e-mail to the firm that it would have a lien for its costs out of the sums recovered in the action;

63.6 On 25 July 2007 the firm issued a bill of costs for £60,947.54 as the firm's charges in respect of the disputed fees of Mr Simon Monty QC. These had not been reduced, and those of Mr Hill-Smith had never been paid nor had any reduction finally been agreed. The sum had nonetheless been credited from the firm's client account to its office account on 27 July 2007.

63.7 On 23 October 2007 solicitors for Mr Hill-Smith wrote to the firm seeking payment as the firm had made it clear that Mr Hill-Smith was not entitled to any payment whatsoever as the firm had been unhappy with his advice and had sought alternative advice from Mr Simon Monty QC.

63.8 On 23 January 2009 summary judgment was given in favour of Mr Hill-Smith against the firm in the sum of £101,492.31 plus costs with £20,000 to be paid on account of costs. The Judgment remained unsatisfied.

63.9 On 13 March 2009, Mr Hill-Smith submitted a claim to the Solicitors Compensation Fund.

<u>Failure to remedy cash shortages promptly or at all</u>

64. Particulars of allegations 1.9 in relation to the First Respondent, 2.8 in relation to the Second Respondent and 3.7 in relation to the Third Respondent.

65. Rule 7 of the SAR required that principals remedy SAR Rule breaches "promptly upon discovery". To the extent that the cash shortages specified in the relevant allegations were remedied at all, this had not been done upon discovery.

Systemic failure to comply with Rule 23 of the SAR

66. Particulars of allegations 1.10 in relation to the First Respondent, 2.9 in relation to the Second Respondent and 3.8 in relation to the Third Respondent.

67. The inspection and subsequent intervention revealed serious failings in the firm's auditable control systems in breach of Rule 23. Many transfers had been made without written records of authority from a solicitor. There had been no system in place whereby there had to be a signed written instruction from a solicitor. In interview, the Second and Third Respondents had acknowledged that Rule 23 had been continuously and repeatedly breached.

Client V photographic reconstructions

68. Particulars of allegations 1.11–1.12 in relation to the First Respondent.

69. Client V (a well-known music publisher) had been assaulted at her home on 7 June 2005 by a friend of her daughter. The assailant claimed that he had acted under the influence of cannabis. Client V had been interested in securing media coverage to advance her view that cannabis should be reclassified as a class A drug. A public relations consultant (Ms Riley at Bell Yard Communications Ltd) had been engaged through the First Respondent in order to generate media interest in the sentencing of the assailant and Client V's views on reclassification of cannabis. This had initially been successful. Subsequently, further media coverage had been sought. In respect of this further coverage, police photographs of Client V's injuries could not be secured, so reconstructions had been created and provided to Ms Riley. However, media organisations, upon examination, found that they were in fact reconstructions which had led Ms Riley to resign her appointment on the basis that she had been misled by the First Respondent. There had subsequently been proceedings brought in the County Court by Ms Riley's firm against, inter alia, the firm and Client V for unpaid fees.

Fees owed to Mr Richard Spearman QC and Mr James Strachan

70. Particulars of allegation 1.13 in relation to the First Respondent.

71. On 1 October 2008 a complaint was received from Mr Richard Spearman QC by email in which he recorded a series of broken promises (made by the First Respondent or to which he had been a party) as to when certain professional fees (amounting to £50,175 plus VAT owed to himself and his junior, Mr James Strachan) would be paid. To date none of those fees had been paid.

Failure to pay Counsels' fees in a timely fashion

72. Particulars of allegations 1.14 in relation to the First Respondent, 2.10 in relation to the Second Respondent and 3.9 in relation to the Third Respondent.

73. On 9 December 2008 the Applicant's investigators had been provided by the Second Respondent with a schedule of fees owed to Counsel totalling £913,792.63.

74. On 5 December 2008 the Bar Council issued a Withdrawal of Credit Direction against the firm on the grounds of non-payment of Counsels' fees.

75. A subsequent analysis conducted by Russell-Cooke (which took into account Counsels' fee notes received at the firm's offices after the Intervention Notices) revealed that, as at the time of the interventions, the firm owed fees of £1,144,753.20 and $773.77.

£100,000 received from Client G4/G5 on 7 November 2008

76. Particulars of allegations 1.15–1.16 in relation to the First Respondent and 2.11–2.12 in relation to the Second Respondent.

77. On 7 November 2008 the firm's client account was credited with £100,000 from a client of the firm (G4/G5). This was transferred out of client account the same day.

78. The relevant circumstances of that transfer were:

78.1 On 6 November 2008 Pitchford J refused permission for the firm's Judicial Review of the inspection. The Applicant's investigators were able to recommence the inspection halted by the ex parte injunction of 10 October 2008. Also on 6 November 2008, RadcliffesLeBrasseur had written a letter to Russell-Cooke to the effect that the First Respondent had decided to take a sabbatical with immediate effect;

78.2 On 7 November 2008 £100,000 was paid into client account with the narrative "GMF";

78.3 On the same day, the Second Respondent authorised the transfer of £100,000 from client to office account;

78.4 No loan agreement was ever produced;

78.5 On 1 December 2008, the Second Respondent provided the Applicant's Mr Shaw with a letter dated 28 November 2008 from Client G3 which stated (amongst other things) that the payment of £100,000 on 7 November 2008 had not been in respect of fees but had been private funds of the First Respondent.

The firm's applications for professional indemnity insurance for 2007/8 and 2008/9

79. Particulars of allegations 1.17–1.18 in relation to the First Respondent and 3.10 in relation to the Third Respondent.

Professional indemnity insurance for the year 2008/9

80. The firm's Professional Indemnity Application Form for 2008/9 was signed by the Third Respondent on 16 September 2008. It stated that the fee income for the year ended 31 May 2008 was £1,326,420 but an analysis of the firm's quarterly VAT returns showed turnover in the region of £1.8 million for the year to 31 May 2008.

81. On 30 September 2008, the First Respondent signed two "confirmations of order" in respect of the firm's indemnity insurance 2008/9. Both contained an express confirmation that "there are no material changes to my/our 2008 proposal submitted for quotation purposes".

Professional indemnity insurance for the year 2007/8

82. The firm's application in respect of the preceding year was signed by the First Respondent on 4 September 2007. Box 5 of the form asserted that gross fees for the year to 31 May 2006 were £1,405,533. The amount shown for the year to 31 May 2006 was at odds with what was shown on the document entitled "Annual Office Accounts 2005/2006" located in the course of the intervention. That document had shown for the period June 2005 – May 2006 "payments" and "income by invoices". The gross totals had been, respectively, £2,341,921.08 and £2,541,017.39; and the net sums (excluding VAT) had been, respectively, £2,191,015.04 and £2,240,560.39. On this basis, the firm's gross fees for the year to 31 May 2006 had been substantially understated.

83. The First Respondent signed a "confirmation of order" on 26 September 2007 which contained a similar confirmation in respect of material changes to the proposal form to that signed the following year. The position as to fee income in the year to 31 May 2006 had not been corrected.

Using Philip Brown & Co as a facade

84. Particulars of allegation 1.19 in relation to the First Respondent, namely that in 2003 the First Respondent had used another firm of solicitors Philip Brown & Co as a façade in relation to legal proceedings in London for Client R2 and that this had given the false impression that Philip Brown & Co had been conducting litigation, when in reality the litigation had been secretly conducted by the First Respondent and the firm at a time when it had been considered that the firm ought not to have acted in view of a possible conflict of interest.

Continuing to act as a solicitor while claiming to be on sabbatical

85. Particulars of allegation 1.20 in relation to the First Respondent.

86. From 6 November 2008, it had been represented to the Applicant and the court (and others) that the First Respondent would not be practising as a solicitor for a period of at least three months.

87. In the period after 6 November 2008 the First Respondent had continued to speak with Client G and had advised on the proposed settlement and/or correspondence in respect of his litigation. This was reflected in the firm's attendance notes of conversations and advice on 11 November 2008, 17 November 2008 and 18 November 2008.

Purported assignment of the equity in the firm to Mr Tehrani

88. Particulars of allegation 1.21 in relation to the First Respondent.

89. The First Respondent's position was that on 11 December 2008 (the day before the first resolution to intervene into his practice) he had assigned the equity in the firm to Mr Tehrani.

90. The documents relied on as having constituted the alleged transfer to Mr Tehrani were provided to the Applicant by letter dated 23 December 2008. They comprised a

handwritten letter which bore the date 22 November 2008 and a typed document headed "Agreement" which bore the date 11 December 2008. The Applicant did not accept that the Agreement had been made on 11 December 2008.

Failure to pay costs orders made in favour of Sinels.

91. Particulars of allegations 1.22 in relation to the First Respondent and 2.13 in relation to the Second Respondent.

92. In October 2007 the Second Respondent had represented the relevant partners (the First Respondent, herself and Mr Tehrani) in seeking to resist Sinels' claims for fees at a trial in Jersey. Judgment had been entered along with an order for indemnity costs.

93. The Second Respondent had thereafter been heavily involved in the firm's manoeuvrings in respect of the costs order (assessed in the sum of £23,995 plus interest). In particular:

93.1 The First Respondent had first sought to secure Sinels' agreement to the costs order being satisfied in monthly instalments. There had been no basis on which the judgment debtors (including the First and Second Respondents) had been entitled to satisfy the costs order in instalments. Rejection of this proposal had not led to full satisfaction of the debt;

93.2 When the five cheques (totalling over £25,000) had been presented in October 2008, they had all been dishonoured. This had been drawn to the firm's attention on 14 October 2008;

93.3 The Second Respondent had applied on the firm's behalf to set aside the registration of the Judgment by Master Fontaine on the apparent basis that Sinels had been "in possession of the full amount payable".

Improper, unreasonable and abusive conduct of litigation

94. Particulars of allegation 1.23 in relation to the First Respondent.

Directing the A5 (AA) litigation

95. At paragraph 2 of his Judgment dated 30 June 2008, Coulson J had commented that "the disputes relating to the detailed assessment of these costs, including the numerous appeals, have occupied 50 days of court time and the participation of 24 different judges" with total costs in the order of £1 million. He referred to Mackay J's description of the case as "an appalling piece of litigation" and quoted his conclusion that "the multiplicity of proceedings, appeals and applications is the product of what I consider to be an abuse of the process of the court by the proposed applicants, Dean and Dean". At paragraph 10, Coulson J had commented that Mackay J's view "might be thought to be something of an understatement".

96. The First Respondent's second witness statement in the Judicial Review proceedings (which had the opportunity to comment on this matter) had referred to a new set of proceedings which had just been issued revisiting many of the issues already canvassed. Those new proceedings were subsequently struck out by Patten J ([2009]

EWHC 447 (Ch)) on a number of grounds, which included that they amounted to a further abuse of the court process.

The A5 bill of costs

97. In the matter of Dean & Dean v AA, where the firm had sued a former client for fees of £444,705, the Costs Judge (Master Seager-Berry) rejected evidence from the First Respondent, reduced the fees to £99,449.65 and referred the matter to The Law Society.

Blackburne J's Judgment in the Delivery Up Action

98. The First Respondent issued action HC09C00085 against The Law Society and others, seeking delivery up of certain documents and an order that witness statements covering particular topics be provided. The action was dismissed by Blackburne J in a Judgment handed down on 9 February 2009 and the First Respondent was ordered to pay the costs of the proceedings on an indemnity basis.

The Judicial Review and Injunction Proceedings against the Applicant

99. Pitchford J had found that the without notice injunction against the Applicant made by Forbes J on 10 October 2008 and continued by Stadlen J on 13 October 2008 had been procured by means of (a) misleading the court as to the urgency of the application, (b) misinforming the court that the Applicant had been given notice of the impending application to Forbes J, and (c) failing to disclose the pending bankruptcy petition which had been issued against the First Respondent.

The challenge to the Intervention Notices

100. Henderson J's Judgment dated 4 September 2009 set out his reasons for (amongst other things) awarding the Applicant its costs of the First Respondent's challenge to the Intervention Notices on the indemnity basis and an interim payment on account of such costs in the sum of £300,000.

False statements in the First Respondent's Second Statement in the Judicial Review Proceedings

101. Particulars of allegations 1.24 in relation to the First Respondent and 2.14 in relation to the Second Respondent.

102. In his second witness statement in the Judicial Review proceedings, signed on 31 October 2008, the First Respondent made the following assertions: (a) neither he nor the firm had been "in financial difficulties"; (b) the firm had "always complied with the Solicitors Accounts Rules"; (c) the firm had "stringent compliance policies where [it] randomly instruct[s] independent accountants to undertake random audits"; (d) the firm was "a successful London firm in excellent financial health" whose "turnover last year was over £5.5 million"; and (e) the firm was "second to none in our accounting procedures. Not only are our accounts fully compliant, we have procedures in place which go over and above the SRA best practice requirements".

103. Pitchford J in his 6 November 2008 Judgment had dismissed the application for permission to bring a Judicial Review and had discharged the Injunction.

The First Respondent's relevant pre-admission conduct

104. Particulars of allegation 1.25 in relation to the First Respondent.

105. In or about 1997, the First Respondent applied for an exemption from the CPE course. By letter dated 18 July 1997 the First Respondent wrote to The Law Society with information on the degrees he claimed to have obtained and the courses he claimed to have taken at postgraduate level. As to the former, the First Respondent stated that his credentials were a "Bachelors Science in Business Administration, graduated top of my class with a grade point average 4.0 Suma [sic] cum laude", a "Master of Science in International Law, graduated with honours, Suma [sic] cum laude" and a "Doctorate of Jurisprudence, graduated with honours, Suma [sic] cum laude" in respect of which 26 courses were listed.

106. In reliance on the information provided in this letter, The Law Society agreed to grant a certificate of exemption from the CPE on 5 September 1997 and a certificate of completion of the academic stage of training on 21 October 1997.

107. Contrary to the representations of fact in his letter dated 18 July 1997, the Doctorate of Jurisprudence and Master of Science in International Law degrees purportedly awarded by the American University of Hawaii ("AUH") had not been the product of genuine academic study and/or had themselves been procured on the basis of material misrepresentations.

The TC8 – reduction in period of training contract

108. The First Respondent applied to The Law Society for a reduction in the period of training contract he had to carry out. That application was supported by (amongst other things) a letter dated 18 November 1998 and form TC8 which Mr O'Bryan (a Californian lawyer) had latterly said it was "possible" he had signed. That application was successful and a reduction of one year was secured on the basis of the aforesaid letter and TC8.

109. The letter and TC8 had contained representations that:

109.1 The First Respondent had been employed, full-time, at Mr O'Bryan's law offices for two years between August 1995 and August 1997;

109.2 The First Respondent's work had encompassed English as well as American law and had involved "handling the office's English cases";

109.3 The extensive work conducted by the First Respondent had embraced civil as well as criminal cases.

The veracity of these representations was doubted by the Applicant.

Failure to disclose criminal convictions – application for admission as a solicitor

110. In his application for admission as a solicitor, which the First Respondent had signed and dated on 17 May 2000 under a declaration that "the information supplied on this form is complete and correct as at the date of this application", he:

110.1 Answered the question "have you been convicted of any offence in any court of the UK or elsewhere (other than a motoring offence not resulting in disqualification) which you have previously not disclosed to the Society?" by ticking the box marked "No";

110.2 Answered the question "are there any other matters relating to your character and suitability to become a solicitor, which should be considered which you have not previously disclosed to the Society?" by ticking the box marked "No".

111. The form in question stated "Note: convictions which are "spent" under the Rehabilitation of Offenders Act 1974 should be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975".

112. The First Respondent failed to disclose to The Law Society (at this or any time) that in or about early 1991, he had been convicted in Ventura County, California in respect of a telemarketing fraud where consumers had been cheated. The First Respondent had been found guilty on fifteen charges and had been sentenced to three years probation, ordered to serve ninety days in jail (one actual day) and pay restitution of $6,813.90 to victims identified (as well as any other victims who came to the attention of the District Attorney or Probation Officer).

113. On completion of his probation, the First Respondent had applied as a legal formality to have his guilty pleas withdrawn and convictions set aside and this had been done in June 1994. That had not operated to exonerate him in relation to the offences nor obviated the need for disclosure for comparable purposes (such as if seeking admission to the California bar) under US law.

Witnesses

Mr John Mercer

114. Mr Mercer was sworn in to evidence and confirmed the truth of his witness statement dated 24 October 2008. His statement detailed the fact that he had attended at the First Respondent's premises on 8 and 10 October 2008 and that he had been unaware that an injunction was being sought to stop him and his team from carrying out their inspection. Mr Mercer said that there were two FI Reports which had been signed by Mike Calvert, then Head of FI. Mr Mercer said that he had prepared the Reports with input from Forensic Investigator Officer ("FIO") colleagues on the investigation; Ms T Townsend and Mr P Palmer (the latter not having been involved in the investigation after 7 November 2008), and Mr David Shaw.

115. Mr Mercer referred to his most recent witness statement and its contents. A list of claims made on the Compensation Fund by clients of the firm was exhibited to this statement – the compensation claimed totalled £1,450,150 as at 25 February 2011 and £138,000 had been paid out in grants by the Fund as at that date.

116. As at 30 September 2008, the office account of the firm had been overdrawn by £502,389.46. On 1 October 2008 four cheques were shown for £5,000 each made payable to Hanson Ranouf Barristers and Advocates ("HR"), solicitors for Sinels, with a final instalment due of £5,058.21. The office account showed that the cheques had been bounced by the bank and on 6 October the same four cheques had been re-presented and again bounced. The fifth cheque for £5,058.21 had bounced again on 7

October 2008. On 9 October, the four cheques for £5,000 each were re-presented and the following day they bounced again. On 8 October there was a receipt into the account of £40,000.00.

117. Mr Mercer said that he had seen no evidence that Sinels was paid the judgment sum. Sinels' solicitors had written to the firm on 14 October 2008 stating, "We would inform you that your cheques in the sum of £25,058.21 [is] have all been dishonoured by non-payment".

118. Other bounced cheques were evident - £50,792.27 presented on 22 October 2008 and bounced on 23 October; the overdrawn balance was then £427,576.52. On 4 November a cheque drawn for £33,173.10 bounced and on 5 November a cheque for £1,239.63 was shown unpaid and credited back. On 6 November a cheque for £1,634.77 bounced and more cheques bounced on 7 November 2008.

119. The First Respondent's witness statement in the judicial review proceedings on 6 November 2008 had stated "The firm is not in financial difficulties" and "My firm is a successful London firm in excellent financial health". Mr Mercer said it very soon became clear that the firm was experiencing very significant cash flow difficulties. The overdraft on 6 November amounted to £533,340.91. An amount had been received on 7 November of £100,000 from a client of the firm from client account but no written instruction in accordance with Rule 23 had been seen for that transfer.

120. Mr Mercer confirmed that the order of Pitchford J of 6 November 2008 had required the firm to make an interim payment on account of costs of £70,000 by 4 pm on 20 November 2008 but this had never been paid.

121. On 1 December 2008, a series of cheques had been credited back to the office account. The overdraft was approximately £462,000 and there had been a transfer in of £34,000, but on 3 December another series of cheques had bounced and been re-credited to the account. There had been a lot of unpaid cheques up to 16 December.

122. The second office account had been the office salaries account. There was a Client Account Cash Book which recorded receipts into and payments from client account. In October and November 2008, staff salaries had been paid out of client bank account as opposed to office account. Mr Mercer said this was completely and totally inappropriate and not allowed by the SAR. He said that the BACS facility had been withdrawn by the bank.

123. In relation to the R2 matter, on 3 July 2008 an amount of £123,500 had been transferred from the designated client account and credited to a separate client designated bank account. It had been disbursed by 8 July 2008 in a number of payments referred to as "Loan to office, authorisation from client", leaving a balance of £753.44. The £123,500 had been transferred for a specific purpose, namely paying mortgage payments to the RBC who had a mortgage on the matrimonial home. The firm acted for the husband, Client R2, and had given an undertaking to that effect to the RBC.

124. In relation to Client G2's matter, on 25 October 2007 there had been receipt of a banker's draft of £200,000 and then on 13 November a further receipt of £50,000. In

total £250,000 had been received by the firm and all of it had been disbursed in the firm's favour. Mr Mercer said that this was surety money to be held to the order of the court for this client for bail conditions to be amended to enable her to travel overseas.

Cross-examination by First Respondent

125. Mr Mercer said that he was instructed in the weeks leading up to 8 October 2008 to lead the investigation. Mr Calvert asked him to lead the investigation and his first substantive involvement had been 8 October 2008 and when he had assembled his team. He had been tasked with serving the notices which had been served on that day and with moving the investigation forward. He received no further instruction from Mr Calvert between being asked to lead the investigation and the start date of 8 October.

126. The Section 44B Notices were prepared by others in the SRA, in conjunction with solicitors Russell-Cooke. Ms Townsend had had an involvement. She had been a member of his team on the investigation but he had not been involved in that part of the process. The decisions had ultimately been made by Mr Calvert.

127. Mr Mercer did not have an attendance note of his meeting with the First Respondent on 8 October 2008 as it had not been requested to be disclosed but he denied telling the First Respondent that it was just a routine audit and a routine inspection. He recalled that the First Respondent had very strong views about the Applicant and about what he felt the motives had been for the visit and inspection. Mr Mercer said that if he had said anything at all, it would have been that he had come with an open mind to fact-find, as he would have said to anybody.

128. Mr Mercer said that there would always be a reason to inspect but that reason would not be that a firm was an ethnic minority firm. He had not attended any specific training courses about discrimination and he denied that the Applicant had set out to discriminate against the First Respondent.

129. From the FI Report the next step was to consider whether to intervene and Mr Mercer had no involvement in that decision. The First Respondent referred him to the caseworker's report to the Intervention Committee and that this had been inaccurate regarding held back cheques. Mr Mercer stated that the initiative had been taken by the Second Respondent and the cheques had been released. The First Respondent said that the Applicant had alleged that the Second Respondent had done nothing about the cheques but this was incorrect and that Mr Mercer had lied. Mr Mercer denied this.

130. Mr Mercer said that he could not state what the turnover of the firm had been as no-one had been able to tell the investigators. There was a requirement to file an annual accountant's report for the client account. The remaining partners at the firm had not had enough knowledge about the accounting system and the bookkeeper had been absent due to sickness. There had been an accounting package but it had not been implemented.

131. Mr Mercer said that there had been discussion about turnover at the firm. Turnover was gross fees and this did not include VAT. The management accounts had been used from imaging the firm's computers to better understand what the turnover had been; this had been done by Russell-Cooke on the intervention.

132. Mr Mercer confirmed that he reported to Mr Calvert as head of his department. He had been aware of other enquiries going on abroad but had had no part in that and knew no detail. He confirmed that he would have given information to the Legal Director, David Middleton, as to how the investigation was progressing but would not have formally reported to him. Mr Mercer acknowledged that the wider Applicant had an interest in the investigation.

133. On 10 October Mr Mercer had remarked in his statement that the Second Respondent seemed nervous; more nervous than on the first day of the inspection and he acknowledged that he had sent a text message to Mr Middleton to record that. He said that it had been an observation. He had subsequently realised that this had been the day that the First Respondent had gone to court and obtained the injunction against the investigation. He said that Mr Middleton had not requested a report on the investigation of the First Respondent. Mr Mercer said that he knew nothing about the First Respondent having been "targeted" by the Applicant. He said that it would have been very helpful if the First Respondent had been at the firm to assist with the accounts, as the other partners could not answer certain questions.

134. Mr Mercer stated that there may have been ad hoc conversations between him and Mr Middleton but he could not recall them now. It had not been mentioned that the First Respondent had been at court obtaining an injunction. Had it been mentioned, he would have contacted his head of department and let him know; this would have been of interest to the Applicant's legal department. He did not consider that it was for him to have had a view as to whether the First Respondent was honest or dishonest. No instructions had come from Mr Calvert or Mr Middleton for the interviews carried out in relation to the First and Second Respondents.

135. In relation to the twelve cheques which were not sent out, Mr Mercer was referred to the schedule prepared by Mr Shaw on 14 November 2008. The cheques had first been identified on that date. It had been the first time they had been told (by the Second Respondent) that cheques had been held back. Mr Mercer said that the schedule must have been updated subsequently to include additional cheques with clearance dates for certain cheques and that it had been discussed in interview which cheques had cleared. Mr Mercer confirmed that twelve out of seventeen cheques had cleared. In relation to cheque thirteen, Mr Mercer accepted that cheque may have been issued and simply not cashed.

136. Mr Mercer confirmed that checks had only been made up to 24 November; the Applicant had been satisfied that the cheques which had been held back had been released as a matter of principle. The concern had been that client funds had been transferred into the office account. If the client had ordered the firm not to send out a specific cheque then Mr Mercer would have expected the money still to have been on the client account.

137. It had been the partners' decision to release the cheques. The First Respondent had declined to be interviewed, via his solicitors, and had asked for questions to be put in writing. This had not been done as, firstly; it would have taken longer and there were concerns which needed to be progressed and secondly, the Applicant had not considered that the First Respondent would respond very promptly. He said that the preferred way was to put questions in interview.

138. The First Respondent had not completed the Professional History Form whilst the Second Respondent had done so; it had been given on the first day of the inspection. Mr Mercer said that the firm's position had not been good and since the Applicant had a duty to act in the public interest, the facts needed to be reported as soon as possible. Had the First Respondent made himself available for interview, then he would obviously have been interviewed. The First Respondent suggested that Mr Mercer had chosen not to put questions to him in writing even though he had been invited to do so by the First Respondent's solicitors. Mr Mercer acknowledged that they could have chosen to put questions in writing.

139. Mr Mercer confirmed that he had wanted to understand what the First Respondent's position in the firm was, in what capacity and at what times. He denied absolutely that on 6 November 2008 there had been any intention to intervene into the firm.

140. The First Respondent referred to Mr Geoffrey Negus who also worked for the Applicant. Mr Mercer said that Mr Negus was the press spokesperson for the Applicant. The First Respondent referred Mr Mercer to an email from Mr Negus to, amongst others, Antony Townsend and David Middleton. Mr Mercer said that he had not been interested in this area (the press) at all and he had not seen the email before. He was aware that a number of articles had been written about the firm and he had read some of them. He did not recall reference to the firm being intervened or shut down. He acknowledged that if clients had been aware of that, it could have had an effect on them paying bills.

141. If the firm had run out of cash, it would certainly have been in financial difficulty, regardless of assets. Mr Mercer said that they had never been told what the outstanding debt was to the firm. This question had been asked by the Applicant, but the remaining partners did not know the answer.

142. Between November 2007 and September 2008 the overdraft facility, according to the bank, was £200,000 and from October 2008 it had been £450,000. There was an element of discretion of £25,000 when the overdraft facility was £200,000 and when the facility went to £450,000, the discretion was 10% of that and therefore could have gone to £495,000. There had been discussion of a client credit facility in interviews but it had been unclear whether the facility had actually been put in place.

143. Mr Mercer confirmed that a response from the bank had finally been received in 2009 when they confirmed that the £1 million credit facility with the bank had been secured on properties. He had not been aware that at one time the overdraft facility had been £850,000 and said that had he been able to interview the First Respondent, he could have explained first-hand about any credit facilities.

144. The First Respondent said that his defence to the allegations in the Rule 5 Statement was that he had been targeted by the Applicant. The Section 44B Notices had been served based on certain issues relating to newspaper articles about the firm. These related to some complaints and Judgments.

145. The Tribunal acknowledged that the First Respondent had issued proceedings before the High Court dealing with conspiracy and misfeasance. The Tribunal informed the First Respondent that his defence had to be limited; whilst it recognised that he had complained about abuse of process, his primary concern had to be with his case and it was for him to answer the allegations in the Rule 5 Statement. The Tribunal was not

in a position to make a finding until the conclusion of the proceedings but had noted what the First Respondent said regarding having been targeted.

146. Mr Mercer denied that he had been told the firm had to be closed down by 15 December. The First Respondent referred Mr Mercer to a document which stated "...now Mireskandari himself is being investigated by The Law Society's watchdog, the SRA, for alleged dishonesty, accounting malpractice and other serious misconduct". Mr Mercer said that he did not know where this information had come from.

147. Mr Mercer was aware of the allegation of a sham transaction between the First Respondent and Mr Tehrani regarding assignment of the firm. He was not aware of the professional ethics guidance regarding possible intervention.

148. Mr Mercer's function had been solely to execute the Section 44B Notices and to lead his team on the investigation of the firm's accounts and other books and documents. This included the gathering of documentation regarding three separate client matters and one element in relation to the First Respondent's qualifications.

149. In relation to the FI Report dated 11 December 2008, Mr Mercer had written the Report with input from colleagues and Mr Calvert had reviewed a copy of it. The caseworker, Ms Ku Patel, had probably had an advance draft of the Report to read so as to understand the facts. Mr Mercer said that the Adjudication Panel of the Applicant was not within his remit. An intervention did not always have an FI Report behind it; however, the Adjudication Panel did have the FI Report in front of them when they had made their decision about the firm.

150. In relation to Client G2, Mr Mercer said that he had known about the bail surety. He had also been aware that the firm had obtained a freezing order against her assets and assumed that this had been because she owed the firm money. He did not know that the First Respondent was alleged to have misled the Judge who dealt with the ex parte injunction.

151. Mr Mercer confirmed that they had investigated ledgers back to 2007 when they had identified the £200,000 movement. He recalled an attendance note by the First Respondent requiring £200,000 in costs from the client. He said that his concern had been regarding the money for the bail surety. Mr Mercer confirmed that they had not looked at the G2 files but that Mr Shaw had checked the ledgers. Mr Mercer could not remember who had told him about the £200,000 but said that he had had no previous knowledge that £200,000 was missing; this had been found in the course of the investigation. It was put to Mr Mercer that he had not carried out a proper investigation. Mr Mercer said that the partners had been asked in meetings about the £200,000 and an explanation had been required regarding the missing money.

152. Mr Mercer had decided to draw the line after he had spoken to the partners. They had had the opportunity to react to the investigators' concerns and provide additional information. Once the investigators had seen the bounced cheques and the past SAR breaches, there had been a lot to be concerned about and so Mr Mercer had decided to report the facts at that stage. He said that "past breaches" meant the bail surety money, the cheques held back, counsels' fees held back and monies taken subject to an undertaking.

153. The First Respondent put to Mr Mercer that receipt of the £200,000 may have mistakenly been believed by the accounts department at the firm not to have been for bail money but to have been for costs. Mr Mercer said that it was possible to make a mistake but the facts were that the money had been for bail surety. The partners had been interviewed regarding the bail money but had said they knew nothing about it. They had been unable to allay the investigators' concerns regarding the £200,000. There had been a considerable period of time between the date the bail money had been taken and the date when the matter had been rectified.

154. The letter sent to the firm, which the First Respondent would have received, had advised that if the investigators needed to go more than six months back in time, further information would be requested. The Applicant was not bound by a six month rule and they very often went back more than six months. If information was more than six months old and clearly warranted investigation in the public interest, then this would be done.

155. The First Respondent submitted that in the A5 case, the Order of Master Seager-Berry reducing the firm's costs was made before 2005 and so before he had become a partner in the firm. Mr Mercer acknowledged that if matters occurred before the First Respondent became a partner, they would attach to the people who owned the firm at the time; up to November 2005 Mr Tehrani had been the sole principal. Mr Mercer recalled that on the first day of the investigation, the First Respondent had told the investigators that the he had referred Master Seager-Berry to the Office for Judicial Complaints ("OJC") regarding the A5 matter. Mr Mercer had no knowledge of this other than the First Respondent's own comments in October 2008.

156. In relation to Rule 23 of the SAR, Mr Mercer did not believe that signing an invoice was sufficient to satisfy the requirements of Rule 23; a signature on an invoice indicated approval of the invoice but was not specific authority in accordance with the rule in respect of withdrawing money to settle the invoice. If a cheque had been signed by a partner or solicitor to effect a transfer from client to office account the authority would be that contained on the cheque. The investigators' concerns were that transfers had been made in matters where they should not have been made and as to what the underlying authority for those transfers had been. The authorities needed to be written and not verbal, for example the £100,000 on 7 November 2008 done under a verbal authority only. Signed invoices had been found but no other written authority.

157. In relation to the £100,000, the investigators needed to understand the source of funds to understand whether the transfer had been made properly. It appeared to have come from Client G3. Mr Mercer recalled that he had been passed a letter dated 28 November 2008 which stated that the monies received had not been for any legal services but had been the First Respondent's personal funds. The partners' understanding had been that this had been a loan to the firm. The investigators had probed as to what the money was for with the remaining partners and they had said that they had spoken to the First Respondent and it was a loan. He said that they had not asked the client to clarify that.

158. The Second Respondent confirmed that she had spoken to Client H before the transfer was made on 7 November but she had not said that in interview on 21 November 2008, although it would have been a significant thing to have said for the

investigators' benefit and that of the other partners. The letter seemed to make it clear that the monies were not intended for use on a client matter.

159. The absolute quantum of counsels' fees had been cause for concern but there had been no attempt to break the fees down, for example what fees were disputed, ongoing matters and bad debt. The Second Respondent had done this subsequently and provided it to the investigators. Some of the fees may have been disputed and this would have reduced the figure once those had been resolved. Mr Mercer acknowledged that the schedule of outstanding counsels' fees had been prepared in the context of the firm exhibiting cash flow problems and this had given cause for concern.

160. Allegation 1.3 was discussed and Mr Mercer recalled that this related to a matrimonial client, R2, for whom the firm had acted. Money was agreed to be held jointly to meet the wife's costs and some of that money had been separated off and put in a DDA for the purpose of paying the mortgage instalments on the matrimonial home. The First Respondent referred to Barclays Client Credit ("BCC") and Mr Mercer recalled that, in interview, mention had been made of the client not having paid interest on the credit agreement. Barclays would transfer money to the firm for which the client would be responsible in respect of the firm's costs.

161. Mr Mercer acknowledged that there could always be instances where mistakes could be made, but they had been unable to interview the bookkeeper due to her serious illness. He had been aware of the seriousness of her medical condition although the remaining partners had not seemed aware of it.

162. In relation to the payment of staff salaries, the allegation concerned the mechanism which had been adopted to pay the salaries and this had been entirely against the rules. The bookkeeper under no circumstances should have been paying any overheads of the firm out of client account. Mr Mercer did not know who had authorised payment of the salaries out of client account; the other partners had said they had no knowledge.

163. In relation to Client D, Mr Mercer acknowledged that the £40,000 related to four clients at £10,000 per client. He did not consider that this satisfied the rules regarding a fixed fee as there had been nothing in writing to that effect. The files could not be found and there had only been an invoice and a ledger. If there had been a client care letter which clearly referred to a fixed fee and the work to be carried out for that fixed fee and the client had signed such a letter, then he would have accepted it could have been a fixed fee agreement.

164. The First Respondent referred to the client being the company, DGT. Mr Mercer stated that, whilst the payment had come from a company in this name, this did not mean the company was the client or that a document had been sent to it; there was no proof of that. The fixed fee element, if applicable, would only attach to profit costs, not the disbursements. The First Respondent put to him that there was no distinction when it was a fixed fee agreement. Mr Mercer said that he thought there was a differentiation. He said that if all was in place that was required to be in place for a fixed fee agreement and it was evidenced in writing, then the money had to go into office account in those circumstances. The FI Report had been prepared on the basis that there was no fixed fee agreement with the client and the money should never have been transferred from client to office in those circumstances.

165. It was important to know who was on the bank's mandate for a firm's client accounts. The First Respondent submitted that the focus appeared to have been on him. Mr Mercer said that the same questions would have been asked, no matter which partner had signed but the First Respondent had been the senior partner.

166. In relation to Client Q, this was another case where there was an invoice involving anticipated disbursements and client monies were transferred in settlement of the invoice. The First Respondent referred to the client in the intervention proceedings having given a statement which said that she had authorised the firm to do with the money whatever they wanted to do. Mr Mercer said that would have had to be evidenced in writing by the client and contemporaneously with the date on which the money had been withdrawn. Ms Townsend had read the files available for Client Q and had not found any authorisation at the relevant time.

Cross-examination by Second Respondent

167. It was correct that the Second Respondent had not become a salaried partner until 16 October 2007. Mr Mercer accepted that she had not known what the position was regarding the bank accounts until that time and not necessarily with regard to cheques. He accepted that she had been under a lot of pressure after the First Respondent had resigned and that the Second Respondent had not had the means to know what the turnover of the firm had been and had no idea whether she had seen previous years' accounts.

168. In the matter of Client G2, Mr Mercer confirmed that he had no knowledge whether the Second Respondent had been involved in that matter.

169. In relation to the G2 matter, the money had been put back into the account in April 2008 and had been remedied by way of the loan from Weybridging Limited. In relation to the R2 matter, the monies had been put back and in relation to the cheques held back, the initial cheques which added up to £32,000 had been brought to his attention on 14 November and sent out on 17 November. After the intervention on 15 December, he accepted that the Second Respondent would not have been able to see the bank account and so could not have followed up any of the other cheques.

170. In relation to the payment of the staff salaries from client account, Mr Mercer confirmed that there had been concern as to how this had been done but it had not been classified as a shortage as such. He accepted that what had been done meant that nothing could be done to remedy the breach.

171. In relation to Rule 23, the Second Respondent said that this had been admitted by her in interviews as having been breached, but she had subsequently questioned whether or not it was correct.

172. In relation to the Sinels' case, the Second Respondent said that she had only been made a salaried partner to enable her to attend the hearing in Jersey to represent the partners of the firm rather than having been an active member of the case.

173. Mr Mercer accepted that all of the partners had said that there had been quite a number of significant areas where the Second Respondent had not had knowledge and control.

174. In relation to the salaries, the Second Respondent said that she had had a conversation with the bookkeeper and she had told her that she had not asked for anyone's authority as she had thought they were office monies so she could deal with it as she did. The Second Respondent accepted that this had not been the case but this had been her understanding.

175. Mr Mercer said that the first day that the investigators had been able to get back into the firm had been 7 November 2008, the first day of the First Respondent's sabbatical and after the lifting of the injunction. He accepted that the Second Respondent had been the only partner in the office on that day and that it could well have been a very busy day for her. He said that she had not mentioned the telephone conversation with Client H which she said she had had on 7 November until 2 December 2008.

176. In relation to the Rule 23 breaches, Mr Mercer accepted that the Second Respondent had put a procedure in place for authorising client monies to be transferred out of client account and had taken steps to try and remedy the cheques which had been held back. He accepted that he had no evidence to show that the Second Respondent had been deeply involved in the running of the accounts of the firm and that the Second Respondent's evidence had been that this was an area in which the First Respondent had been very heavily involved.

Re-examination of Mr Mercer

177. Mr Malek referred Mr Mercer to the Ouseley Report and the latter confirmed from the report that the percentage of ethnic firms inspected was 18% and not 70% as alleged by the First Respondent.

178. Mr Malek suggested to Mr Mercer that the bookkeeper had told the Second Respondent that the First Respondent had known about the holding back of cheques. The partners met with the First Respondent when he returned from the USA on 13 November and he had denied knowing about the held back cheques or why the bookkeeper had done that. The First Respondent said that he had not known about the salaries. Mr Mercer said that he had never been informed by the partners that any of the cheques had been held back on the instructions of clients.

179. Mr Mercer was referred to a list of the firm's outstanding invoices, but said that he had not been shown that by the First Respondent in cross-examination. The question had to be whether the invoices were realistic and whether they were recoverable.

180. Mr Malek referred to the Ethics Guidance "Closing down your Practice". Mr Mercer said that he had seen no evidence that the conditions referred to in the guidance for sale/transfer of the firm had been complied with in respect of any client matters. In relation to the passage read out by the First Respondent "Closure due to striking off or suspension", Mr Mercer said that this talked about facing a possible strike-off or suspension; it was not dealing with a situation of a firm under investigation.

181. In relation to the G2 matter, Mr Mercer was referred to a letter from the firm dated 13 March 2008 which related to the surety money. He confirmed that he had understood from this that the money was held to the order of the court. He did not need to see a formal order from October 2007 to form that view. He agreed that he had interviewed the Second Respondent regarding the surety money and that he had never found a piece of paper during the investigation which stated that the £200,000

was coming in respect of fees and had never seen any documents which evidenced that enquiries had been made by the firm as to where the monies had gone. It had not been suggested to him during the investigation that there was never any bail money.

182. In relation to the A5 matter, Mr Malek referred to all of the matters put to Mr Mercer by the First Respondent regarding Master Seager-Berry. Mr Malek referred Mr Mercer to a letter from the OJC dated 23 March 2011 to Russell-Cooke for the Applicant which stated:

> "Your request for disclosure of information relating to a complaint made against Deputy Costs Judge Seager Berry.
>
> ...
>
> Dr Mireskandari complained that Deputy Costs Judge Seager Berry:
>
> 1. held two meetings in secret with Lindales [Solicitors], the opposing solicitors, on 18 September and 17 May 2005. He also said that there was [sic] private line of communication arising from the attendance of both parties on 26 April 2006, evidenced by a reference to a phone call being overheard;
> 2. demonstrated racial and/or ethnic discrimination in his decision-making on the case. Dr Mireskandari said that the majority of the decisions taken were against his firm, Dean and Dean, and that they had been cast as the villains in the matter; and
> 3. in reporting Dean and Dean to the Solicitors' [sic] Regulation Authority/Law Society, made an unjustified personal of Dr Mireskandari, and that he copied this to a Senior Costs Judge.
>
> The Lord Chief Justice and Lord Chancellor considered the OJC's investigation into the allegations made and found all parts of the complaint to be <u>unsubstantiated</u> [underlined as written]. The complaint was dismissed...".

183. Mr Mercer said that he had not been aware that the complaint by the First Respondent against the Master had been dismissed.

184. In relation to the £100,000 on the G2 matter, Mr Mercer said that he thought that the First Respondent's case was that those monies had been his own personal monies. He did not know whether this had been a loan or not. Mr Mercer's letter dated 11 May 2009 to Client G4/G5 asked what the money was. Mr Mercer confirmed that no reply had ever been received from G4/G5. Mr Malek referred to the interview of the Second and Third Respondents on 2 December 2008 and the letter of 28 November from clients G3, G4 and G5. The Second Respondent accepted that this was the first time she had mentioned that prior to transferring the funds she had spoken to Client H. Mr Mercer confirmed that he had not been told that in any earlier interviews.

185. Mr Malek referred to Client R2 and the DDA. He said that the Second Respondent had agreed in interview that the undertaking had not been complied with regarding the £123,500. The Third Respondent had also agreed that it did not appear to have been complied with. The Second Respondent had also agreed that it had been breached on several occasions. Mr Mercer said that at the time the transactions had occurred, there had not been any evidence that the partners whom Mr Mercer had interviewed had

been aware of what had happened on this account. He had seen no evidence of any written authorisations for the transactions on the DDA.

186. Mr Mercer confirmed that the question of the bookkeeper's knowledge of the SAR had come up in interviews. The Second Respondent said that she had been told by the First Respondent that the bookkeeper had gone on an SAR course, but that when this had been discussed with the bookkeeper, she stated that she had never been on such a course.

187. In relation to payment of the salaries from client account, the Second Respondent had admitted in interview that this had occurred due to "office account strain".

188. In relation to the fixed fee questions, Mr Malek referred the Tribunal to Rule 19(5) SAR and Note 13 to the Rule, which stated:

> "19(5) A payment for an agreed fee must be paid into an office account. An "agreed fee" is one that is fixed – not a fee that can be varied upwards, nor a fee that is dependent on the transaction being completed. An agreed fee must be evidenced in writing" and
>
> "(xiii) The rules do not require a bill of costs for an agreed fee, although a solicitor's VAT position may mean that in practice a bill is needed. If there is no bill, the written evidence of the agreement must be filed as a written notification of costs under rule 32(8)(b)".

189. Mr Mercer said that, for SAR purposes, agreed fees would attach just to the firm's own profit costs and not to the disbursements if this had been a proper fixed fee agreement but no work had been done. Mr Mercer said that the money had gone into the client account and it should have been refunded to the client.

190. In relation to the internet banking, Mr Mercer said that he believed the person who had pressed the buttons had been the bookkeeper but no written instructions had been seen from the authorised signatories, namely the First Respondent and Mr Richard Southall (a barrister working at or for the firm), to make the transactions.

Richard Spearman QC

191. Mr Spearman was sworn in to evidence and confirmed the truth of his witness statements dated 16 February 2011 and 15 March 2011. He confirmed that he had made a complaint about the firm to the Applicant.

Cross-examination by the First Respondent

192. The First Respondent cautioned Mr Spearman because, he said, he intended to prosecute Mr Spearman.

193. Mr Spearman said that he had been instructed by the First Respondent, with his junior Mr Strachan, to apply for Judicial Review regarding the Applicant's Adjudicators' Decisions. He had prepared a detailed document which had run to approximately forty pages. The Applicant had made a number of investigations into the firm and the First Respondent's view was that they were targeting his firm. Mr Spearman said that

there was a breakdown in emails of fees due to him but that Client R's case had been the largest of the cases.

194. Mr Spearman's complaint was based on responses he had received from the firm and the First Respondent when he had pursued non-payment of his fees. The actual work done was not relevant. Mr Spearman recalled that Simon J could not understand what the Judicial Review proceedings had left in them and that the application was not to be re-submitted without a note settled by counsel to advise what was left. The firm's position was that Simon J had misunderstood the situation by siding with the Law Society and by saying that the Judicial Review proceedings served no purpose.

195. The First Respondent had also wanted to recover the costs of the Judicial Review, as his view had been that his complaint was well-based. The decision to proceed with the Judicial Review in the face of the Law Society's withdrawal had been taken on the express instructions of the First Respondent. He recalled that he and Mr Strachan thought there was substance in a number of the First Respondent's points and the First Respondent was adamant that he wanted to proceed with the application.

196. Mr Spearman had corresponded with the firm regarding non-payment of his fees but had not received any answers and so made a complaint. He had written an email dated 1 October 2008 to the Third Respondent as the Managing Partner and he had intended to refer the matter to the Applicant if no satisfactory response was received. He acknowledged that he had made an allegation of dishonesty.

197. Mr Spearman told the Tribunal that there had been a "Chinese wall" in relation to work Mr Malek and Mr Tabachnik had undertaken for the Applicant, but that if the work had been in relation to the First Respondent's firm, he (Mr Spearman) had not known that. He did not know if his clerk had known that but the clerk could have acted for both without a problem unless there were opposing objectives. Mr Malek and Mr Tabachnik had not been involved with the Judicial Review proceedings at all.

198. Mr Spearman said that he did not know about any wider interest the Applicant may have had in relation to the firm. There was no issue regarding the Judicial Review proceedings being listed. His clerk was not acting for the Applicant or representing any barrister on the other side.

199. Mr Spearman confirmed that he remembered one article from the Daily Mail but could not remember what the articles were about. He denied that the articles had any influence on him when writing his letters. The reason he wrote the letters was as set out in his emails. He said that he had not reported any other solicitor to the Applicant but he had not been treated by any other solicitor as he had by the First Respondent's firm.

200. The First Respondent alleged that Mr Spearman had sought to blackmail him by threatening to make a complaint which would have affected his livelihood. The normal route would have been to report him to the Bar Council, not the Applicant. The Tribunal questioned whether this was correct in view of the fact that Mr Spearman had alleged a breach of professional conduct by the First Respondent/his firm.

201. The First Respondent confirmed that Mr Spearman had been paid £28,000 for work he had done and there were still outstanding fees. It could not therefore be correct

that the firm had been out to defraud Mr Spearman as these fees had been paid. The First Respondent alleged that Mr Spearman had an ulterior motive for referring him to the Applicant.

202. Mr Spearman's letter of complaint was dated 6 October 2008. He said that it had been a proper complaint as it had included the emails which had been exchanged, one of which had set out the full position. He did not recall his clerk having discussed with him any of the First Respondent's alleged concerns and said that the matter had passed way beyond a normal case of delay in payment of fees. There had been repeated breaking of promises. Mr Spearman did not think that this had been a case for mediation, which no-one had ever suggested.

203. Mr Spearman confirmed that he had been contacted by a solicitor from Russell-Cooke to give a statement. The First Respondent put to him whether there had been any breach of Legal Professional Privilege ("LPP") or confidentiality by Mr Spearman regarding the First Respondent or his firm. Mr Spearman said that there had been absolutely no divulgence of any confidential information at all. He had carefully edited his email of 1 October 2008 to remove anything confidential or subject to LPP. The exhibit had been compiled by his redacting the emails to remove references to confidential material. Mr Spearman confirmed that he had also consulted his Head of Chambers about the situation.

204. Mr Spearman said that he had flagged up the very serious potential consequences to the First Respondent pursuant to Section 35 and Schedule 1 of the SA 1974. He denied that this was blackmail. He had understood there was a power of intervention which might or might not have been exercised. Repeated promises had been made to pay the fees and there had never been a dispute about the fees.

205. Mr Buckley, solicitor, confirmed that he had been instructed by the First Respondent for Day 11 of the hearing only.

Cross-examination by Mr Buckley

206. Mr Buckley quoted from the witness statement of Ms Rahbari, Client R's former wife, which stated:

> "21. Dr R told me that the SRA did not want him to pay the £850,000 that he owed to Dean & Dean and that they would help him delay matters.
>
> 22. Dr R also told me that he and his lawyers had been cooperating with the SRA for a long time and that Dean & Dean would never see a penny of the money he owed and so the assignment that I had bought would be made invalid.
>
> 23. Dr R also said that the SRA was intentionally delaying concluding Dr R (sic) complaints against Dean & Dean which was assisting his lawyers in America in stopping the release of money to Dean & Dean".

He also referred Mr Spearman to the witness statement of Mr Livingstone, a former police officer which stated:

> "8. After a while I could hear raised voices coming from within the room where they were, I went to the room Shala [Rahbari] walked out and I stood at

> the open door to the room Dr R said to me, "You are the only one of them who has any sense. Mireskandari is finished I am going to put him in jail, Dean & Dean are finished they will be closed down soon, his Empire is finished." He continued, "You know the SRA in England?" I said yes. He said "I am helping them close him down, they are after him". Dr R was laughing and seemed to be getting more and more excited. He said, "Dean & Dean will not get any money from me." I said, "Why are you telling me this?" He said, "Everybody else knows, Mireskandari is finished, Judge Lowe knows, Alison knows now you and Shala know"".

207. Mr Spearman confirmed that he understood fiduciary duty owed to a client by a barrister and that it was an obligation to do the best for one's clients and avoid conflicts of interest. He said that because his fees had not been paid and he had been lied to a number of times, he had written a final letter on 1 October 2008 which had stated that unless there was a reason why he should not refer the matter to the Law Society, he intended to do so. No reply had been received and so his clerk had made the referral by letter dated 6 October 2008 to the Applicant.

208. Mr Buckley submitted that it was Mr Spearman's duty of confidentiality which had continued, not his fiduciary duty to the First Respondent. He referred to the Bar Council's Code of Conduct which stated:

> "A barrister must not without the prior consent of the lay client **or as permitted by law** [Mr Buckley's emphasis] communicate to any third person information which has been entrusted to him in confidence". He continued "This has been interpreted by the head of the professional standards and legal services department of the General Council of the Bar to mean, if the lay client has told a barrister that he's likely to commit a crime, the barrister is prevented from informing the authorities".

209. Mr Spearman said that he did not agree that the rule meant that one had an obligation of confidentiality which endured for all time. Mr Buckley submitted that it meant that a barrister's mouth was shut forever. Mr Spearman stated that most confidence had a shelf life and most confidentiality obligations had exceptions, such as when information had come into the public domain. Mr Spearman did not accept that he was vicariously liable for his clerk's acts and defaults.

210. Mr Spearman accepted that he had threatened to refer the matter to the Law Society because in his opinion, having looked at what had happened, there had been grounds to suspect dishonesty. Mr Buckley asked him why he had not administered a caution. Mr Spearman said he had not done so because the situation had not been that of a police investigation so there had been no question of administering a caution.

211. Mr Buckley submitted that Mr Spearman was not entitled to fees from the firm as his services had been of no value whatsoever to the firm. Mr Spearman did not accept that; he said that he had done the best he could for the firm and his clerk had done his best to have the matter listed. Mr Buckley submitted that Mr Spearman had misled Mrs Sokhal and the First Respondent by having requested fees when none were due because the consideration of the promise had totally failed. He submitted that the firm had a claim against Mr Spearman for return of all his fees on the basis that they believed he was to have performed a service which he never did perform.

212. Mr Buckley referred to Mr Spearman's email dated 1 October 2008 which stated:

> "...I should say in the absence of payments of outstanding fees or the provision of cogent reasons in writing as to why it would be inappropriate for me to take this course, in each case by 2 o'clock on Friday, 3 October I propose to refer the subject of this email to the Law Society on the grounds that there is reason to suspect dishonesty on the part of all or some of the three fee earners that I have identified above".

213. Mr Spearman said that he did not know why no answer had been received. But a request to extend the deadline for a response had been received and agreed by his clerk. When no response had then been forthcoming, the letter/email had been sent to the Applicant. Mr Spearman stated that the fees had been due to him and no-one had ever suggested differently.

214. Mr Buckley summarised in conclusion that the First Respondent's case was that Mr Spearman had sought to obtain money by deception from the First Respondent's firm by failing to disclose his complete failure to undertake the task for which he had been retained, namely to seek an application for leave and an expedited hearing. This was denied by Mr Spearman. The First Respondent had known exactly what had been going on in relation to the Judicial Review proceedings at all times. There had been a paper consideration by Simon J and his order had been that the matter could be restored if a note was prepared. Mr Spearman had completed a draft note which had required revision but, as far as he was aware, it had never been finished. He had responded to the instructions to prepare the note within two or three days.

215. Mr Buckley submitted that Mr Spearman was liable to be sued for return of all the money paid to him by the firm on restitutionary grounds. Mr Spearman stated that was wrong and absurd.

216. Mr Buckley submitted that Mr Spearman and his clerk, with others, had been involved in perversion of the course of justice in having failed to list the case against the Applicant in a timely fashion. Mr Spearman stated that was totally untrue, without foundation and that Mr Buckley had no evidential basis for the assertion, nor had it been put to him in cross-examination.

217. Mr Buckley further submitted that Mr Spearman had sought to blackmail the First Respondent and had committed the ingredients of an offence under Section 21 of the Theft Act. This was denied by Mr Spearman. He said that blackmail involved an unwarranted demand with menaces; the only demands he had made had been entirely warranted and without menaces. Mr Buckley submitted that the menaces had not been proper in that Mr Spearman had been in breach of LPP, confidentiality, fiduciary duty, Article 8 and the Bar Council guidance. Mr Spearman denied that he had been in breach of any of those.

Justice Elizabeth Baron

218. Mr Malek referred the Tribunal to the Expert's Report and its reference to two sets of proceedings; "San Mateo" and "Ventura". Mr Malek confirmed that the Applicant relied solely on the Ventura proceedings because they led to the convictions: the San Mateo proceedings were not relied upon. The First Respondent confirmed that he did

not rely on the ”San Mateo” parts of his response and no findings were required to be made on those proceedings.

219. Mr Malek said that whether the First Respondent should have included the conviction on the AD1 form and the consequences thereof was a matter for the Tribunal. The expert evidence would only assist with what the American practice was, whether the conviction should have been disclosed in America and the consequence of the conviction.

Examination-in-Chief

220. Justice Baron confirmed that she understood that her duty, as an expert witness, was to the Tribunal rather than the party which had instructed her. She was sworn in to evidence and confirmed the truth of her statement.

221. Justice Baron said that she had never met anyone with the juris doctorate degree who ever called himself or herself “doctor”. However they could do so if they wanted to.

222. Mr Malek said that the First Respondent did not accept that all of the entries on the case docket dated 9 March 1994 produced by Justice Baron were correct. Justice Baron confirmed that she had contacted the Presiding Justice of the whole court in Ventura and he had agreed to ask his clerk to print out a copy of the microfiche and attest to its truthfulness. On 14 March there was a fax from the Supreme Court of California, County of Ventura and a declaration from the custodian of the records. She had declared that what she had produced was a true copy of the record. Justice Baron confirmed that it looked like every docket she had ever seen and she was satisfied that it was a correct copy.

223. Justice Baron confirmed that on 30 October 1990 the court had issued a decision that the case go forward as it said “Court overrules defence demurrer on each grounds”. On 2 January 1991, the First Respondent had withdrawn his not guilty plea and entered a guilty plea on the basis of a plea bargain. He had pleaded no contest [nolo contendere] to counts 1–13, 16 and 19 and had been found guilty on those counts. The counts related to fraud, deceit and advertising under the telephone sellers’ law.

224. Justice Baron said that this was a “wobbler” meaning it could either have been state prison or county jail; state prison if it was a felony or county jail if it was a misdemeanour. The state prison term was either sixteen months, two years or three years. Deception or fraud was a necessary element of this charge.

225. Counts 2–15 related to “false or misleading advertising” and all involved dishonesty and fraud and it was therefore considered moral turpitude. A plea of no contest in a criminal court could not be used against the person in a civil case arising out of the same counts of which he was convicted. This therefore meant that a lawsuit could have been filed against the First Respondent but his plea in the criminal case could not be used against him by the person suing as proof that he committed the crime.

226. Justice Baron confirmed that the First Respondent did not go to county jail but it had been considered a county jail term because of supervision by the sheriff’s department. One would be allowed to do “work release” instead of serving time in the county jail. Mr Malek referred to the Los Angeles Times and the press release dated 2 March 1991 which stated:

> "More than 50 complaints by local residents have resulted in the arrest and conviction of two women who ran a Ventura telemarketing firm that reportedly bilked [sic] consumers of more than $6,000
>
> Patricia Lee Darcy, 21, and Shahrokh Mireskandari, 29, both of Los Angeles, pleaded guilty last month to misdemeanor charges of violating telemarketing registration requirements...".

227. Mr Malek said that the newspaper had not realised that "Shahrokh" was a male name rather than a female name.

228. Mr Malek referred to the entry dated 1 April 1994 "Request for expungement filed". Justice Baron said that the plain language of the statute showed that if you applied for a position in which you needed a license to hold public office and were asked if you had ever suffered a prior conviction, you had to answer "yes". Under code sections where a person had to be licensed to practice law, if asked whether you had ever been convicted of a crime on the state bar application you would have had to answer "yes" because you were seeking a license to practise law.

229. Mr Malek referred to the annotations and the reference to "Moral character in general" which stated:

> "Those seeking admission to practise law must be possessed of unquestioned good character and be above suspicion in dealings with the public".

230. Mr Malek referred Justice Baron to "The Committee of Bar Examiners for the State Bar of California, Office of Admissions" document. In particular, the section headed "Complaints; professional discipline" and section 9.1C which stated:

> "To the best of your knowledge, have there ever been, or are there now pending, any charges, complaints, or grievances (formal or informal) concerning your conduct as a member of any business, trade, or profession, or as a holder of public office? If YES, complete "E"...
>
> I hereby declare under penalty of perjury under the laws of the State of California that the answers and statements provided by me in the foregoing application are true and correct".

231. Mr Malek referred to the expunged convictions against the First Respondent and whether there was a requirement to answer "yes" to 9.1C. Justice Baron said there absolutely was. If there was non-disclosure of a conviction which an applicant would otherwise have been required to disclose under 9.1C then they would be doing something false and misleading.

232. The First Respondent had contended that there was no conviction under US law but Justice Baron stated that was not correct.

<u>Cross-examination by the First Respondent</u>

233. The First Respondent put to Justice Baron that if the docket was wrong then her evidence would be wrong. She said that would depend on what part of the docket was incorrect. It would depend if it was relevant or not. Justice Baron said that in the First Respondent's case, there had been three amendments to the complaint and the demur

had been denied as to the third amended complaint. She said that the docket could confirm what the First Respondent had been charged with as it stated it under the sentencing but she acknowledged that on the third amended complaint she did not know. She admitted that she would base the third amended complaint on the first and second and make an assumption as to the third.

234. The First Respondent referred the Tribunal to the case of People v Dewey Smith which stated that if there was a grey area in relation to the construction of an earlier or penal law, then it must go in favour of the Defendant. Justice Baron said that was correct.

235. Justice Baron confirmed that her report consisted of her own independent research, original thinking and writing. She confirmed that one day in jail, from her personal experience, meant credit for one day served; anything less than twenty-four hours counted as one day. She confirmed that anybody sentenced to ninety days would get thirty days and she had never known a ninety day sentence where anybody had ever served more than thirty days. Justice Baron accepted that if the First Respondent had served four days it would have counted as six in accordance with penal code 4019.

236. The First Respondent stated that he had never been in Ventura County Jail. Justice Baron said that the Judge may have given him credit for one day served and that may simply have been him being booked, fingerprinted, photographed and waiting for the bail bondsman to arrive. The First Respondent got eighty-nine days so did not spend the night in County jail and had been lucky.

237. The First Respondent referred to the various figures of $500 and $5000 on the docket. These totalled $43,000 but the bail had been set at $10,000. Justice Baron said that did not reflect the number of charges; it was a suggestion for a Judge and he would look at all the misdemeanours. $43,000 bail would have been excessive. She said that the sums marked with an "F" meant they were "wobblers" and could be charged either way.

238. Justice Baron accepted that the clerk should have put the name of the First Respondent's lawyer on the docket and it did not appear on it; that may have been because Mr Greenbaum had been standing in for Mr Schechter. Justice Baron said that in relation to the third complaint and why this had not been typed in, she could only think that there really had been no change from the second complaint. The demur had been granted on the second complaint and they had agreed the third amended complaint and the First Respondent had entered his pleas from that.

239. Justice Baron said that the docket spoke for itself and that her understanding of it spoke for itself. If the Tribunal felt that this could not have happened then it was open to them to discount her opinion. She agreed that there was missing information in the docket but said that the information would not have been crucial to her; she would have known what the docket meant.

240. The First Respondent said that Mr Schechter had represented him and Justice Baron confirmed this. The First Respondent said that he had represented him on anything of substance and the First Respondent had only attended when his presence had been required. On other occasions, for a continuance Mr Greenbaum may have attended. Mr Paretz had also represented the First Respondent and another lawyer Mr Cousins.

Justice Baron said she had not expected to see Mr Greenbaum's name on the docket; the clerk may not have written it down and these were busy criminal courts.

241. Justice Baron said that if an underlying conviction was expunged under penal code 1203.4, that penalty was no longer in effect but that did not change the conviction. That was why 4019 stated that if you were asked if you had ever had a conviction, you had to answer the question correctly. Justice Baron quoted Kelly v Municipal Court of City and County San Francisco [1958/160, Court of Appeal, second edition]. The First Respondent said that had been overruled by statute but Justice Baron did not agree.

242. Mr Malek referred the Tribunal to the First Respondent's production of documents in the middle of cross-examination and asserted that this was not right. The Tribunal asked the First Respondent to ensure that any documentation he relied on was provided to all parties and Mr Malek asked that they be formally produced to the clerk. The Tribunal noted that the documents related to additional case law referred to by the First Respondent, the Ventura website and whether experts were required to have insurance (which the First Respondent had submitted was required under the Civil Procedure Rules ("CPR")).

243. The First Respondent referred Justice Baron to the three exceptions to the requirement to inform regarding expungement; he stated these to be licensures, the California Lottery Commission and vehicle code section. Justice Baron said that it related to any state or local agency in the USA. She agreed that it did not refer to the UK and the First Respondent put to her that therefore, other than in the three exceptions, he did not have to disclose Ventura to anybody else. Justice Baron did not agree. She said her opinion was that he should have known or should have disclosed the complaint/grievance against him in his UK application. The First Respondent asked if it was reasonable for someone advised of only those three points to believe that they did not have to disclose and Justice Baron agreed that someone could come to that conclusion. She acknowledged another error on the docket but said that her report would still have been the same even with the two errors which had been identified.

244. The First Respondent asked Justice Baron if she had been aware that he had exposed the Applicant for disproportionate investigation into ethnic minority lawyers. Justice Baron said she had not known but had read part of his Skeleton Argument where he contested the legitimacy of the allegations. The Tribunal did not consider it appropriate for the First Respondent to ask questions of the expert witness regarding his complaints of racial profiling and discrimination in England.

245. The First Respondent produced to Justice Baron "Yellow Pages" for the Iranian community in America. The First Respondent submitted that Iranian lawyers referred to themselves as "doctor". Mr Malek said that he accepted only that he had been shown a page in Farsi of an Iranian person who in Farsi had described themselves as "doctor". He did not know what that person's qualifications were. Mr Malek said that this case was about the First Respondent, practising as an English solicitor and claiming to be a qualified doctor of law. Justice Baron said that in twelve years on a trial bench and two in the appellate court, no lawyer had ever referred to himself as "doctor".

246. The First Respondent referred to the Ventura County website and put to Justice Baron that the website stated that there had only been two charges. Justice Baron said that

she had been unaware of that and had not been shown the website. If the First Respondent could show her a docket which stated that he had only pled to two counts. then the original docket would be inaccurate. The First Respondent said that it was not from a docket but the website. Mr Malek said that this had not been submitted before by the First Respondent.

247. Justice Baron was given the extract by the First Respondent of the Ventura County website which he said he had obtained from the Daily Mail in his libel action with them. Justice Baron said that if she was given this extract, she would not accept it into evidence. She would accept the docket with the court seal on it and certified by Ms PY notwithstanding the fact that there were some inaccuracies in it overall. She would look at the docket to determine whether those inaccuracies were material or immaterial to the decision she had to make as to whether to accept that these were the convictions that the person had suffered. She said that the website extract was similar to a newspaper report and she would not use that document. The document/extract was not something she had ever seen before and she would question its authenticity.

248. The First Respondent said that he had always maintained that the docket was wrong. That apart from a few very minor charges, as part of the plea bargain, the rest had been dismissed. The First Respondent said that he had pointed out the inaccuracies on the docket and on the website as against the docket.

Ms Emma Tomlinson

249. Ms Tomlinson was head of the programme management office of the Law Society/Applicant. She was sworn into evidence and confirmed the truth of her statement.

250. "Form EN1 1997/98 Application for student enrolment and/or completion of the academic stage of training" stated:

> "Any matter such as a conviction or bankruptcy, or any other matter which brings into question a person's character and suitability to qualify as a solicitor MUST [emphasis added] be declared. The Society, on considering the information supplied, will ask for additional referees who MUST be aware of the matter. The Society reserves the right to call any applicant for an interview
>
> Applicants MUST [emphasis added] answer the following questions (please tick where appropriate) N.B. Convictions which are "spent" under the Rehabilitation of Offenders Act 1974 should be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
>
> 1.Have you ever been convicted of an offence in any court of the UK or elsewhere (other than a motoring offence which did not result in disqualification)?
>
> ...
>
> 3.Are there any other factors, such as bankruptcy or any other matter relating to your character or suitability to become a solicitor which should be considered?".

251. Ms Tomlinson confirmed that the AD1 form was the application for admission to the Roll of Solicitors. The First Respondent had ticked the "No" box for each of the four questions on that page which included:

> "The Law Society is required by Section 3 of the Solicitors Act 1974 (as amended) to be satisfied as to the character and suitability to be a solicitor of an applicant for admission. Please complete this section by ticking the appropriate boxes.
>
> 1. Have you been convicted of any offence in any Court of the UK or elsewhere (other than a motoring offence not resulting in disqualification) which you have previously not disclosed to the Society?
>
> ...
>
> 4. Are there any other matters relating to your character and suitability to become a solicitor which should be considered which you have not previously disclosed to the Society?
>
> If you have answered Yes to any of the above questions you must attach to your application a written statement about the matters, the names and addresses of two referees and, where appropriate, a certificate of conviction".

Cross-examination by the First Respondent

252. As head of operations it had been within her unit to process these applications. She did not have a detailed understanding of the Rehabilitation of Offenders Act. She confirmed that she did not know what an expungement was under US law. Ms Tomlinson confirmed that "any other matters" would be a matter in a person's mind that he or she would consider should be disclosed. She agreed that it would be for the judgement of the applicant as to whether they honestly believed that something did or did not need to be disclosed.

253. The application itself was very clear in terms of disclosure and guidance was available at the time as to what to and what not to disclose. At the time she made her statement, she had been head of the programme management office. When she had been head of operations that was not at the time the First Respondent's AD1 had been submitted but a number of years later so she could not comment on the point at which his AD1 had been submitted.

254. Ms Tomlinson said that she had made her statement having had regard to the regulations which were in force at the time the First Respondent submitted his AD1 application and based on the application process at that time; applications had not changed significantly since then. The applications then and now contained very similar character and suitability questions and the declarations were virtually the same. Ms Tomlinson confirmed that she had assisted Russell-Cooke regarding the ex parte applications for educational records concerning the First Respondent. She had not met the lawyers in the US or gone to the US.

255. Mr Malek explained that the purpose for calling this witness had been to explain mechanical processes and what the Applicant had on record in relation to the applications. In response to a question from the Tribunal, Ms Tomlinson confirmed that if all answers were "No" and the form had been fully completed, this would have been entered on the database and as long as all parts had been met, the application

would have been granted. If an answer had been "Yes" then this would have been considered by an assessment officer and that would have been when additional evidence would have been requested such as referees, PNC checks, Bankruptcy and County Court Judgments, dependent upon what the actual character and suitability issue was.

Evidence from an Interpreter

256. An interpreter was sworn in. She confirmed that she was a qualified interpreter and that her language was Farsi which was her mother tongue.

257. The First Respondent put the "Yellow Pages" from California to the interpreter and asked her to look at the sections dealing with attorneys and the number of those with JDs who referred to themselves as "doctor". The interpreter agreed to review the document and confirm how many referred to themselves as "doctor". In relation to a photograph of one gentleman, she confirmed that it stated his name and that he was a doctor and attorney of California in America. The First Respondent made the point that there were people in the "Yellow Pages" in America who were lawyers and called themselves "doctor" but Mr Malek said that there was no way of knowing their qualifications. Mr Malek asked the interpreter whether she accepted that there were entries in the "Yellow Pages" in Farsi where people described themselves as "doctor" and she confirmed that was correct.

Witness Client D (via an interpreter)

258. Client D was sworn into evidence and confirmed the truth of his statement. Client D confirmed that he required his witness statement to be translated as he had little fluency in English.

259. Client D confirmed the request for funds transfer form dated 17 July 2008 of £40,000 from D Trading Co ("DTC") to the firm's client account. The signature on the document was that of his uncle who had been the managing director of the Dubai office.

260. Client D confirmed that the invoice dated 22 July 2008 addressed to him was headed "immigration" and had been split between £20,000 profit costs and £19,994 anticipated disbursements. Mr Malek referred Client D to his statement and the letter dated 25 February 2009 to the Legal Complaints Service ("LCS") from his then solicitors, which stated:

> "We have recently been instructed by Mr D [Client D] in connection with his immigration matter in the United Kingdom and enclose a signed letter of authority for your attention.
>
> In June 2008 Mr D instructed Mr Shahrokh Mireskandari of Dean & Dean Solicitors to take conduct of his application for leave to remain in the United Kingdom as well as the applications of his father and two uncles who live in Dubai.
>
> Mr D was told by Mr Mireskandari that his fees for dealing with the four applications would be £40,000 (£10,000 per person). Accordingly, on 27th June 2008 Mr D made a payment of £40,000 into the client account of Dean & Dean Solicitors....

> Mr D claims that since the payment of the money into the client account of Dean & Dean Solicitors he has received no client care or any other form of correspondence from his solicitor in connection with his visa application. He has attempted to contact Mr Mireskandari without any success. The contact numbers given by the firm are no longer recognised.
>
> Mr D wishes to claim that payments made into the client account of Dean & Dean, are refunded to him in full as no work has been carried out on his behalf".

261. Client D confirmed the letter had been written by Mr Cambiz Kiudeh of Russell Wise Solicitors on his instructions.

262. Mr Malek referred Client D to a further letter dated 17 May 2009 from him to the LCS, which stated:

> "Dear Sir,
>
> I have been Advised [sic] that a complaint has been made on my behalf against Dean & Dean solicitors. I have no complaint and I am satisfied with the services of Dean & Dean.
>
> Dean & Dean have complete authority to take all the money paid to them at any time. I want this complaint withdrawn immediately.
>
> This is an irrevocable order on behalf of me and my family. I and my family are very satisfied with the services of Dean & Dean and have no complaint.
> I write this letter after taking independent legal advice."

263. Client D said that the letter had been read to him and he had typed it and emailed it. He said that he had been telephoned by the First Respondent in Dubai and the First Respondent had said that he was going to return the money.

264. Client D had not taken any independent legal advice. He said that by the time he wrote the letter, he had received nothing from the firm by way of "services".

265. Mr Malek referred to a letter dated 13 July 2009 to the LCS which stated:

> "I am writing further to a letter dated 17 May 2009 signed by myself, withdrawing my complaint against Dr Sharokh Mireskandari and Dean & Dean Solicitors.
>
> I would like to explain the circumstances surrounding my signing of the letter dated 17 May 2009. From the date I lodged the complaint against Dean & Dean Solicitors, I have received a number of phone calls from Dr Mireskandari urging me to withdraw my complaint. He gave me assurances that I would receive my money back.
>
> In May 2009, Dr Mireskandari contacted my father and I, and put a lot of pressure on us to sign a letter to withdraw all our complaints against his firm. He promised that if we signed the letter, he would return our money in full, within 24 hours.
>
> It is now eight weeks since the date I signed the letter and I have still not received my money back. I feel that, I was tricked by Dr Mireskandari into signing the letter to withdraw my complaint and am therefore writing to you to

> inform you that, I would like the complaint against Dean & Dean Solicitors to continue to be dealt with and wish to withdraw what I have stated I [sic] my letter of 17 May 2009".

266. Client D confirmed it was his letter and it was true. He was referred to the decision of the Adjudicator dated 26 October 2009 which stated:

> "I have carefully considered the complaints made by Mr D [Client D] and I make the following decision upon the quality of professional services provided by Dean and Dean.
>
> ...Having regard to the categories of compensation in the Guidance on Compensation produced by the Legal Complaints Service I consider that the consequences fall within the serious category and I shall award Mr D the sum of £1,500 which is at the top end of that category
>
> ...
>
> I therefore direct Dr Sharokh Mireskandari of Dean & Dean to pay to Mr AD the sum of £1,500 compensation".

267. Client D confirmed that the £1,500 compensation had not been paid to him.

268. Mr Malek referred Client D to another document provided by the First Respondent on Day 7 of the hearing. Client D confirmed that his signature was on the document. He could not remember exactly the circumstances in which it had been signed but said that it had been signed before he made his complaint. Client D said that these were documents the First Respondent had asked him to sign.

Cross-examination by the First Respondent

269. Client D confirmed that since he had gone to Dubai and begun working for his father, he had returned to England twice; once travelling and once to take an English course in late 2007. He had studied at Albion College for nine months and then Regent College but he could not remember how long he had been there. The First Respondent suggested that Client D had lied about his time in England. Client D said that the reason he had stayed and registered at Regent College was that he had been waiting for the First Respondent to arrange his visa. Client D said that he only understood a little English and could not speak it fully in court. Client D said that registering for one year meant attending for nine months.

270. Client D said that when he did business in Dubai he spoke in Farsi. The business was as agent for the LG Company. He attended meetings and his uncle and father spoke English fluently. It was their business, not his. Client D said that 80 to 90 % of people in Iran did not speak English. The First Respondent referred to the withdrawal letter to the LCS. Client D said that he did not understand about 90% of the letter. He did not know who had signed it as a witness.

271. Client D said that he did not know if the company had its own lawyers. The First Respondent referred him to the line "I have taken independent legal advice". Client D said that he had written the letter which he had been asked to write by the First Respondent and had signed it. He was referred to the letter he wrote for continuation of his complaint. Client D said that he did not know who the witness's signature was,

he had not seen it before. When he had signed the letter he had been alone. The letter was with his solicitor when he returned to Dubai and Iran and so he had not checked the document. He had been to the First Respondent's office three times and the third time had been the last time; the First Respondent asked it to be noted that Client D had replied before the translation.

272. Client D said that the First Respondent had said to him "First I actually have to get the money and then I'll do the job for you". Client D said that he had then paid the £40,000 on account. He had believed the agreement to be that his family would pay the £40,000 and the First Respondent would deal with the visas. The agreement had been with four people; Client D, his father and two uncles for £10,000 per person. The First Respondent said that the company matters were important because they were required by the firm to establish the appropriate credit points needed for immigration purposes. Client D said that he did not understand the balance sheet of the company and these were private matters of the company. Client D said that the owner of the company had sent the money and that the First Respondent's clerk/secretary had given him the firm's account number with Barclays Bank.

273. Client D said that he had instructed his solicitor when he realised that he was not going to get his money back from the First Respondent. The letter from Russell Wise to the LCS had been dated 25 February 2009. He had then been contacted by the First Respondent who had asked him to sign the letter withdrawing his complaint. When he realised that the money was not going to be refunded, he asked his solicitor to pursue the case. Client D recalled signing a letter when he had met with the First Respondent at the Churchill Hotel in January 2009. The First Respondent submitted that the £40,000 transfer had taken place in July 2008 and so this letter had been approximately six months after that.

274. Client D said that he had tried to call the First Respondent on his mobile telephone numerous times but there had been no reply. He had tried to contact the First Respondent through a friend but there had been no reply. Client D could not remember whether he had met with the First Respondent between July 2008 and January 2009.

275. In relation to these proceedings, Client D said that he had been in Tehran and had been telephoned by a group of people from Russell-Cooke with the aid of an interpreter who translated for Client D. They had been in touch with his solicitor. The Tribunal noted the First Respondent's point that there were a group of individuals speaking to one witness to get a statement over the telephone.

276. Client D confirmed that his evidence was that the First Respondent had called him and pressurised him. He believed he had been pressurised by the First Respondent telephoning him in Tehran or Dubai and asking him to sign and that he had even spelt words for him. Client D stated that he recognised as pressure the First Respondent telephoning him first in Tehran and then tracing him to Dubai. He had had to write what he was told to write and send it; that was pressure. He did not say "no" because the First Respondent had promised him his money and had given him the First Respondent's father's address and told him that he could go there to collect his money.

277. Client D's father had gone to see the First Respondent's father but he had said it was nothing to do with him. Client D had sent the signed letter back to the First

Respondent within the hour. He had been told he would receive his money back within twenty-four hours.

278. Client D confirmed that his solicitor had told him about the Compensation Fund and that the Applicant would consider whether he was entitled to his money back or not. The First Respondent said that if the Compensation Fund paid Client D back then he did not have to and Client D likened it to a sort of insurance policy. Client D maintained that the First Respondent had promised him his money back.

Re-examination by Mr Malek

279. After he had paid the £40,000 on 17 July 2008, Client D confirmed that he had received no correspondence or letters from the First Respondent. Client D said that he had never met Mr Farooq Bajwa of the firm.

280. In relation to the letter of complaint written by Russell Wise dated 25 February 2009, Client D confirmed that this had been the first complaint.

281. Client D stated that the First Respondent had never repaid the money and if he had, Client D would not have been before the Tribunal.

Mr Cambiz Kiudeh

282. Mr Kiudeh was sworn into evidence and confirmed the truth of his statement.

283. Mr Kiudeh acted for Client D regarding immigration matters and complaints against Dean & Dean. He always spoke to Client D in Farsi.

284. Mr Kiudeh wrote the letter of complaint on the instructions of Client D and discussed the contents before it was sent. Mr Malek referred to Mr Kiudeh's attendance note dated 9 July 2008 which stated:

> "Received email from AB of LCS together with signed letter of client withdrawing the complaint against Dean & Dean.
>
> Called client in Dubai. Client confirmed that he did sign the letter, but only following persistent phone calls and pressure by Sharokh Mireskandari to withdraw the complaint against him and only then, client would receive his money back.
>
> Client stated that S Mireskandari had promised him and his father that when the complaint against him was withdrawn he would repay the money within 24 hours.
>
> Client believed that he had been tricked into signing the letter to withdraw the complaint and confirmed that he wished to go ahead with the complaint against Dean & Dean...".

285. The first time Mr Kiudeh became aware that Client D had withdrawn his complaint was on 9 July 2008 and his attendance note was an accurate account of his telephone call with Client D.

Cross examination by the First Respondent

286. Mr Kiudeh said that he had first been instructed by Client D in February 2009 and had written the letter dated 25 February 2009, having been instructed by the client approximately one week before that. He had received an email and a telephone call from the LCS caseworker.

287. Mr Kiudeh confirmed that he had made the attendance note on 9 July as a reminder of what had happened that day but it had only been a brief discussion with Client D who had been in Dubai. The First Respondent referred to the second paragraph which stated:

> "Called client in Dubai. Client confirmed he signed a letter but only following persistent phone calls and pressure by [me]" (the First R).

288. Mr Kiudeh said the conversation had been mainly to do with his letter and whether Client D wanted him to continue with his case. He said that Client D's complaint had been about lack of service and to recover his £40,000.

289. In relation to the May letter withdrawing the complaint, Client D told Mr Kiudeh that the First Respondent had spelt everything out to him on the phone.

Re-examination by Mr Malek

290. Mr Kiudeh confirmed that he had not been aware of any work carried out by the First Respondent for Client D between 9 January and 25 February 2009. He confirmed that the Adjudicator's statement "Client D's complaint is that he did not receive a client care letter or any other documentation relating to this matter, and that no work was carried out on his behalf by the firm" was accurate. Mr Kiudeh said that in relation to the file produced for Client D, he had seen no evidence of any work done. It was his understanding that this was the file recovered by Russell-Cooke as Intervention Agents and which was exhibited to his statement. The file had not included any Rule 15 correspondence.

Mr Antony Townsend

291. Mr Townsend was sworn into evidence and confirmed the truth of his statement.

292. He said that his position remained unchanged and that he was the Chief Executive of the Applicant. He confirmed that he had looked at the First Respondent's response to the Rule 5 Statement and "The SRA's motivation and conduct" (files 27 and 28) although not in exhaustive detail in relation to the latter. Mr Townsend confirmed that he had also looked at files 29 and 30, making four files in total. For the majority of his work, he was engaged in the SRA's strategy and management, direct staff reporting, supporting the Board and external engagements.

Cross examination by the First Respondent

293. Mr Townsend said that he might keep an eye on a particular case in two respects; certain cases had a high profile involving costs or publicity and secondly, Mr Middleton, as Legal Director, reported directly to him and as his line manager he

checked that the right resources were being devoted to a particular matter and that the person dealing with it was not overloaded.

294. The Applicant's policies included transparency and proportionality, to which it strove to adhere. He did not know how much had been spent investigating the First Respondent and would not necessarily want to know on each individual case. Mr Townsend acknowledged that a number of articles had been written about the First Respondent and said that the case had been a priority in the sense that the First Respondent had raised it and made allegations against the Applicant and Mr Townsend.

295. Mr Townsend confirmed that the First Respondent had initially raised his allegations against the Applicant in 2007. The First Respondent complained that the Applicant targeted and/or disproportionately investigated ethnic minorities. Mr Townsend accepted that the published statistics had shown that in certain areas of the Applicant's work there had been a disproportionate involvement of black and minority ethnic solicitors and firms. He clarified that the statistics had shown "a disproportionate representation in a variety of our [the Applicant's] regulatory procedures". This meant that there were more black and minority ethnic solicitors and firms in the Applicant's procedures than one would expect given their representation in the overall population of solicitors as a whole. The majority of firms investigated were white firms.

296. Between July 2006 and October 2007, following the first report commissioned by the Applicant, Mr Townsend said that further research had been undertaken and an equality and diversity strategy was being drawn up. This had subsequently fed in to the work which Lord Ouseley had undertaken from early 2008. There had been two or three meetings and the Applicant had agreed to the setting up of the inquiry. Mr Townsend said that he believed it had been Mr Keith Vaz who had been the instigator, although it may have been prompted by the First Respondent's letter. He was aware of the letter from Mr Vaz to him which had ended up in the Daily Mail; Mr Townsend said that he had been concerned but denied that the letter could only have come from him. Mr Middleton had investigated, which included making enquiries of any of the Applicant's staff who would have had access to the correspondence.

297. Mr Malek submitted that the inquiries by Mr Middleton as the Legal Director were privileged. The First Respondent referred to the directions order of the Tribunal dated 9 March 2011. Mr Malek said that the Applicant had provided any communications it had had with the Daily Mail and the alleged conspiracy was that the Applicant had given information such as the education file to the Daily Mail. Mr Malek confirmed that the internal emails between the Applicant and the Daily Mail had been disclosed. He said that communications with and within the Applicant for the purpose of responding to the allegations were covered by legal professional privilege.

298. Mr Malek accepted that the two letters sent by the Applicant to the Daily Mail were not protected by privilege as they were letters to a third party asking about a leak and they had been disclosed. With regard to Mr Middleton's investigation and work with Russell Cooke, he said that was privileged and privilege had not been waived. He submitted that in law, an in-house lawyer and communications with him (Mr Middleton) were just as privileged as those with an external lawyer. This was clear English law in accordance with Phipson [2010 edition, 17th edition]. Mr Malek

also referred the Tribunal to the authority of Alfred Crompton Amusement Machines v Customs and Excise No.2, [1972] 2 QB 102 at 129.

299. The First Respondent submitted that if Mr Middleton had "opened the door" in his statement in relation to the investigation that he had undertaken, by doing so he had waived privilege and the First Respondent was entitled to ask questions. Mr Malek said that he was not saying that the product of the legal work was privileged, for example the statement, but what was privileged was the communication between, for example Mr Negus and Russell Cooke. The First Respondent said that he wanted to know the names of the people who had been interviewed by Mr Middleton during the course of his investigation into the leaked letter. Mr Malek confirmed that if Mr Middleton had interviewed people, spoken to people and corresponded with people then as a lawyer that was privileged.

300. The First Respondent said that his position was that Mr Townsend had leaked the letter. The letter must have emanated from Mr Townsend's office, someone had told the Daily Mail about the letter and the Daily Mail had then requested the letter and published it. The First Respondent submitted that the Applicant was seeking to hide behind privilege. Mr Malek clarified that Mr Middleton's investigations had been done by email and not face-to-face so the Tribunal would have to consider whether a communication from a lawyer to someone else within the Applicant's organisation was privileged or not.

301. The Tribunal considered the question of whether Mr Middleton was required to reveal the names of the individuals interviewed and whether he had waived privilege in his statement. The Tribunal questioned whether it was germane to the proceedings and the allegations it needed to consider. The First Respondent submitted that it was one of the most fundamental issues of his defence, because if there had been an abuse of process, then the case was effectively over. The First Respondent relied on the concept of ex turpi causa. The Tribunal requested that the First Respondent produce the law he sought to rely on and put this forward if it was his defence unless he intended to submit no case to answer at close of the Applicant's case.

302. Mr Malek referred the Tribunal and the First Respondent to the Applicant's Skeleton Argument and submitted that the Tribunal was a public interest body and if, for example, prosecutorial misconduct was found where also the allegations had been proved against the First Respondent the Tribunal would have to balance the two. Mr Malek referred to Warren v The Attorney General for the Bailiwick of Jersey [2011] UKPC 10. Mr Malek stated that, in light of the First Respondent's allegation that Mr Townsend had leaked Mr Vaz's letter to the Daily Mail, Mr Townsend had been called to give evidence so that the First Respondent could put his allegations.

303. The First Respondent referred the Tribunal to the case of Stone & Rolls v Moore Stephens [2009] UKHL 39 which supported the proposition that as a matter of public policy, if a claimant committed an act, whether or not a criminal act, he could not benefit from his misconduct. The Applicant could not produce Mr Townsend and then seek to hide behind privilege. The only reasonable conclusion was that the letter had emanated from Mr Townsend's office and from Mr Townsend.

304. Mr Malek stated that the Applicant did not accept that it had hidden anything. The allegation was that it was Mr Townsend who leaked the letter and no purpose could be served by going into communications from the lawyer, Mr Middleton, to other

people as to whether they were aware of the leak; those communications were privileged and the allegation was that Mr Townsend had leaked the letter.

305. The Tribunal accepted as a matter of law as cited in Phipson that in-house lawyers enjoyed the same privilege as external lawyers. The Tribunal was of the view that it was entirely permissible to have a policy of transparency whilst at the same time asserting legal professional privilege where it was appropriate to do so. Mr Middleton had made direct inquiries of individuals employed by the Applicant and had said he found no evidence of a leak to the national press and was satisfied that the Applicant had not disclosed confidential material to the Daily Mail.

306. The First Respondent could put questions to Mr Townsend on whether he had leaked the letter to the Daily Mail or whether it could have been stolen from his office. He could not however question him about privileged information between him and Mr Middleton or between Mr Middleton and others. The Tribunal considered that such communications were covered by legal professional privilege. That privilege had not been waived by the very limited reference to the investigation in his witness statement.

307. Mr Townsend acknowledged that it appeared that a copy of the letter to him from Mr Vaz had turned up in the Daily Mail. He confirmed that he had the original letter and that a copy had been requested by the Daily Mail to check the authenticity of what the Daily Mail had received. The First Respondent put to Mr Townsend that he could not have been very concerned about the leaked letter as the article had appeared on 12 September but a letter had not been sent by the Applicant to the Daily Mail until 29 September, some seventeen days later. Mr Townsend said that the Applicant had been very concerned. He recalled that the paper had refused to disclose its source. The follow up letter was dated 13 October and Mr Townsend said that he could not recall whether there had been any further correspondence with the Daily Mail. Mr Townsend stated that he had not leaked the letter to the Daily Mail nor had he asked anybody to leak the letter to the Daily Mail; had he found that someone had done so he would have taken disciplinary action.

308. The First Respondent asked Mr Townsend how much money had been authorised and spent in relation to the investigations into him. Mr Townsend said that the answer could be extracted from the financial records but that he doubted anyone knew as at that moment.

309. Mr Townsend explained to the Tribunal the meaning of "proportionality". He said it meant the resources, not just money, devoted to inquiring into solicitors and their firms and that this had to be proportionate to the risk posed. Part of the changes over the past two or three years had been about ensuring that the procedures could be used irrespective of the size of a firm. He said that it was not true that there had been no investigation of "magic circle" firms; whilst the number of investigations had been small, there had been investigations.

310. The First Respondent referred to Mr Negus's email dated 11 September 2008 to Mr Townsend which stated:

> "Antony
>
> I was called by Richard Pendlebury, one of the authors of today's feature, on

> Tuesday. He asked me what [the] procedure was for lawyers coming from abroad to practice in England. When I said this was a big subject and he needed to be more specific, he became quite aggressive. He then said he wanted to know the procedure for lawyers coming from the United States. I said it was obvious that he intended to write about an individual and I wasn't prepared to discuss hypothetical scenarios – he should name the lawyer he was interested in. (I imagined at that point that he was interested in somebody who had been denied entry)".

311. Mr Townsend said that he had read the email as meaning entry to the Roll of Solicitors. The telephone conversation between Mr Negus and Mr Pendlebury of the Daily Mail had taken place on 9 September and the Daily Mail article had been printed on 11 September. Mr Townsend said that he could not say how the paper had known about the Applicant's investigation or that investigators had gone to another country. He said that he could not remember what the scope of Mr Middleton's questions had been.

312. Investigations by the Applicant were confidential. The First Respondent referred to the two issues of which the Daily Mail had been aware; the letter and the worldwide investigation of the Applicant. Mr Townsend said that it was possible for information to come from a source from which inquiries had been made, for example a complainant who then talked to the media. Whether a complaint would be sent to the solicitor would depend on the nature of the complaint and the moment at which the Applicant chose to disclose it.

313. Mr Townsend confirmed that he had written the letter to Mr Vaz dated 10 December 2007 which stated:

> "...The regulatory profile of Dean & Dean is a matter of great concern to us. Over forty matters have been brought to our attention and have required investigation. With just one exception our contact with Dean & Dean has resulted from allegations of misconduct or inadequate professional service by members of the public or other solicitors. The allegations in some of these matters are serious".

314. Mr Townsend said that he recalled there were in excess of forty matters. He had seen a list of the allegations so had been aware of the nature of the allegations. He did not agree that all of them had been dismissed; while some had remained open, some had not proceeded because the complainant had not proceeded with them and some had been conciliated.

315. The First Respondent said that the Office for the Supervision of Solicitors ("OSS") had investigated his education in 2000 after a complaint by a Ms NM and had said it was "[sic] load of nonsense". They had investigated the First Respondent's legal qualifications and had written to him. In 1996/97 Mr Beatty had also investigated the First Respondent's qualifications and background. In 2005 a similar allegation had been made by another complainant and the OSS/SRA had come back with the same result and that had been the third such investigation.

316. The First Respondent submitted that the first port of call should have been to write to him to ask about his qualifications. Mr Townsend said that whether that was done would depend on a whole host of circumstances including the relationship with the

firm or the individual. He had no reason to believe that the investigation had been disproportionate. Cases were reviewed as they went along to check that they remained focused and proportionate.

317. Mr Townsend estimated that the cost of an intervention would be approximately £50,000 including the investigation. After intervention, the cost would vary hugely depending on the complexity of the case and the steps taken by a respondent's solicitors in relation to the defence. There was however a difference between the intervention and the costs of any disciplinary proceedings. Mr Malek suggested that all parties should check the Applicant's website to see what it said regarding the cost of investigations/interventions.

318. The First Respondent maintained that he should give his evidence when he chose and that it was not for the Applicant or the Tribunal to dictate. Mr Malek referred to Phipson and criminal procedure. The Tribunal stated that the dishonesty element would be considered to the higher degree and the criminal standard of proof. The parties agreed the order of witnesses and to guillotine Mr Mayne subject to the First Respondent's position that if Mr Mayne's evidence took an unusually long time, he reserved the right to recall him.

319. Discussion continued regarding the Applicant's costs and those of the First Respondent. The Applicant was able to provide its costs schedule but the First Respondent still could not do so; the First Respondent said it was difficult as he could not calculate his solicitors' costs.

320. The First Respondent submitted that the Applicant was only referring to the costs of the Tribunal hearings whereas he wanted the costs of the investigation in total. Mr Malek said that this had already been dealt with by the Tribunal at the hearing on 9 March and they had not made a direction. Furthermore, that point had been conceded by the First Respondent's then solicitor and he had withdrawn the application.

321. Mr Malek said that it was very unusual to expect a party to provide its pre-litigation costs. There had been numerous costs incurred and costs orders already; the costs of the initial investigation pre-October 2008, the Judicial Review proceedings when the First Respondent had been ordered to pay £70,000 on account of costs which had not been paid, the hearing of 5 November which had assessed costs at £5,000, the costs of the intervention and the hearing before Henderson J where the First Respondent had been ordered to pay £300,000 on account of costs and had not done so. In between those hearings had been a case before Blackburne J and he had made an order for indemnity costs which had not been paid. Then there were the costs of the current proceedings. Mr Malek submitted that the costs were so high due to the way in which the First Respondent had conducted the proceedings.

322. Mr Malek acknowledged that a lot of money had been expended by the Applicant dealing with numerous applications and cases; three sets of cases before the Employment Tribunal and three actions in the High Court, including applications to the Court of Appeal. The First Respondent already had details of all of those costs but disclosure of any further costs information regarding the actual investigation of the firm was opposed by the Applicant.

323. The First Respondent replied that all of his assets had been frozen including over

£1,000,000 on his private property. He stated that there was £4,000,000 owed to the firm but the Applicant had been obstructive in relation to this being collected, so that they could not pay any costs or secure proper representation to fight the proceedings. He had received a bill solely for file removal within the intervention proceedings amounting to £600,000. He estimated the costs to be in the region of £3,000,000 to £4,000,000. The First Respondent submitted that the Applicant did not want to disclose the costs as this would show when the investigation started, how much had been spent and would alarm people to see how much had been spent and who had authorised the expenditure.

324. Mr Malek handed in the Applicant's costs schedule and asked for it to be noted that he awaited receipt of the First Respondent's schedule once he was able to obtain the information.

Cross-examination of Antony Townsend by the First Respondent (continued)

325. Mr Townsend confirmed that there was guidance on the conduct of investigators, including a variety of policies and in-house training. He acknowledged that there was work with law enforcement agencies but not whether there was a memorandum of understanding. He said that he delegated quite a lot of his responsibilities. He agreed that ultimately he was accountable for everything. If an investigator went to a witness and lied, he would be very concerned and it would be a matter for consideration of disciplinary action.

326. The First Respondent asked Mr Townsend about the Baxendale-Walker case and whether he knew what the allegations had been in that case. Mr Townsend was unsure whether it was proper to answer the question. Mr Malek questioned the relevance and stated that if the allegations were allegations by another person against the Applicant, those allegations were not before the Tribunal. The First Respondent submitted that they were relevant since they related to his misfeasance claim which had been disclosed. The Tribunal was willing to look at the papers which the First Respondent had disclosed regarding his claim.

327. The First Respondent referred Mr Townsend to the misfeasance papers in relation to which Mr Townsend was named as a defendant. Mr Townsend confirmed that he was aware of the allegations which the First Respondent had made. He acknowledged that the allegations against Mr Middleton were very serious and he had had to ask himself whether what Mr Middleton had allegedly said on tape was true or not. He had not requested the tapes but had looked at the facts and had been involved in discussions, including with Mr Middleton, on the issue. He had looked at what was alleged very carefully and had discussed it extensively. He was satisfied that the allegations were not true.

328. The Tribunal commented that it could not rely on allegations in another case to deal with the First Respondent's case. The First Respondent had raised the allegations and the Tribunal was now aware of them.

329. Mr Townsend confirmed that Mr Middleton had not been suspended following the investigation. He had been satisfied, when he had looked at it very carefully and discussed it extensively, that there had been nothing in the allegations. He said that if allegations were made, he had to take decisions whether to suspend someone and that was a serious step; in terms of the effect on the individual and upon the workings of

the organization. He had taken into account the source of the allegation, the reliance he would have placed on it and his knowledge of the individual; his judgement was that it was not necessary to suspend Mr Middleton and he stood by that.

330. The Applicant published its risk categories in relation to how allegations were considered; this included the reliance that could be placed on the source. This was principally a discretionary issue as it required weighing up a number of factors. The initial assessment was carried out by a risk centre which looked at the information; investigators then undertook investigations in the course of which further information might be received which would have to be taken into account.

331. Mr Townsend confirmed that Mr Andrew Garbutt was head of the risk centre. He was the person who dealt with the First Respondent's correspondence regarding the complaints albeit in a different role. Mr Garbutt investigated whether there was any "heavy-handedness" by the Applicant and the outcome was that there was not. Mr Townsend acknowledged that he had known of the allegation regarding Client R and non-payment of his bill.

332. Mr Townsend was referred to his letter to Mr Vaz dated 10 December 2007. In relation to the reference to "The regulatory profile of Dean & Dean is a matter of great concern for us. Over forty matters have been brought to our attention and have required investigation", he explained that the letter was written in response to a letter from Mr Vaz which raised concerns raised by the First Respondent. A significant number of concerns had been brought to the Applicant's attention which needed investigation. With one exception, they were not matters which the Applicant had initiated in spite of the suggestion that the Applicant had in some way unfairly targeted the firm.

333. The First Respondent asserted that that was an "absolute lie". Mr Townsend denied that. The First Respondent submitted that Mr Townsend had written the letter to Mr Vaz in an attempt to stop him investigating the conduct of the Applicant towards ethnic minorities. Mr Townsend said that not only was that not the truth, but it was very clearly not the truth since at the same time, the Applicant had been undertaking work with black and minority ethnic ("BME") practitioner groups to look at the question of disproportionality. Mr Townsend accepted that the reason for the more intensive discussions had been partly because the First Respondent had raised the profile through Mr Vaz. He did not retract his letter to Mr Vaz.

334. Mr Townsend confirmed that he had met Ms Bridget Prentice, the Junior Justice Minister, but had no recollection of having discussed the First Respondent with her. The First Respondent submitted that Ms Mehrunissa Leilani had approached Mr Sailish Mehta and told him not to assist the First Respondent in the matter. Mr Townsend said that he was not aware of that, that he had not instructed her to do so and nor would he have ever done so. The First Respondent asserted that, after the Association of Muslim Lawyers had assisted the First Respondent, the husband of the Chairman of the Association had been investigated by the Applicant. Mr Phillip Saunders, a solicitor, had also been investigated and audited as soon as he had started acting for the First Respondent. Mr Townsend said that he had no knowledge of that. The First Respondent alleged that an agent of the Applicant had been caught in his house and that the police and security had been called. Mr Townsend stated that he had no knowledge of that.

335. The First Respondent said that he had asked to see the forty complaint files, which had required him to go to Russell-Cooke's offices to go through the files. Mr Townsend said that he had been unaware of the details but believed there were arrangements in place for the First Respondent to see the files. The First Respondent said that had been ordered by the Tribunal on 9 March 2011 and the Applicant had requested costs for supervising him. Mr Malek said that was not accepted and the facility to view the files had been available since April 2009. Mr Tabachnik stated that he had dealt with the hearing on 9 March and that there had been no Tribunal order in this regard and he had given an undertaking on behalf of the Applicant that there was no question of seeking costs for the First Respondent to view the files. The First Respondent said that this went to his case for abuse of process; not allowing him to have documentation and refusing access. Mr Townsend said that he did not know enough about what the First Respondent had alleged to be able to comment properly.

336. Mr Townsend confirmed that he had gone through Mr Garbutt's report into the forty complaints and that the issue had been the nature and frequency of the complaints. This had not been the totality of the complaints which had been raised, as many had been dealt with by the LCS. They were matters which had been referred to the Applicant directly or referred by the LCS because they had considered that they raised regulatory concerns. That information might have come in as a complaint or as a piece of information. That might then have been dismissed or closed for a number of reasons, such as the complainant refused to provide further information. At a later stage the matter might then have been reconsidered in light of further information received. Taken in the round, a series of small bits of information might amount to something which required further investigation.

337. The First Respondent referred Mr Townsend to an email from Mr Negus to him and various other persons at the Applicant. Mr Townsend confirmed that the journalist, Mr Stephen Wright had never interviewed him and he had never responded to the allegations. The First Respondent referred to the email dated 30 September 2008 which stated:

> "...Wright has a bullying manner, even by the standards of crime reporters. Of course, it could all be bluster – though given what he has managed to publish during the past month, I wouldn't care to call his bluff. One reason for cajoling us is that action against Mireskandari by the SRA might strengthen the hand of Associated Newspapers in any libel action proceedings. And it would be surprising had the Mail not been contacted by former clients of Mireskandari, given the coverage.
>
> However, I too am beginning to wonder how long it has to take us to deal with Mireskandari. On several occasions since October 2007 we have been told that he is being treated as "top priority"".

338. Mr Townsend said that there were two elements to that. Firstly, journalists were often contacted by disgruntled clients saying that they had complained two, three or four years ago and nothing had happened. Secondly, he did not recognize the phrase "top priority"; it was not a phrase the Applicant would have used. Journalists would have asked the press office about the progress of a case and the press office would have been told that the case was being dealt with as a priority.

339. The First Respondent did not accept that and referred to the date being October 2007 which Mr Townsend agreed was the date when Mr Vaz had written to him and the date of the House of Commons meetings. The First Respondent submitted that Mr Townsend had been caught out at the meetings where there had been a number of ethnic minority solicitors who had complained about him but he had not been informed in advance. Mr Townsend confirmed that he had not been informed of the nature of the meetings but denied that he had known the First Respondent had been the "ringleader" or that he had decided to "teach him a lesson" as submitted by the First Respondent.

340. Mr Townsend could not recall when investigators had gone to America. He said that he had not been aware that the First Respondent had instructed Carter-Ruck solicitors and they had then allegedly been inspected. He denied that there had been any conspiracy against the First Respondent.

341. Mr Townsend acknowledged that the issue of ethnic minority disproportionality still had not reached the point of satisfaction because there remained disproportion in various parts of the procedures. A number of steps had been taken to try to address that. The First Respondent submitted that he had suggested the involvement of Lord Ouseley but Mr Townsend could not recall that. He said that it was a complicated issue and that the Applicant had done a lot of work, the results of which had been published.

342. The First Respondent submitted that, if the issue of disproportionality regarding minority ethnic groups had not been resolved, that was Mr Townsend's responsibility. Mr Townsend did not agree. He said that whilst he was accountable for the work being done, results had been published and he had not pretended that the problem had been solved.

343. The First Respondent referred to Mr Ed Solomons who had been a member of the Applicant's board and Chair of the Rules and Ethics Committee. He had also been the solicitor to Sir Ian Blair at the Metropolitan Police. The First Respondent had represented Client G and Mr Solomons had been involved in that case. Mr Townsend said that he had not been aware of that and he could not recall an article in the paper which had referred to Mr Solomons and that he had never represented any ethnic minority police officers.

344. The First Respondent referred to Adjudicator Lymbury: he had made a decision which the firm had alleged was a fraudulent adjudication. Mr Townsend said he was aware of the issue but not the details. The First Respondent referred to letters having been sent to the firm by Sonia Bird of the Applicant which had threatened to impose conditions on practising certificates. Mr Townsend said he was not involved and acknowledged that conditions on practising certificates could limit the type of work done by a firm and increase insurance premiums.

345. Mr Townsend said that he was not aware of the case of Analchi in Europe or any principle or policy of the Applicant that if a partner believed he might be intervened, he should walk away and someone else should take over in order to continue the practice and not affect the public. He said that there was a general policy that if the Applicant had to consider intervention, it would allow a firm to continue if possible and if that was in the public interest; if that could be done it was clearly preferable but would depend on the circumstances.

346. The First Respondent referred to the firm of Lawrence Graham Solicitors. The First Respondent stated that a partner at Lawrence Graham Solicitors had stolen over £5,000,000 from client account and had been prosecuted. The firm had not been intervened or closed down. Mr Townsend said that there may have been a number of firms where there had been some serious wrongdoing but where it had been concluded that intervention was not necessary to protect the public interest; that was the criterion.

347. Mr Townsend said that the majority of interventions took place in relation to white firms, contrary to the First Respondent's suggestion that this did not happen. In relation to the intervention into the firm, this had been challenged and the court had found the intervention to have been well-founded.

348. If there had been any significant complaints about Mr Middleton, Mr Townsend would have expected to receive them. Apart from the First Respondent and Mr Baxendale-Walker, Mr Townsend could not recall any other complaints regarding Mr Middleton.

349. Mr Townsend said that the Section 44B Notices would generally have been prepared by the Applicant, although there may have been cases when they were prepared externally. The Applicant had to have sufficient evidence to intervene. Once an FI Report had been prepared, it would go to the person in charge of the directorate and be signed off at senior level. A summary would then be prepared and sent to Adjudicators to consider. Mr Townsend estimated that eight hundred pages, if dense and complex, would take approximately eight to ten hours to read and speculatively, if more complex, two to three days.

350. The First Respondent said that the FI Report had been signed by Mr Calvert on 11 December 2008 and on the same day Ms Patel, the caseworker, had prepared a summary of the Report which had then been couriered to Mr Hegarty in Peterborough, another panel member in England and the panel secretary. The First Respondent questioned how the panel could have read eight hundred pages and decided to intervene into the firm on the 12 December. Mr Townsend said that he did not know the circumstances and denied that it had been a "rubber stamp" exercise.

351. The First Respondent referred to the report of Ms Patel and the various allegations including the minimum cash shortage; he said that this had not been a case where a partner had taken money and run. There was a dispute regarding whether an improper transfer had taken place or not, based on the wording of an invoice. Mr Townsend understood the distinction. There had to be an assessment as to whether or not there was a continuing risk and that was not the same as whether the sum of money involved had been large or small.

352. The First Respondent referred to the doctrine of ex turpi causa and Mr Townsend said that he understood the concept in very broad terms; illegal acts would be inexcusable in anybody who worked for the Applicant. Mr Townsend queried whether an illegal act automatically meant that no further action could be taken, as that might not be right or in the public interest.

353. The First Respondent explained that Mr Malcolm Lees and Mr Barrington Mayne had gone to America and interviewed the First Respondent's former boss, Mr William O'Bryan. A statement dated 30 September had been produced and relied upon in the

injunction proceedings before Pitchford J. The First Respondent alleged that when he had gone to America to obtain evidence, the hearing had been brought forward from 20 November 2008 to 6 November without any notification to his legal team. The First Respondent suggested that this had been the work of the Applicant or "somebody". The First Respondent referred to the statement of Mr O'Bryan dated 30 September which stated:

> "...I always sign my name with my middle initial "L"...The signatures on the FH Distributors Complaint (Ex. A, pages 1-3) and Stipulation (Ex A, page 6) are different, but look like mine. The third signature on the Answer (Ex A, pages 4-5 is definitely not my signature. I did not sign it and note that it is not even close to my signature...".

354. The First Respondent submitted that there was a huge disparity regarding how Mr O'Bryan signed his name and how he had stated he signed his name. Mr Townsend said that he did not know if the documents should have been disclosed to Pitchford J; he said that if there had been material differences which did not have a proper explanation he would have been concerned but that was as far as he could take it.

355. The First Respondent referred to the statement of Mr O'Bryan dated 22 July which stated:

> "I knew Sharokh Mireskandari by the name Sean. I can't remember how I got to know him... I cannot be accurate but it was certainly after 1991... I stress that I have never employed Sean Mireskandari in a full time capacity... I certainly never paid him for any work...
>
> ...I have been advised by Barrie Mayne and Malcolm Lees and [sic] that Mireskandari was convicted for activities in 1991 of a criminal nature. I have been told that the offences relate to felonies and misdemeanours relating to unlawful telemarketing...".

356. The First Respondent said that Justice Baron had agreed that there had been no felonies and only misdemeanours. He submitted that Mr O'Bryan had given false statements to the Applicant and the Applicant had only disclosed the statement of September 2008. The Applicant had resisted giving disclosure until it had been ordered to do so by the Tribunal on 9 March 2011. All of the documents would have been very important for the Tribunal and Pitchford J to have seen to make up their own minds in relation to the evidence of Mr O'Bryan. Mr Townsend said that he did not know the circumstances of disclosure of the documents; there might have been confidential documents or documents covered by privilege and it had never been said that every document held by the Applicant had to be disclosed.

357. The First Respondent referred to the hearing before Blackburne J and his Judgment which stated:

> "I think if I got any sniff of a suggestion that this was racially motivated and that was really what lay behind all of this, then I would have no truck with that".

358. Mr Townsend acknowledged that if the intervention had been racially motivated, it would have been improper and he agreed that if that had been the basis of the intervention, it should have been set aside but he said that was not what Blackburne J had said. Mr Townsend said that he did not accept that there had been illegal acts by the Applicant and that even if there had been, the public interest would still have needed to be protected.

Re-examination by Mr Malek

359. It was put to Mr Townsend that there were three possibilities as to who had provided the letter to the Daily Mail and so had been responsible for the leak; Mr Vaz, the First Respondent or Mr Townsend. Mr Townsend denied that it had been him. He denied that he would leak a letter to the press regarding the First Respondent for two reasons; firstly, he did not leak information to the press and secondly, he could not imagine why he would have wanted to with the letter from Mr Vaz dated 4 September 2007 which referred to the Applicant but not to the First Respondent at all. The letter had raised concerns about the Applicant only.

360. Mr Malek referred to the Judgment of Pitchford J regarding the leak which stated:

> "Dr Mireskandari went on to accuse the defendant [the Applicant] of making private and public attacks on him through the press and by its investigations since on 19th May 2008 he had issued his claim in the Employment Tribunal. Of the information allegedly provided by the defendant to the press...the response of the Law Society was to conduct an internal enquiry...By way of example, the SRA received a letter from one interested person in which she said that a complainant had been to America to try "and trace the false credentials of" Dr Mireskandari".

361. Mr Townsend had not been aware of any inspection of Carter-Ruck Solicitors by the Applicant. Mr Malek stated that since this was a new allegation by the First Respondent, he had to produce evidence, whether it was an "audit", "visit" or "investigation". Mr Townsend did not think it likely that investigators would have inspected privileged files of the First Respondent. Mr Malek submitted that as an allegation which had been put to Mr Townsend, if the Tribunal was minded to accept it, it would have to be proved in evidence.

362. Mr Malek submitted that many of the allegations which had been put to Mr Townsend had no evidential foundation and there was no premise behind the questions. There had to be underlying evidence for the Tribunal to make a finding. Mr Malek referred to the inspection of Saunders Bearman Solicitors which had been alleged in the misfeasance proceedings and Mr Townsend stated that the Applicant had not inspected Saunders Bearman Solicitors in order to prejudice the First Respondent.

363. In relation to the Adjudicator's Decision, Mr Townsend confirmed that the date of 17 August 2007 could not be correct but noted that it had not been sent out until 24 August 2007.

364. Mr Townsend stated in relation to Mr Mayne and Mr Middleton that he was not aware of any finding by any court or Tribunal that either of them had lied.

365. Mr Townsend had no reason to believe that the Intervention Panel had not read the papers before them.

366. Mr Malek referred to the allegation that the intervention had taken place in December because the First Respondent had proceedings listed for hearing in the Employment Tribunal on 21 January 2009. A similar allegation had been put at the trial before Blackburne J. Mr Townsend stated that the purpose of the intervention had not been to frustrate the First Respondent's position at the hearing and acknowledged that it would have been completely improper to attempt to do so.

367. Mr Malek submitted that if the First Respondent wanted to allege that people in the employment team at Russell-Cooke had copied and read privileged Employment Tribunal files that had to be proved. Very careful precautions had been taken to ensure that that had not happened; this was why independent counsel had been instructed. Independent counsel had given a statement and appeared before the High Court to assure Blackburne J that it had not happened. If the First Respondent had evidence that it had then he had to produce it.

368. Mr Townsend stated that it was completely irrelevant to the course of the proceedings that the First Respondent was a Muslim and Iranian. Further, the reason the First Respondent had been brought before the Tribunal was absolutely nothing to do with the fact that he had criticised the Law Society for alleged racial discrimination.

Mr George Cousins

369. Mr George Cousins was sworn into evidence and confirmed the truth of his statement.

370. Mr Tabachnik referred Mr Cousins to the First Respondent's response to the allegations in relation to the indemnity insurance application form for the year 2008/9 which stated "The First Respondent (himself) delegated this task to the office manager George Cousins to arrange…". Mr Cousins said that this was not true and that he did not recall having had any involvement in relation to the indemnity application.

371. The form referred to "Past year ending 31/05/2008…" and a figure of just over £1.3 million. Mr Cousins confirmed that he had not provided or collated that figure. He was referred to "confirmation of order" documents regarding the 2008 application form, which appeared to have been signed by the First Respondent on 30 September 2008. Mr Cousins stated that he had had no involvement in the preparation and signature of those documents.

372. Mr Cousins was referred to the Second Respondent's document prepared for her challenge to the intervention proceedings which stated

> "In 2008 the PII form had been given to George Cousins, the office manager, to complete. He then left the firm. Emma realised no one had completed the form. Emma rang me in September and asked for guidance in completing the form…".

Mr Cousins said that he had no knowledge of the form having been given to him.

373. Mr Cousins was referred to the invoice to Client D, signed by the First Respondent, for £20,000 profit costs and £19,994 anticipated disbursements. Mr Cousins said that

he had never seen the document before. He had never overseen the accounts and would never have given the bookkeeper instructions to use the words "anticipated disbursements". Until he read that recently, he had never come across the term before. He had not assisted Mr Healey regarding the Applicant's investigation and as far as he was aware, he did not know him. He had no input into Mr Richardson's work at the firm. Mr Cousins only recalled having submitted one form for the firm which had related to trainee solicitors.

Cross-examination by the First Respondent

374. Mr Cousins could not recall his net salary at the firm. He did not recall ever having signed a contract of employment but said that he had dealt with contracts at the firm when the human resources manager had left.

375. Mr Cousins said that he was sure that he had had nothing at all to do with the accounts. He had become aware that there was little if any criminal work for him to undertake but he could not recall how long it had taken him to realise that. He felt that the First Respondent had been in close control of the operation of the office. He had attended a lot of meetings with the First Respondent but he did not recall the purpose of his attendance.

376. His statement might not have been accurate in that other people from the office might have signed letters on behalf of the First Respondent. He was unaware of any more inaccuracies but could not recall how many drafts of his statement there had been. Mr Cousins had no idea why the former human resources manager had written to him in relation to advertising, but someone must have given her his email address and told her to do so. He could not recall what he did at the firm but he had dealt with some management issues.

377. The First Respondent asked the Tribunal if he could disqualify Mr Cousins as a witness, submitting that he did not know anything or did know but did not want to say. The Tribunal suggested that the First Respondent ask Mr Cousins what his typical day was like whilst at the firm. Mr Cousins said that he would wait to be called to the senior partner's (the First Respondent's) office and various people would come in during the day and discuss matters with him. He was given tasks by the First Respondent but could not recall what they had been other than in relation to the website and Lexis which he had been required to investigate. He said that he had not made any managerial decisions.

378. Mr Cousins said that he had been hired by the First Respondent as a criminal lawyer. The First Respondent said that there was no criminal work as this was all done by the Third Respondent.

379. Mr Cousins had been unhappy working at the firm as he had not had enough criminal work to do. The First Respondent submitted that Mr Cousins had secured the job at the firm on behalf of Mr Healey but Mr Cousins denied this. He recalled a work placement girl called Ms Marina Ferns but denied that she had been allowed by him to access the accounts, as alleged by the First Respondent.

380. The First Respondent referred Mr Cousins to the letter from Mr Tehrani/the firm dated 20 October 2009. Mr Cousins said that he had not answered any of the questions in the letter and had taken legal advice on the contents. The letter and

allegations made against him were completely unfounded and he had taken offence at the contents. He had copied the letter to the Applicant on the advice of his lawyer.

381. The First Respondent referred Mr Cousins to emails dated 11 April 2008 and 14 April 2008 in relation to department targets at the firm. Mr Cousins did not recall either of the emails. The First Respondent put to Mr Cousins that he had lied in his evidence and misled the Tribunal. Mr Cousins denied this and stated that he had told the truth to the best of his knowledge and recollection.

Cross-examination by the Second Respondent

382. Mr Cousins confirmed that he had been involved in a meeting with Ms Sarah Khawaja in relation to her having allegedly taken files from the firm.

383. He denied that he had had any input regarding installation of the new accounts package. He agreed that the Second Respondent and others at the firm would have perceived him as having taken over the role of office manager and he acknowledged that towards the end of his employment he had done a lot of management tasks.

384. Mr Cousins did not think it was possible that he had been given the professional indemnity form before he left the firm. He recalled meetings with the Second Respondent but thought they were later and not when he had first arrived at the firm.

Re-examination by Mr Tabachnik

385. Mr Cousins confirmed that the Third Respondent had sat on the third floor with him with the finance director and that the former was a criminal law expert. He confirmed that Mr Tehrani would use a third desk in the office occasionally. By reference to Mr Tehrani's letter to him, he left the firm in approximately September 2008. Between September 2008 and October 2009 Mr Cousins had had no contact with the First Respondent, Mr Tehrani or anyone else at the firm. Mr Tabachnik referred to the third paragraph of Mr Tehrani's letter to Mr Cousins which stated:

> "Evidence shows that you may have been working undercover for the benefit of a third party against Dean & Dean/Dr S Mireskandari".

Mr Cousins stated this was completely untrue.

386. Mr Tabachnik referred the Tribunal to an extract from Hansard regarding Mr Vaz and dated 5 February 2008 wherein he stated:

> "5 Feb 2008: Column 932
>
> ...I wrote to the SRA on a number of occasions but was unable to receive a satisfactory explanation for the figures that I had been given. On 10 October 2007, I was told by Antony Townsend, the chief executive of the SRA:
>
> "We share your concern about the disproportionate representation of BME solicitors in regulatory matters over several years...It is for that very reason that the SRA is addressing the matters as one of its early priorities".

387. Mr Malek submitted that this showed that to a certain extent, the correspondence of Mr Vaz had been in the public domain.

388. Mr Malek referred to an extract from The Guardian on 26 May 2008 which stated:

> "An Iranian-born solicitor has launched an unprecedented £10m claim against the Law Society and the solicitors' regulatory body for racial and religious discrimination, harassment and victimisation...".

389. Mr Malek said that gave details of the claim which had been filed and referred to pressure from Mr Vaz. The ET1 had been produced and had contained a detailed narrative of the First Respondent's alleged treatment by the Applicant and the alleged discrimination.

Mr Barrington Mayne

390. Mr Mayne was sworn in and confirmed the truth of his statement.

391. He had spent thirty years in the West Mercia police, latterly serving as a Detective Chief Superintendent and Assistant Chief Constable. He joined the Law Society in 1993 and subsequently the Applicant and until 2008, he was Head of the Fraud and Confidential Intelligence Bureau ("FCIB").

Cross-examination by the First Respondent

392. Mr Mayne confirmed that was involved in the investigation into the firm and that he was the lead investigator from the FCIB. The FCIB was set up in 1993 to make contact with other external organisations and internal departments for the collation of information and intelligence concerning solicitors and their employees regarding breaches of the regulations, fraud and other forms of dishonesty. Many different organisations were involved including members of the public, clients of solicitors' firms, police forces, and other regulators such as the Serious Fraud Office and Financial Services Authority. It had a very wide remit.

393. The first reference to him regarding the firm was in January/February 2008. The FCIB would have received information in relation to which he had to decide how to react to it. When asked what information he had received and from whom, Mr Mayne said that to answer that question would place him in difficulty, as information was encouraged to be provided on a confidential basis. The Tribunal was concerned that confidentiality of the FCIB be maintained. The First Respondent said that he was entitled to know in relation to credibility of the source.

394. Mr Malek submitted that there was public interest immunity ("PII") and that in the Judicial Review proceedings it had been made clear there was certain intelligence information which the Applicant would not reveal. Mr Malek submitted that PII applied to the FCIB and to the information that had come to Mr Mayne.

395. The First Respondent submitted that the Applicant was not the police and that it was not the law that they relied on but their own rules so as not to have to disclose information. No application had been made for PII and the First Respondent submitted that it could not apply. No witness including this one could put up a wall and rely on the information being confidential. One of the issues for the Tribunal was

whether the source was credible or not; the Applicant knew who it was and did not want the Tribunal to find out, as any background checks on that person would have led the Tribunal to say "How can you rely on that person, considering all the court orders and all the decisions made against that person prior to him making an intelligence report". The First Respondent said that he also had emails from the person concerned which boasted about what he had done.

396. Mr Malek informed the Tribunal that a PII order had not been applied for as this had been the first time that the First Respondent had asked for this information from Mr Mayne. He referred the Tribunal to the case of Buckley v The Law Society [1984] 1 WLR 1101 which stated that PII did apply to the Law Society in order to protect informants. The Tribunal had to be satisfied that the public interest in protecting informants on one side was not outweighed by the need to give justice to the defendant and come to a view as to whether this was absolutely necessary in the public interest or the administration of justice for the information to be provided which might have damaging effects on informants.

397. The First Respondent submitted that the motivation of the Applicant had to be decided by the Tribunal. Would a normal, honest regulator who had not targeted this man have taken any interest as to what this individual source had said or was it just desperate to find anything?

398. The First Respondent acknowledged that there had been some breaches but questioned whether they had been sufficient to justify an intervention and if not, why had the Applicant closed down the firm and put forty people out of jobs. The First Respondent alleged that the Applicant had hidden behind its corporate identity and had relied on the public interest test. Mr Malek submitted that the real issue for the Tribunal was what the evidence before it was.

The Tribunal's Decision

399. The Tribunal was satisfied that there was nothing to indicate that there had been a waiver of anonymity, express or implied, in relation to the informant's dealings with the Applicant. The First Respondent could explore the actions taken in consequence of the information given by the informant(s) without their identity having to be revealed. Mr Malek referred to the case of Buckley v The Law Society and in particular the comments of Sir Richard McGarry wherein he stated:

> "The balance between the public interest in disclosing all relevant documents to a litigant and the public interest in protecting the identity of those who have given information to the Society seems to me to come down firmly in favour of refusing disclosure".

400. The Tribunal agreed with that reasoning and adopted that wording for the purpose of this case as the Tribunal performed the same balancing act in weighing the protection of the confidentiality of the information against the First Respondent's arguments for disclosure. It followed that Mr Mayne was not required to disclose the source of the information.

Cross-examination of Mr Mayne (continued)

401. Mr Mayne said that whether background checks were done on a source always

depended on the circumstances. If it was necessary it would be done but as a regulator, the Applicant was limited in what checks it could do. No checks had been undertaken regarding any sources of information in relation to the firm. The credibility of the source was checked by following the information which had been given and by looking at any available source documents and other investigations to determine the veracity of what the informant had provided. The evidential trail was the issue that really mattered rather than the character of the originator.

402. Mr Mayne agreed that the cheapest way of carrying out a background check was an Internet search, and that occasionally this had been done, but not in this case. Other than that and any Law Society records, that was all that could be done. He confirmed that looking at previous antecedents would have been a routine and this had been done regarding the First Respondent including his education file.

403. Mr Mayne confirmed that a file was maintained and a "catalogue" of the work done. It was a matter for him as to whether or not he reported to anyone else; it would depend on the content of the information as to what action he would have recommended.

404. No-one else had contacted him in relation to the firm and the First Respondent in January/February 2008. He had not been aware of anyone else at the Applicant having been contacted by the source. Mr Mayne said that the source could have learnt of the FCIB from general knowledge or from the Law Society website.

405. The information initially had been that the First Respondent had a previous conviction in the United States which had not been disclosed and that the Doctorate of Jurisprudence from AUH had not been genuine.

406. Mr Mayne confirmed that he and Mr Lees had gone to California, Los Angeles and once to Hawaii in April, July and September 2008. They had not gone to Washington, Virginia.

407. Prior to going to America in April 2008, research had been done into the registration details as events had happened approximately ten years before. The registration file had been read in detail. There had also been a registration file in relation to the training contract and an entrance/admission file. Mr Beatty would have worked on the registration file. Mr Mayne had not seen the student file as that had been destroyed in accordance with Law Society criteria. Mr Mayne did not know what would have been inside the student file. It was only when information had come into FCIB that the files would have been called for.

408. When the registration file had been looked at, the applications made had been studied including in detail the TC8 form, the application for a reduction in training contract. One of the TC8 forms appeared to have been submitted by Mr O'Bryan. There had been two forms; one from Mr O'Bryan and one from Mr Tehrani. The TC8 forms had been examined with the allegations very much in mind. Mr Mayne had had to determine the practice and procedures within the registration department to understand what the process had been. The form itself had not been completed but typed foolscap pages had been inserted within the appropriate section of the TC8. Mr Mayne said that he would have expected a legitimate form to have been written on. This had seemed unusual to him.

409. Mr Mayne conceded the First Respondent's point that he had previously had no experience of examining TC8 forms but said that this had jumped out at him. The First Respondent questioned whether Mr Mayne had asked somebody with experience to consider the form and Mr Mayne said that he had done so. He accepted the First Respondent's point that if there had been insufficient room on the form then additional information would have been given as attachments and so this would not have been unusual.

410. Mr Mayne referred to the TC8 which purported to have been submitted by Mr O'Bryan, an American Attorney. Mr Mayne said that this had been in "English English" and not "American English"; this made a difference as to whether it was a genuine document or not and had come from Mr O'Bryan or not. Mr Mayne said that he would have expected an American to spell words in the American way and not the English way. The First Respondent said that he had studied and worked in America from 1980 to 1996/1997 and he held an American passport.

411. Mr Mayne had spoken to Ms Tomlinson about the registration/TC8 process at the Redditch office. Mr Mayne had also spoken to Mr Beatty about the form itself and enquiries he had made once the issue had been referred to him. Mr Beatty had been a senior administration policy officer. It was evident from the file that issues had been referred to Mr Beatty concerning the First Respondent's qualifications and application for a reduction in his training contract. That had been one of Mr Beatty's prime purposes. Once the internal investigation had been undertaken the matter would have been referred to an adjudicator to decide.

412. Mr Mayne confirmed that efforts had also been made to contact Mr Greenbaum who had been referred to in the TC8 as having employed the First Respondent. Mr Lees had attempted to contact him. The First Respondent submitted that Mr Greenbaum had accused Mr Lees of having lied and that Mr Mayne had been aware of that and had seen the letter from Mr Greenbaum.

413. Mr Mayne confirmed that he would have spoken to Mr Middleton during the course of his investigation. His report would have gone to Forensic Investigations. He had spoken to Mr Brunton who worked for the Hawaiian government and had also investigated AUH. The First Respondent referred to the EWW letter from the Applicant regarding the alleged non-disclosure by him of the fact that AUH had been non-accredited. Mr Malek referred the Tribunal to the correspondence on the file and that there had been no note on the file that Mr Beatty had been told that AUH was accredited.

414. Mr Mayne said that Mr O'Bryan had appeared genuine but his difficulty had been recalling events which had occurred ten years earlier. Only very basic questions had been asked of him and while he had changed his story slightly, he had added to it and as his memory had been jogged, this had added more. Mr Mayne had seen Mr O'Bryan at each of the visits to America; once in April, twice in July and once in the September. On the third occasion it had been at the offices of Bird Morella, the Applicant's US lawyers.

415. Mr Mayne had called Mr O'Bryan from the UK and asked to see him in America. He said that he had explained who he was and had gone through matters in very broad terms. No attendance notes of those conversations to make an appointment had been made. Mr Lees had made an attendance note of his conversation with Mr Greenbaum

because the conversation had not been straightforward. No attendance notes had been made of discussions with Mr Schechter as he had only made a statement to confirm that he had represented the First Respondent in the Ventura proceedings and due to legal professional privilege ("LPP"), he had not wanted to comment further. Mr Mayne agreed that Mr Greenbaum had put forward the same argument but that Mr Greenbaum knew the interview, if it had gone ahead, would only have related to the TC8 content and not been subject to LPP.

416. Mr Mayne did not agree that Mr O'Bryan had recanted his statement. He said that the statement Mr O'Bryan had given on behalf of the First Respondent in December 2008 had added to his previous statements as his memory had improved.

417. Mr Malek submitted that the First Respondent had made very specific allegations against Mr Mayne and that he should have put them to Mr Mayne rather than having gone through peripheral issues which was not the Applicant's case, for example whether AUH was accredited or not. Mr Malek submitted that the Tribunal now had to enforce the guillotine and confine the First Respondent to time.

418. The First Respondent objected. He said that he had struggled to obtain information from Mr Mayne and that he had frequently said he did not remember. The First Respondent had to try to establish the foundations of what had been done and not done as he would be putting very serious allegations to Mr Mayne. He submitted that the reference to the ABA (American Bar Association) had been a very important point as it had been part of his abuse argument. He said that the Tribunal had to understand the chain of events.

419. In relation to the injunction application by the First Respondent, he said that the original date set down by the court had been 20 November 2008. Mr Mayne said that he had had no involvement in such matters. The First Respondent submitted that the hearing had been brought forward by fourteen days without any notice to him or his representatives. Mr Mayne said that he had not been aware of instances where one side could see a Judge privately without the knowledge of the other. Mr Malek said that there was no evidence that this had happened in this case.

420. The First Respondent referred to a letter dated 3 November 2008 from Mr Lees to Mr Greenbaum which stated:

> "...You will recall that when I spoke to you in April this year you did not wish to speak to me, stating that you wanted no involvement in matters involving Sean Mireskandari as you felt intimidated by him".

421. Mr Mayne said that he had no idea why there had been a time lapse between April and November in contacting Mr Greenbaum. He said that attempts had been made to interview Mr Greenbaum and the Applicant had been suspicious when his written response had been received as it considered that it might not have been from Mr Greenbaum; it was suspected that the TC8 had also been submitted fraudulently and so correspondence had ensued. There had also been different fax numbers which were of concern.

422. The First Respondent said that as at 3 November 2008 his solicitors had contacted the Administrative Court in relation to the date of 20 November and that it was impossible to deal with. Mr Mayne said that he did not know if the letter had been

produced at the High Court on 3 November and his Unit had had nothing to do with the moving of the hearing date from 20 to 3 November.

423. The First Respondent suggested that the only reason Mr O'Bryan had assisted the Applicant was because he had been given incentives. Mr Mayne denied this and said that no money had been given to Mr O'Bryan whatsoever. The First Respondent submitted that Mr O'Bryan had told someone that he had been paid $5000 by the Applicant and Mr Mayne stated that if that was the case he had lied. The First Respondent said that he had raised that in his Employment Tribunal against the Applicant and that after he had done so Mr O'Bryan had been called and had refused to speak to the Applicant. Mr Mayne said that was not correct and that the First Respondent had made some very serious allegations entirely without foundation. Mr Mayne told the Tribunal that all witnesses who had been interviewed in connection with the allegations against the First Respondent had been interviewed impartially with an open mind and had any evidence supported the First Respondent or his views that would have been recorded.

424. Mr Mayne absolutely denied that he had told Mr Schechter that the First Respondent had bribed a Judge. Mr Mayne stated that the First Respondent had made spurious and very serious allegations. Mr Mayne said that he had no idea of the financial status of Mr O'Bryan and said that he did not know that Mr O'Bryan was a recovering alcoholic as suggested by the First Respondent.

425. Mr Mayne denied that he had offered Mr Greenbaum any incentives since he said that he had not spoken to him at all. Mr Mayne said that he could not speak for Mr Lees but was fairly confident that he had not offered Mr Greenbaum any incentives either.

426. Mr Mayne said that Mr Healey had made a telephone call to his office and had sought a meeting but he had not attended any meetings with Mr Healey or Haymarket. Mr Lees had met with Mr Healey. There had not been many meetings but more than one. Mr Mayne was referred to Client R. Neither he nor Mr Lees had met with Client R but they had met with his lawyer and there had been communication. Neither he nor Mr Lees had gone to Virginia and as far as he knew, no-one from Russell-Cooke had gone there. Mr Mayne stated that no promises had been made to Client R and that he had not been told "don't pay your bill to Dean & Dean, we're going to be intervening with him".

427. Mr Mayne said that he was aware that the First Respondent had applied to enforce an £800,000 order against Client R in Virginia. On 9 December 2008 lawyers for Client R had made an application to halt that. The First Respondent submitted that part of their representation had been that the firm had been intervened into but they could not have known that when the intervention had not taken place until 12 December. Mr Mayne said that he had no knowledge of that and the information had not come from him. He said that Mr Healey had not been instrumental in the Client R matter and had not introduced him to Mr F.

428. Mr Mayne confirmed that in the whole time he had been in the police force for over thirty years and for seventeen years with the Law Society he had never been accused by any other solicitor of wrongdoing in his investigations except in the B-W case.

Re-examination by Mr Malek

429. Mr Malek referred to the enquiries made by Mr Beatty regarding the First Respondent's application for exemption to be granted from the first examination required to be passed by persons who wished to qualify. The letter to the Dean of the AUH dated 19 August 1997 stated "Mr Mireskandari's application is based on the award of doctorate in jurisprudence at the American University of Hawaii". Mr Beatty had asked about accreditation, whether the doctorate was recognised by the ABA for the purpose of becoming an Attorney in America and a transcript of his studies had been requested. In the reply, Mr Mayne confirmed that there had been no reference to accreditation and that he had not seen anything on the file which answered that question.

430. Mr Malek said that the transcript of the First Respondent's studies showed that he had attended the WSL in the Fall of 1995 and for the Summer and Fall of 1996 he had been at the AUH for the doctorate which took him through to Spring 1997. The Masters had been undertaken in Summer and Fall 1995 and Spring of 1996. The Applicant had sent an EWW to the First Respondent dated 3 October 2008 in reply to which Mr Malek said that the First Respondent had stated "Mr Mireskandari has never sought to say that AUH has been accredited by the ABA" and "Mr Mireskandari believes that the Law Society corresponded with the AUH in 1997 and was aware at the time that the university did not have ABA accreditation and one of the reasons why we have asked to see the Law Society's file is to check whether documents on the file confirm that is the case". Mr Mayne said that the file had not confirmed whether that was or was not the case.

431. Mr Mayne confirmed that Mr Brunton had described the university as a "diploma mill". Mr Brunton had been the attorney who had worked for a consumer affairs organisation in Hawaii. Mr Malek said that the new law had come into effect on 1 July 1999.

432. Mr Malek referred to the TC8 form which stated that the First Respondent had been employed full-time from August 1995 to August 1997 by Mr O'Bryan. It stated:

> "In addition, Mr Mireskandari was in charge of handling the office's English cases...".

It referred to "All the above areas ticked within the course of two years' full time experience" in relation to the various areas he had had experience with. The TC8 had further stated:

> "In 1995, my office was retained in reference to a case that dealt with issues in the United States and the United Kingdom. Mr Mireskandari was in charge of that case and was instrumental in its handling. Mr Mireskandari worked in Los Angeles and London and was present throughout the trial at the High Court, which lasted approximately eight months".

433. Mr Mayne confirmed that he understood that the First Respondent had been in England for eight months in 1995. The TC8 had further stated "He spent approximately six months in London and attended trial every day". Mr Mayne confirmed that it had been a matter of concern to him that the transcript had shown it was Summer and Fall 1996 and Spring 1997 that the First Respondent had undertaken

his doctorate and undertaken his Masters in the Summer and Fall of 1995 and Spring 1996. Mr Mayne was unable to explain how the First Respondent could have been undertaking his Masters and a doctorate at the AUH at the same time while also doing what had been claimed by Mr O'Bryan and that he had conducted and been involved in a High Court case for eight months over that same period.

Ms Melanie Riley Examination in chief

434. Ms Riley was sworn in to evidence and confirmed the truth of her statement. She confirmed that she had a litigation PR consultancy called Bell Yard Communications Ltd ("BYC") and that in 2006 she had been director of the business.

435. Mr Malek referred to an email from Ms Riley to the First Respondent dated 10 February 2006 which stated:

> "DS Default has returned my call at last – since the Met Police retain copyright over the photos they won't release them to me or to L [Client V]. End of story as far as they are concerned.
>
> He says he's not aware of any having been taken at the hospital as he doesn't have any ones that originated from there.
>
> So, looks like it's a no-go with those".

436. Ms Riley said that she had been asked by the First Respondent to contact the police following the attack and to obtain photographs of the injuries, as he had tried to do but had been unsuccessful. The police had not been prepared to hand them over so none had been obtained at that time. Mr Malek said there had been a further email dated 23 March 2006 from the First Respondent to Ms Riley. This had included some photographs and Ms Riley confirmed that she had thought they were originals from the police which the First Respondent had managed to obtain.

437. Mr Malek referred to an email dated 24 March 2006 from Ms Linda Baylis [an employee at the firm] to Ms Riley and copied to the First Respondent, which stated:

> "Dear Melanie
>
> Please find attached the amended version of the letter to the Home Secretary, Charles Clarke".

438. Ms Riley said that the letter had been drafted by the First Respondent while she had been at his office. She had amended some of the written English and made some suggestions. It had been the next day when she had received the version which had been sent out and it had been changed from "my client..." to appearing to have been sent by Client V. Ms Riley said she assumed that the photographs would have been those she had been shown in the First Respondent's office.

439. Mr Malek referred to an email from Ms Riley to Ms Annemarie Thomson who at the time worked for Max Clifford Associates ("MCA"); she was another PR who had worked for Client V in the litigation matter. It was dated 24 March 2006 and stated:

> "We are writing to Charles Clarke (Home Secretary) in an attempt to meet him to discuss the shocking situation with the current sentencing laws in respect of cannabis use.
>
> In L's [Client V] case, the fact that the assailant was experiencing a psychotic episode as a result of using cannabis was deemed a mitigating circumstance and thereby caused a reduction in his sentence, however when individuals cause GBH whilst under the influence of alcohol then it's an aggravating circumstance causing an increase in sentence.
>
> ...We're trying to get a number of celebrity backers to counter-sign a letter going to the Home Secretary today – will keep them posted as to who we've got".

440. Ms Riley confirmed that Ms Thomson had tried to speak to some of her contacts to generate interest from the media for a potential campaign. The Sunday Mirror had considered it "too gory" and the Mail on Sunday had asked in an email dated 25 March 2006 "Hi M, a quick question, were the L V pictures taken just after the attack or are they a reconstruction?". Ms Riley said that she had been told by the First Respondent that he had got the photographs from the independent police photographer. It had not been until she had received the email and a telephone call from GMTV that she had begun to have doubts.

441. Mr Malek referred to Ms Riley's email to Mr C Anderson [Mail on Sunday] dated 27 March 2006 which stated:

> "I am told they were taken by the independent photographer drafted in by the police. However, I would be very interested to hear what your picture desk actually says about them.
>
> Their professional thoughts would be very helpful to me – in order that I might consider my position with this client.
>
> On a personal level, I am very sorry if this has caused you an unnecessary problem and would very much appreciate getting to the bottom of things when you are back at your desk".

442. Ms Riley said that she had set up the story with the Mail on Sunday as they had been very interested in it and had agreed to look at the photographs which she had thought were the real ones. Mr Anderson had then telephoned her and said that the photographs were reconstructions and she had then called the First Respondent to ask whether that was true as he had purported to her that they were the real thing.

443. Ms Riley said that the First Respondent had maintained that the photographs were the real thing and had come from the police. She said that she had not believed him and had asked him whether he would be prepared to sign something to that effect. He had become more and more angry and agitated and had suggested that it was simply that the Mail on Sunday had not wanted to run the story. Ms Riley knew that was not the case. He had requested the number for the Mail on Sunday but Ms Riley said she had declined to give it to him and it had been at that point that she had known something was amiss with the photographs.

444. Mr Malek put to Ms Riley that the First Respondent's case was that it had been her idea to reconstruct the photographs. She said that he was wrong and that she had had

no reason to have the photographs re-created. The First Respondent's client told her that she had had sixteen facial reconstructions and the last thing anyone would have wanted to do would have been to make her recreate the photographs. Ms Riley said that she had not known on 24 March 2006 when she had heard further from Ms Thomson that the photographs were not genuine and neither had Ms Thomson. It had not been until the Saturday that the Mail on Sunday's picture desk had queried them.

445. Mr Malek said that on 27 March 2006 Ms Riley had emailed Ms Thomson and copied in Ms S Goodale, a colleague at MCA. The email stated:

> "Re L's letter to the Home Secretary
>
> Don't touch them with a bargepole...they're not genuine copies of those taken by the police photographer at the time...despite protestations by our clients to me to the contrary...I don't think I need to say more. Just take it from me that I know this.
>
> I am not sure what you want to say to people asking for them...other than perhaps she's had a change of heart. She called me on Saturday afternoon (after my full and frank shouting match with Sean [the First Respondent] and I told her that serious reputational damage would result if these were flogged around and if the MoS [Mail on Sunday] could show they were not genuine...".

446. In relation to the "full and frank shouting match" Ms Riley confirmed this had been her conversation with the First Respondent on the Saturday after she had heard from the Mail on Sunday. He had become more and more aggressive and she had told him she did not believe that the photographs were not reconstructions. She said that the telephone call had ended with her knowing that the photographs had not been genuine.

447. Ms Riley was referred to an invoice from her to the First Respondent dated 26 March 2006 in the sum of £1,944.34 and a further sum due to her of £5,331.56. She said that she had invoiced the First Respondent and his firm as he had always instructed her. The bills had not been paid. Mr Malek quoted from emails dated 12 May 2006 between Ms Riley and the First Respondent which stated:

> "Sean
>
> You may be aware I am still awaiting payment for two invoices relating to the work I undertook on behalf of L V...
>
> I have rung on a number of occasions requesting payment. Furthermore, I have sent copies of these, as requested, to Linda Bayliss, in an effort to get them settled, to no avail.
>
> Recent phone calls to your office have gone unreplied.
>
> ...
>
> ...As you will appreciate, failing this, I shall have no option but to seek recovery through the Court's Money Claim service, and I will seek interest and costs".

448. Mr Malek said that the First Respondent had replied by email of the same date which stated:

> "We sent you a letter last week asking for your insurance policy as we shall be instigating a case against your firm".

449. Ms Riley said that she had not received a letter from the First Respondent requesting her insurance details nor had a case been brought against her company. Ms Riley said that she had never discovered what the supposed claim was.

450. Ms Riley had then written a lengthy email to the First Respondent on 12 May 2006 which stated:

> "Sean, I repeat, I have no idea what case could be instigated against us.
>
> ...
>
> In case your memory fails you, I had worked hard to get the story in to both papers, based on photographs you gave me in your office on 23rd March in a meeting I had with you and L. I repeatedly asked you where you got the photos as, despite several efforts, I had failed to get copies from the police. You declined to tell me how you got them but you told me that they were taken by the independent police photographer immediately after the assault.
>
> Based on this, as you know, I recommended you write to Charles Clarke (then Home Sec) and you enclose a copy of one of the photos, which were horrific to look at. You will recall you then drafted and I redrafted your letter to Mr Clarke and you promised to send it the following day, along with the photos.
>
> All was set up for a story in the Sun Times based on the letter and in the MoS based on the photos. However, I spoke to the MoS on Saturday afternoon who told me that the photos had been 'enhanced'. I told them I was very surprised by this, as I had been given them by L's lawyer, who runs a leading London (sic) practice, and he had told me they were taken by the police photographer, so as far as I was concerned, they were genuine.
>
> As you can imagine, this was a shock to me so I called you that afternoon, and I spoke to L. You denied any knowledge of these photos being fake and I told you that if they were found out to be fake they could seriously damage both your reputation and that of L. You repeated your denials and demanded to speak to the MoS...However, when I called them back, despite my telling them of your denials, they said the photos looked like they were reconstructions.
>
> ...
>
> It was on Monday 27th March that I found out that indeed they had been reconstructed. I found out you had flown in a make-up artist from Hollywood to 're-create' injuries as if they had been the ones caused to L. I was stunned that you you [sic] had hidden the truth from me, had knowingly caused me to seek to place 'fake' photos yet I was acting throughout in good faith – which sadly has turned out to be misplaced...".

451. She confirmed that she had not received a reply from the First Respondent to that email. She had issued proceedings in the Central London County Court in August 2006 and Mr Malek referred to the Particulars of Claim. Ms Riley confirmed that her statement filed in the County Court proceedings was true.

452. Mr Malek also referred Ms Riley to the First Respondent's statement in reply wherein he had stated that the reconstruction of the injuries had been Ms Riley's idea and that at all times she had known how the photographs had been produced. Ms Riley said that his version of events was untrue and absurd. Ms Riley referred to the First Respondent's statement as "a sort of tangled web of half truths". She said that there had been a discussion about a letter to the Home Secretary but she had only received a copy once the letter had been sent.

453. Ms Riley said that nowhere in the contract between her and the First Respondent had it said that if no story appeared, she would not be paid. She said it was not within her gift to determine whether a story got published or not. She could only act on her best efforts and in good faith. If she had been lied to, the only option was to withdraw which is what she had done.

454. Ms Riley confirmed that she had given two statements to the Applicant dated 14 August 2008 and 10 March 2011 respectively and both were true.

Cross-examination by the First Respondent

455. Ms Riley confirmed that she had been contacted in August 2008 by Mr Lees. He had gone to see her and had wanted to understand the circumstances surrounding her work with the First Respondent and Client V. She had assumed that as a regulatory body, the Applicant and its representatives had the right to talk to people and she had responded as she had been requested to do. Ms Riley said that the matters discussed with Mr Lees were already a matter of public record because she had had to sue the First Respondent for non-payment of fees. That had all been in the public domain and she had expected to be able to discuss matters within her knowledge.

456. Ms Riley denied that had been a breach of privilege or confidentiality. She said that there had been difficulty in determining who the client was; the First Respondent or Client V and since the First Respondent had not signed the paperwork, it had never been clear. She had therefore issued against both with a view to the court determining who was liable for her fees.

457. Ms Riley stated that she had not had a one on one conversation with Client V other than within half an hour of her having discovered that the photographs had been faked by the First Respondent. She said she had never spoken to Client V directly and remembered the assignment well because the First Respondent had directed everything and all the instructions had come from him. As far as she had been concerned, the client had not been Client V but the First Respondent.

458. Ms Riley said that now and then she was instructed by a law firm and they treated it as a disbursement for their client. She maintained that the lawyer would be her client as the contractual relationship would be with the lawyer. The issue was not whether the client put the lawyer in funds or the lawyer took on the cost; the issue was whether she got paid and who she had contracted with.

459. Ms Riley said that she had never been in a position before where the client had done something dishonest and had therefore been investigated. She would have expected it to be her duty to give an investigatory body information about her dealings with an individual and his client and to do so honestly. There would have been court papers which she surmised was how the Applicant had found out.

460. Ms Riley confirmed that she had given the Applicant any documents which had been relevant to her witness statements and which had been aired already in a public forum. There had been no issue with handing things over because they were already in the public domain.

461. The First Respondent referred Ms Riley to the contract. She said that it referred to Client V "care of" the First Respondent and so implied that he had been agent for Client V. She said that there had only been one contract which the First Respondent had not signed; there had not been a "second contract". Ms Riley stated that the financial contractual arrangement/client contract had been between herself and the firm but the First Respondent had not signed it. She had acted at his behest and every instruction had come through him. The First Respondent put to Ms Riley that in a solicitor/client/barrister relationship, the solicitor instructs the barrister but the client is the barrister's client. Ms Riley said that on that basis, she would not have owed the First Respondent any duties at all and only Client V and she had not complained about confidentiality.

462. The First Respondent stated that Client V had been Ms Riley's client and that the publicity had not been for him but for Client V. Ms Riley replied that was debatable since his people had stood outside court and handed out the firm's business cards. Ms Riley said that the First Respondent had wanted publicity as much as Client V. She said that when she had been in the First Respondent's office before going to court, he had said that he wanted publicity and for his name to be quoted alongside it.

463. Ms Riley said that as far as she knew, she had never met Mr Healey. She recalled that Client V had had bodyguards after the attack but not at the meetings in the First Respondent's office when there had been Client V, the First Respondent and Ms Riley only.

464. Ms Riley confirmed that she had advised against anyone countersigning Client V's letter if they had any public persona around drugs. There had been no insinuation about Client V and only in relation to any of her friends which she felt had been both reasonable and cautious.

465. The First Respondent referred Ms Riley to the letter to the Home Secretary and said that he had not signed it. She had only become aware of that when she had been sent a copy after it had been sent out.

466. Ms Riley confirmed that Mr R Winnett [Sunday Times] had told her that the First Respondent had flown in a Hollywood make-up artist to deal with the reconstruction photographs. The First Respondent referred Ms Riley to the statement of Ms Rhodes but she did not know who she was. Ms Riley noted that Ms Rhodes had made no allegation against her in relation to the "scam". If the woman in question had not come from Hollywood, Ms Riley said that simply meant that the information she had been given was wrong. She had signed her statement which had been prepared to the best of her knowledge and belief.

467. Ms Riley said that her witness statement had been designed to explain the factual background to the work she had done and information she had received and why she felt that she had done her best under the circumstances and had still been owed money by the First Respondent. It had not mattered to her where the make-up artist had come

from. The fact that the photographs had been faked and handed to her by the First Respondent, who had purported that they were real, that had been the point.

468. Ms Riley had not wanted to press the First Respondent on the provenance of the photographs. She said that she had not wanted to prejudice her position about knowing whether they had been procured in a less than acceptable manner. The First Respondent had told her that he could not obtain the photographs and suddenly he had got them and told her that they had cost a lot of money. She said that she had put two and two together and had considered whether the First Respondent might have bribed the police photographer but she had been wrong and he had gone a step further than that.

469. Ms Riley said that Client V had consulted MCA but it could not have been after she had been instructed. Ms Thomson of MCA had been at court on the morning of the sentencing and Ms Riley had not met Client V until that morning. Client V could not have gone to MCA after her but either at the same time or beforehand. Ms Riley believed that her assignment had concluded and Client V had been very grateful for the work she had done.

470. The First Respondent referred Ms Riley to her statement dated 26 January 2007 in the County Court proceedings which stated:

> "They were also the photographs that Dr Mireskandari had himself sent to the Home Secretary to accompany Ms V's [Client V] letter".

471. Ms Riley said that the First Respondent would have instructed them to be sent and that the email which had been sent to her attaching the letter had come from the firm and the letter itself had been created at the firm. Nothing in relation to the work she had been involved in had been done by Client V herself.

472. Ms Riley said that the First Respondent had had "complete power" over Client V. Client V had agreed to whatever the First Respondent had said. Ms Riley said that her point was that the First Respondent had been controlling events and it had been evident. Client V had not known one end of a courtroom from another and Ms Thomson had said exactly the same, that Client V had been "driven" by the First Respondent. Ms Riley agreed that she had only spoken from her own experience of having dealt with Client V and her perception of her behaviour and the First Respondent's. Client V had not been aware of court procedures in this country, whether or not she had been aware of them in America. Ms Riley suggested that for Client V, going through the attack and her operations again must have been an unpleasant and unnerving experience for her.

473. Ms Riley recalled that she had gone out to lunch with Client V after the event as Client V had wanted to thank her. She did not believe that Client V was disappointed in her and had instructed MCA instead; they had already been instructed. Ms Riley said that she had acted on the litigation only as that was what she did. MCA had been doing the promotional work. Ms Riley stated that she and MCA had been working on Client V's matter together. Ms Thomson had said "It seems to me that Sean [the First Respondent] is the driving force in this and I will expect an explanation as to why this happened" in relation to the fake photographs.

474. At the moment that Ms Riley realised that the photographs had been faked, she had resigned. She said that she had been of the view that Client V had been a "pawn" in the matter and she had been less cross with her. She said she had been furious with the First Respondent.

475. The First Respondent submitted that it was Client V who had faked the photographs. Ms Riley admitted that she had said that photographs would create further interest in the story by creating an image and that newspapers might want to use photographs to give another "leg" to the story. She recalled that in relation to police photographs, they retained copyright over them. Ms Riley had originally thought that the photographs were genuine and that Client V had consented to them being released to the media. She said that she had taken instructions from the First Respondent and Client V had appeared relaxed about the photographs appearing in the press.

476. Ms Riley clarified that it was also her position that Client V had lied and been dishonest regarding the photographs.

477. The First Respondent submitted that in the same way that Ms Riley had made up her claim against the firm in the County Court (which had been dismissed) she had made up the majority of her evidence in these proceedings. Ms Riley denied that absolutely.

Re-examination by Mr Malek

478. Mr Malek referred to a letter dated 8 May 2008 from Client V to Mr Lees. The First Respondent objected to the letter as parts of it had been blacked out. Mr Malek informed the Tribunal that he only wanted to put to Ms Riley the breach of confidentiality point; the First Respondent had submitted that Ms Riley breached confidentiality but there had been a letter of complaint which Client V had sent to the Applicant prior to Ms Riley being interviewed. It went to the issue of whether she had acted wrongfully in having discussed the matter with the Applicant. The First Respondent objected further that the letter in question had not waived confidentiality by Client V. The Tribunal agreed to hear Mr Malek's limited point on the letter.

479. Ms Riley said that there had never been any suggestion from Client V that she should not have been in a position to speak to the Applicant. On 14 August 2008, Client V had provided a statement to the Applicant which had been the same day that Ms Riley had spoken to the Applicant at their offices. Ms Riley confirmed that she did not believe that she had breached confidentiality.

480. Mr Malek produced two letters from Russell-Cooke dated 14 April 2011 which related to the position of Carter-Ruck Solicitors and the allegation put by the First Respondent to Mr Townsend that the Applicant had examined the First Respondent's files at Carter-Ruck's offices. The reply from Carter-Ruck dated 17 April 2011 stated:

> "There has been no audit and/or investigation of this firm in 2008 or at any time in which the SRA or anyone on their behalf have been given access to our files, including copies relating [to] and/or concerning Mr Mireskandari. Further, we have not given the SRA or anyone on their behalf access to our files, including copies, relating to and/or concerning Mr Mireskandari for any reason or at any time".

481. The First Respondent submitted that it did not confirm that no audit had taken place as the letter had been worded very carefully. Mr Malek acknowledged that and agreed to seek clarification from Carter-Ruck as to firstly, whether there had been an audit or investigation of the firm in 2008 whereby the Applicant had gone into the firm and secondly, if there had been, had they looked at the First Respondent's files.

482. Mr Malek confirmed that Carter-Ruck Solicitors had replied by letter dated 19 April 2011 as to whether they had ever been visited and their files examined by the Applicant. The letter stated:

> "We do not believe our letter dated 17 April requires any clarification. We can state that at no time in the firm's history has the SRA or anyone on its behalf come into this firm for any audit, investigation and/or other inspection".

483. The First Respondent also said that there was a letter whereby Russell-Cooke or the Applicant had requested access to his Employment Tribunal files, after the intervention. Mr Malek produced documentation which he submitted showed that this had not happened. There had also been the Judgment of Blackburne J which had dealt with that issue. The First Respondent had wanted access to those files and independent counsel, Mr Nigel Ingram had been asked to ensure they were available so that they could be collected by the First Respondent.

Mr David Shaw Examination in Chief

484. Mr Shaw was sworn in to evidence and confirmed the truth of his statement.

485. Mr Tabachnik referred Mr Shaw to the witness statement of the First Respondent dated 31 October 2008 regarding the financial status of the firm, which stated:

> "My firm is a successful London firm in excellent financial health. Our turnover last year was over £5.5 million and we have 42 employees" and "...I believe the practices of Dean & Dean are second to none in our accounting procedures...".

486. Mr Shaw was referred to the application for professional indemnity insurance made on behalf of the firm; figures quoted for the past year which had ended 31 May 2008 of £1,326,420 and for the current year estimated as £1,132,233. Mr Shaw said that these had been completely inconsistent with the figures quoted by the First Respondent in his witness statement in the Judicial Review proceedings.

487. Mr Shaw confirmed that the turnover of £5,500,000 which had been referred to by the First Respondent in his witness statement in the Judicial Review proceedings had caused him concern.

488. Mr Tabachnik then referred to the professional indemnity insurance application form for 2007/2008. Mr Shaw confirmed the figure given for the last financial year period 31 May 2006. Mr Shaw said that all of these matters had given him cause for concern.

489. In the transcript of his interview, Mr Richardson had said "One of the things that usually happens, and I think the agreement is the information that I will produce is only as good as the information, or the reports etc, are only as good as the information

that the partners provide to me". Mr Shaw had then said "Yes, and that's what Dr Mireskandari has done, provided you with figures and he's told you that the turnover is in the region of £4.5 million, including disbursements".

490. Mr Shaw said that during the investigation he had seen no forms signed by a partner of the firm which authorised transfers out of the designated deposit client account of Client R2. Mr Tabachnik quoted from the firm's office manual which stated:

> "3.9 Transfers
>
> A transfer form is to be used for authorising transfers of client and office monies. Two copies of the form should be raised, the top copy to be sent to the accounts department for action and the duplicate retained on the client matter file. On occasions it may be necessary to support the transfer form with a note of explanation.
>
> The proper transferring of monies is directly the responsibility of fee-earners and verbal instructions will not be accepted by the accounts department" and
>
> "3.10 Payment out of client monies
>
> Payment out of client monies by cheque or transfer, irrespective of the amount, can be authorised only by Dr Sean Mireskandari".

491. Mr Shaw confirmed that he had not seen any written document which had evidenced a fixed fee arrangement between the First Respondent and Client D or any of his family or a company the family owned. Mr Tabachnik referred to the guidance to Rule 3 of the SCC and note 40 which stated "In conduct, there is a conflict of interest where you, in your personal capacity, sell to or buy from or lend to or borrow from your client…In all these cases, you should insist the client takes independent legal advice. If a client refuses, you must not proceed with the transaction".

492. Mr Shaw stated that to the best of his knowledge and belief Mr Hill-Smith had not been paid any of the £95,000 due to him. In the second FI Report, it referred to this matter and stated "Thus it appears that the client was charged in excess of £65,000 by Dean & Dean in respect of cost reduction negotiations with counsel that were not successful and which resulted in no saving for the client". Mr Mercer had written to the client (G4) and asked the following questions:

> "Could you please:
>
> (a) explain what cost savings you understood had been achieved by Dean & Dean in respect of counsel's fees?
>
> (b) provide copies of any documents you may have concerning this.
>
> (c) Could you say specifically whether, if reduction had been achieved, you agreed that Dean & Dean could raise an invoice in the amount of £60,947.54?".

Mr Shaw confirmed that the client had not answered any of the questions.

<u>Cross-examination of Mr Shaw continued</u>

493. Mr Shaw acknowledged that over the years there had been one or two allegations against him personally in relation to how he had conducted investigations but said that

no Judge or Tribunal had criticised him in relation to the way in which he had presented accounts.

494. Mr Shaw confirmed that he had not asked Russell-Cooke to try and ascertain the bad debts figure. He said that one could attempt to spend any given amount of time on any investigation but at some stage investigations had to be terminated and that had happened in relation to the First Respondent's firm.

495. Mr Shaw agreed that the firm's year end had been 31 May. He confirmed that there had been a significant increase in the firm's income between 2006 and 2007. The First Respondent submitted that if there had been serious problems in the client accounts for those years which had been audited, he would have expected the accountants to have brought them to the investigators' attention or for an investigation to have ensued based on the reports.

496. Mr Shaw said that he presumed it would have been HW Fisher (accountants) who would have brought it to the attention of the Applicant and not the other way around, on the assumption that they had been the firm's reporting accountants. He said that someone else in the investigation team might have looked at the accountant's reports. They would have been requested at the outset of the investigation which had been October 2008 and he had not become involved until November 2008.

497. Mr Shaw said that he had been unaware of the articles about the firm in September 2008. By the time he had become involved in the investigation in November 2008, he had become aware of some of the articles.

498. The First Respondent referred Mr Shaw to the 11 September 2008 article from the Daily Mail. Mr Shaw said that he had had no knowledge of the letter concerning the Applicant and Mr Vaz.

499. Mr Shaw acknowledged that the bank might have been affected by having read the articles but he was unaware of staff at the firm having resigned as a result or that a lot of clients of the firm had been concerned about the articles. He agreed that the Third Respondent had wanted to resign earlier but had agreed to remain to assist with the difficulties at the firm.

500. Mr Shaw said that he was aware that there had been a degree of flexibility demonstrated by the bank regarding the extent of the firm's overdraft facility. He said that they had not known what the overdraft facility was during the first FI Report and had only learnt of it in the early part of 2009. The First Respondent submitted that the Head of Barclays Bank had been so impressed with the firm that he had met the First Respondent personally for dinner.

501. Mr Shaw said that he had looked at some files at Russell-Cooke in early 2009; clients G3, G4 and G5. Ms Townsend had looked at G2 and R2 but Mr Shaw had been "looking over her shoulder"; he had looked at the financial transactions and had noticed some unusual transfers from client to office bank account.

502. In relation to Mr Hill-Smith and the allegation that £60,947.54 had been taken from client account without any legitimate basis for having done so, the First Respondent said that there had been no evidence that the client had been unhappy with the invoice and Mr Shaw agreed. Mr Shaw referred to Rule 19 (2) of the SAR which stated:

> "A solicitor who properly requires payment of his or her fees from money held for a client or trust in a client account must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party".

He then referred the Tribunal to guidance note (ix) to the rule which stated:

> ""Properly" in rule 19 (2) implies that the work has actually been done, whether at the end of the matter or at an interim stage, and that the solicitor is entitled to appropriate the money for costs".

503. Mr Hill-Smith had obtained Judgment against the firm.

504. Mr Shaw said that the problem in relation to the bill of costs for Client D had been the "anticipated disbursements" of £19,994. The SAR did not allow for transfer of funds from client to office account in respect of anticipated disbursements. Mr Shaw referred to Rule 22 (1) (e) which stated:

> "22 (1) Client money may only be withdrawn from a client account when it is:
>
> (e) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by the solicitor to the client in writing".

505. He said that the problem was that there had been nothing in writing.

506. Mr Shaw accepted that at the relevant time, the First Respondent had instructed RadcliffesLeBrasseur and that they had offered to answer any questions from the Applicant in writing but questions had not been put in writing. He also accepted that there was no rule which said that the First Respondent had to be interviewed in person.

507. Mr Shaw referred to the interview with Mr Richardson. He had explained that the bank would from time to time loan money to the client, effectively underwritten by the firm and those funds would have been on account of fees. The loans would have been secured somehow and after a period of time, if not repaid by the client, the loan would have been repaid by the firm. The First Respondent said that the way in which the facility had worked had been for an invoice to have been drawn, signed by the client and a partner, sent to the bank and approved by the bank, the money would have been sent to the firm and the client would then have paid interest on it every month. He said that this had only been offered to matrimonial clients.

508. Mr Malek referred the First Respondent to the witness statement of Ms Kay Georgiou in relation to the court order. The First Respondent disputed that the undertaking in relation to Kay Georgiou Solicitors had continued and submitted that the firm had been released from that undertaking and instead the undertaking had been to RBC.

509. The Tribunal noted that this appeared to have sought a relaxation of the terms of the original designated deposit account, namely the "Lamborghini account". Once the money had been removed from the Lamborghini account, by consent, there had been a re-designation of the original arrangement with Kay Georgiou but not a release from

it. Kay Georgiou had agreed to monies going into the mortgage account on terms and the terms had been set out in the documents.

510. The First Respondent submitted that this had been an agreement reached between the parties which had varied the original undertaking to the court. He said that the money had not gone missing, it had been replaced. In the ledger, it had been recorded that "the client authorises". Mr Shaw said that looking at the document dated 27 June 2008, there had been an undertaking to Kay Georgiou Solicitors for the £123,500 in the mortgage account and in his opinion, that money had been ring fenced and should never have been used. It had not been in the gift of the client to have told the firm that it could be used; had Kay Georgiou said that, it might have been a different matter but she had not.

511. Mr Shaw accepted that when the firm had ceased acting and the matter had been transferred to new solicitors, no monies had been missing.

512. The First Respondent referred Mr Shaw to Client G2. Mr Shaw said that he was not aware of the conviction of G2 but was aware that she had absconded. He had seen a request for funds from the client made by the First Respondent and the client had disputed how much she owed. Mr Shaw said that he had not been aware that the firm was owed over £4,000,000 by clients. He had read some of the G2 files but not many and did not know what had been in the files.

513. The First Respondent referred to the loan to the firm from Client G3 in the sum of £100,000 in November 2008. The First Respondent said that it had never been client money as it had been his personal funds.

514. Mr Shaw said that the paramount concern had been that no evidence had been seen that the client had taken independent legal advice. He confirmed that transfer of the money had not caused a cash shortage on the client account but no confirmation had materialised from either the client or the First Respondent that independent legal advice had been taken. The allegation had been made in the absence of any evidence to the contrary.

515. Mr Shaw went on to say that he had not been aware of the position in respect of any of the clients shown on the schedule regarding funds owed to the firm.

516. Mr Shaw confirmed that Mr Mercer had principally prepared the FI Report with input from himself and Ms Townsend. He estimated that preparation of the report had taken two weeks. Mr Mercer had been fed information for inclusion in the Report as the investigation had progressed. The input could have started as early as October 2008. Mr Shaw said that Mr Mercer would have started work on the Report at a fairly early stage. Breaches of the rules had been alleged, reported and fed back to Mr Mercer. It had to have been done that way or the 11 December date would not have been met.

517. Mr Shaw said that serious breaches of conduct and the SAR had been identified and Forensic Investigations in such circumstances drew together a final or interim Report as a matter of urgency and placed it before a Committee. He said that there was a duty to act expeditiously in all cases. Whilst Mr Shaw accepted that the bail money and the R2 matters had been rectified, the money should not have been taken in the first place and that was the point.

518. Mr Shaw said that he had not contacted Mr Bajwa regarding Client D's files. The First Respondent said that Mr Bajwa had done some work on the file of Client D and had given him a note about it. The First Respondent alleged that Mr Bajwa had arranged for his trainee to steal files from the firm and said that the matter had been reported to the police. Mr Shaw said that the transcripts did not say "steal"; they referred to the files having been "taken". The First Respondent said that Mr Cousins remembered that the firm had reported the trainee (Ms Kawaja) to the police for having stolen files.

519. The First Respondent submitted that the reason why the files had not been found was possibly because they had been taken by Mr Bajwa. Mr Shaw said that was a possibility but not a fact. Mr Shaw said that he had not known the details about Mr Bajwa or that there had been allegations about him at a previous firm. The First Respondent said that the firm had reported Ms Kawaja to the Applicant and said that she was not fit to be a solicitor because she had been engaged in a conspiracy to steal files from the firm. Mr Shaw said that he had been unaware of that.

520. The First Respondent said that if the firm had had £4,000,000 outstanding those debts would have been considered assets. Mr Shaw said only if they were recoverable.

521. The First Respondent submitted that Mr Shaw, Mr Mercer and Ms Townsend had put words in the Second Respondent's mouth and twisted things she said when she had already said that she knew little about the accounts. Mr Shaw denied this. He said that the letter from the client regarding the £100,000 had been "ambiguous" and that when the client had said that the payments had been the private funds of the First Respondent, it had not been clear what was meant. The First Respondent submitted that the Applicant's witnesses had made up their evidence and lied.

522. Mr Shaw said that the funds had come from a company; Clients G3, G4 or G5 and not from the First Respondent and it had been difficult therefore to understand how they had been the First Respondent's funds. The First Respondent suggested that the plan had been to pressurise the Second Respondent even though she knew nothing. Mr Shaw denied this. He confirmed that the Second Respondent had told the investigators they would have to ask the First Respondent. He said that a number of questions had been asked about the First Respondent albeit the First Respondent maintained that he had left the firm by then; Mr Shaw said that he had still been on the bank mandate.

523. The First Respondent referred Mr Shaw to the statement of Client H which had been produced by the First Respondent at the beginning of the hearing and Mr Malek confirmed that he had no objection to the statement being put to the witness. The First Respondent referred to the Rule 5 Statement and the allegation that he had taken a loan from G4/G5 but that had been incorrect as the loan had been from G3, a subsidiary of G4/G5. The statement of Client H stated:

> "I can confirm that F SA [G3], a Luxembourg company, did make a loan to [yourself] personally. I recall that he [the First Respondent] advised the company to take appropriate legal advice before approving the loan".

524. Mr Shaw said that it went some way towards answering the allegation but he was not absolutely certain. He recalled that the funds had come from Luxembourg.

525. The First Respondent referred Mr Shaw to an article by Mr D Mackintosh, past President of the Law Society and City of London Law Society Chairman. He quoted from the article which stated:

> "SRA investigations can lack basic fairness and disregard the rules of natural justice...According to Mackintosh procedures are unfairly weighted against the investigated firm with little or no protection other than the promise of confidentiality....Firms under investigation are under strict obligation to provide information requested and must authorise the SRA to contact the staff, clients, banks and other financial institutions with which they have dealings. These disclosure obligations not only destabilise the ordinary course of business but can also affect critical business strategies such as tendering for new business, new partner appointments or merging with other firms. The SRA operates in a cocoon where it thinks it is the sole judge of due process".

526. Mr Shaw said that this was Mr Mackintosh's opinion in an article attributed to him. Mr Shaw said that in his experience, behaving in a high handed and judgemental manner with solicitors was totally counterproductive. His role was to ascertain the facts and produce a report.

527. The First Respondent suggested to Mr Shaw that estimating turnover based on VAT returns was not an accurate way of calculating turnover. Mr Shaw said it was more complicated than that. The First Respondent suggested that the bank looked at work in progress and projections but Mr Shaw said that he had never seen any projections provided by the firm to the bank.

528. Mr Shaw denied that the Applicant had sent him and his colleagues into the firm to close it down and the timeline had been dictated by what had been found. He reiterated that the FI Report had been prepared over a number of weeks and suggested that the report of Ms Patel had been similarly prepared.

<u>Cross-examination by the Second Respondent</u>

529. Mr Shaw agreed that the Second Respondent had struggled to provide accounting information due to other commitments and that she had not been involved previously in the accounts. There had been some doubt regarding the value of work in progress figures as Mr Richardson had said that some of the fee earners had been "rather clueless" with regard to what work in progress even meant. It had not been a clear situation.

530. The Second Respondent submitted that there had been no cash shortage due to payment of the staff salaries because invoices had been raised so the monies had been available to become office monies. Mr Shaw agreed; it had been a breach of the SAR which had not resulted in a cash shortage. He said it was accepted that effectively the money taken from the client account had been offset against bills of costs. In relation to allegation 2.8 and the £200,000, Mr Shaw confirmed that there had been a breach but that it had been remedied. Similarly, the RBC monies had been replaced. Mr Shaw also confirmed that the unpresented cheques had cleared as evidenced by the bank statements produced by the Second Respondent.

531. Mr Shaw accepted that they had requested a lot of information from the Second Respondent, sometimes having seen her several times a day. He agreed that once the

firm had been intervened, it had made it very difficult for the Second Respondent to make further investigations but it had not been impossible. The Second Respondent said that she had only become more involved once the First Respondent had taken his sabbatical from 6 November 2008.

532. In relation to the unpaid counsels' fees, Mr Shaw confirmed that the Second Respondent had provided a schedule and additional information as to why certain fees had not been paid albeit after the intervention had taken place.

Re-examination by Mr Tabachnik

533. Mr Tabachnik referred Mr Shaw to Client R2 and the ledger. Mr Shaw confirmed that in the course of the investigation, he had not seen any evidence of authorisations from the client, the RBC or R2's wife. No evidence had been seen of Client R2 having been given advice or instructions by the firm regarding taking independent legal advice. Had this been evident, Mr Shaw said that it would have been reported as it would have been pertinent. The First Respondent objected to Mr Shaw's response as he had admitted in evidence that he had not read all of the files. Mr Shaw accepted that he had said that in evidence. In relation to Client D, Mr Shaw said that it had never occurred to him or his colleagues that this had been an agreed fee matter. He said that no mention of this had been made during interviews. The Second Respondent interjected that she had confirmed in interview that this had not been her matter and she had been unable to find the file so had not been in a position to answer questions on it.

534. Where there had been a transfer out of client account, Mr Shaw said that he and his colleagues had not seen written documentation which would have complied with Rule 22 (1) (e) but that files had not been looked at. Mr Shaw confirmed that withdrawals from the client account were allowed under Rule 22 (1) (b) if "properly required" for the payment of a disbursement on behalf of the client but disbursements had not been paid. Mr Shaw said that the First Respondent had suggested that had the files been examined, that would have revealed that cheques had not been sent out, for example, because there had been disputes with counsel. Yet when raised with the Second Respondent, she had sent the cheques out immediately. If there had been disputes with counsel, as suggested, the proper thing would have been to replace the money in the client account but that had not happened.

535. Mr Shaw confirmed that at the outset of the inspection, professional history questionnaires had been handed out by Mr Mercer but the First Respondent had never returned a completed questionnaire to the best of his knowledge. Mr Shaw said that he was not aware of any response from the First Respondent to the EWW letter dated 5 February 2009. Mr Shaw said that he had not been aware of any substantive response from the First Respondent to the allegations in the FI Reports in the course of the proceedings. The First Respondent had filed an undated document which had been seen in February 2011 but Mr Shaw said that he had not been aware of any substantive response from the First Respondent for the period 2009 to 2010.

Ms Lorna Rhodes Examination in Chief

536. Ms Rhodes was sworn in to evidence and confirmed the truth of both of her statements.

537. Ms Rhodes confirmed that she had been asked to do reconstructive make-up on Client V at her home. Also present had been a photographer, security and the First Respondent. She said she had spoken briefly to the First Respondent. Ms Rhodes identified the photograph of Client V in relation to which she had done the make-up.

Cross-examination by the First Respondent

538. Ms Rhodes confirmed that Client V had telephoned her regarding the reconstructive make-up and had arranged on the telephone for her to attend at her house that afternoon. Ms Rhodes said she knew what had happened to Client V and what was required. The make-up had taken approximately forty-five minutes. Client V had paid her for the shoot. Ms Rhodes recalled that Client V had taken the make-up off almost immediately after the shoot had finished.

539. Ms Rhodes recalled that she had signed a confidentiality document but she did not have a copy of it and could not remember who had given it to her, including whether it had been the First Respondent. There had been two gentlemen present when she had given her statement. The reference to Mr Lees had been made in her statement. Ms Rhodes confirmed that she had read her statements and had seen the exhibits before she had signed them. She also understood them including the allegations.

540. In response to a question from the Tribunal, Ms Rhodes said that the First Respondent had known she was a make-up artist when they had met on the day of the reconstruction after she had made up Client V and the photos had been taken. He had given her his card and said that he could get her a lot of clients.

Client V Examination in Chief

541. Client V was sworn into evidence and confirmed the truth of her statement.

542. In relation to the reconstructed photographs, Client V said that they had been done with the First Respondent. He had asked her if she knew of a make-up artist and photographer which she had done and the photographs had been arranged for the same day at her house.

543. Client V confirmed that she knew Ms Riley and had met her when she had gone to court for the sentencing of her attacker. She said that she had not known the circumstances in which the photographs had been provided to Ms Riley. She said that she had been with the First Respondent in his office when Ms Riley had walked in and been handed the photographs by the First Respondent. Ms Riley had asked if they were the original photographs and he had said that they were. She had asked him twice and both times he had confirmed that they were the originals.

544. Mr Malek referred Client V to the letter to the then Home Secretary dated 23 March 2006. Client V said that the letter had been sent on the advice of the First Respondent. He had also wanted Client V to go to Downing Street but she said she did not want to. She had signed the letter at his office but had not seen the photographs.

545. Client V denied that she had had any complaints regarding the work done by Ms Riley. She had not thought that Ms Riley was working for her as she already had her own PR via MCA. She said that the First Respondent had dealt with Ms Riley from the start.

Cross-examination by the First Respondent

546. Client V said that she had no idea how many times she had seen Ms Riley. She had not instructed Ms Riley to do any work for her. She recalled that she and Ms Riley might have had lunch together and she had spoken to Ms Riley on the telephone but not often.

547. Client V said that she agreed with Ms Riley's statement which she had seen. The First Respondent referred her to the first statement of Ms Riley dated 14 August 2008, which stated:

> "As a result of the phone conversation with Mireskandari I had a meeting at his office later that day. L V was also present in the office of Dean & Dean solicitors. At the start of the meeting Sean Mireskandari showed me 3 photographs, hard copies on photographic paper.
>
> I said to him "How did you get these". He looked at L and said something like "They cost me a lot of money". He and L looked at each other and smiled".

548. Client V said that Ms Riley's version of events was not quite correct as she (Client V) had not seen the photographs; she had refused to look at them. Client V said that she had not seen the whole of the statements.

549. The First Respondent put to Client V that Ms Riley had alleged that she (Client V) had been dishonest. Client V said that was incorrect. She agreed that Ms Riley had dealt with confidential matters pertaining to her through the First Respondent but said that she had not given Ms Riley permission to discuss her private matters; everything had been done through the First Respondent. He referred to Mr Healey and Haymarket and Client V said that it would have been Mr Healey who had contacted her in 2008 regarding these matters.

550. The First Respondent submitted that Client V had accused various people with whom she had dealt of some wrongdoing, such as people she had done business with and previous lawyers. The First Respondent said that he had some documentary evidence to support his allegations.

551. The Tribunal indicated that the First Respondent's approach to the witness had to be relevant and he had to have documentary evidence in support of it. The First Respondent said that he was challenging the truthfulness of Client V's evidence. The Tribunal stated that he had to identify which parts of her evidence he was saying were untrue. The Tribunal said that the First Respondent needed to start with the allegation and look at the evidence of the witness and test it.

552. The Tribunal continued that the allegation was that the First Respondent had participated in an improper scheme to create reconstructed photographs of injuries of a former client (Client V) and to release them to the media and the then Home Secretary as genuine photographs of her injuries. The Tribunal remarked that this had not been addressed by the First Respondent and he needed to address that first before seeking to discredit the witness without there being any evidential basis for that.

553. The First Respondent submitted that there were two aspects. Firstly, whether he had sent the photographs and the letter or whether Client V had done so. Client V said that

she had never seen the photographs but Ms Riley said that she had so one of them had to be lying. Secondly, Client V said that he had dealt with everything and she had not had anything to do with any of it. The First Respondent said that Client V had a history of accusing those she had worked with of wrongdoing and he wanted to put that to her as he had not been the first person it had happened to.

554. The Tribunal said that it had not heard anything from the witness regarding the purpose for which the photographs had been prepared and why she had arranged the make-up artist; the First Respondent had not put it to the witness. The Tribunal had no knowledge of the witness' business transactions and had not seen the additional documentation produced by the First Respondent or whether that went to the heart of the case. The First Respondent said that this involved Mr Healey and that he had worked for Client V for some time until they had fallen out as she had accused him of stealing.

555. Client V said she had worked with Mr Healey. He had taken things from her daughter's room but she had not accused him of theft. She had ceased working with him and admitted there had been a dispute regarding his fees as an amount had to be deducted from an invoice. Client V confirmed that Mr Healey had contacted her regarding the Applicant's case and she had met with him and Mr Saunders. Some of the discussions had related to the First Respondent based on her personal opinion of the legal work undertaken for her by the First Respondent.

556. Client V said that the letter to the Home Secretary had not been her idea but she did not know whose idea it was. She had asked Ms Rhodes to do her make-up to reconstruct her injuries from the attack but said that she had done so on the instructions of the First Respondent. He had also asked her to arrange the photographer. Client V maintained that the First Respondent had been present at her home when the photographs had been taken. The First Respondent referred to Ms Riley's evidence which had been that he had arrived after the photographs but Client V said that he was present when they were taken as he had told her how to lie on the sofa.

557. Client V recalled that she had met Ms Riley at the First Respondent's office and that she had left approximately ten minutes after Ms Riley had arrived. She recalled that there had been some photographs on the First Respondent's desk but she had not looked at them as she had not looked at her face once she had left hospital after the assault. She denied Ms Riley's version of events namely that she had looked at them.

558. Client V remembered that she had met Mr Lees on two or three occasions but had not spoken to Mr Healey since 2010. She said that Mr Saunders had dealt with all of her invoices. She had never seen Ms Riley's statement in the County Court proceedings. The First Respondent said that Ms Riley had suggested that Client V did not know her own mind. Client V said that the First Respondent had also done that in his statements.

559. Client V confirmed that she had retained the services of Mr M Clifford to gain her television coverage and coverage in the press. She denied that she had wanted "publicity" as suggested by the First Respondent and she said that it had been the First Respondent who had wanted publicity and fame.

560. Client V said that the photographer had given the photographs to the First Respondent directly. She said that she had signed the letter to the Home Secretary and had read it. She agreed that she had suffered significant injuries to her face but that she had never taken any photographs of her face after each episode of surgery. The police had photographed her injuries when she had returned home after the attack. There had been some confusion regarding the police and photographs. Mr Malek said that there had been official photographs taken by the Metropolitan Police which they had refused to release.

561. Client V said that the letter to the Home Secretary had not been sent on her own headed notepaper. She said that the First Respondent had requested some of her personal stationery at one time. Her position was that the First Respondent had sent out the letter and not her and that he had included the photograph.

562. In response to a question from the Tribunal, Client V confirmed that she had received the invoice from Ms Riley and BYC. She had only received it the afternoon before the court hearing. She said that prior to that the First Respondent had dealt with it and had said that it had nothing to do with him.

Mr Alexander Hill-Smith Examination in Chief

563. Mr Hill-Smith was sworn into evidence and confirmed the truth of his statement.

564. Mr Malek referred Mr Hill-Smith to the Conditional Fee Agreement ("CFA") exhibited to his statement. This had been signed by Mr Hill-Smith and Mr Tehrani, not the First Respondent. Mr Malek said the CFA related to client G5/Mr A versus DLA Solicitors. The relevant paragraph dealt with uplift on counsel's fees of 100%.

565. The calculation on the fee note included the CFA uplift of 100% and the total was £95,647.44 inclusive of VAT of £14,232.44.

566. Mr Hill-Smith had said in his statement that he had met with Mr Southall and the Second Respondent. Mr Malek referred him to a telephone attendance note in the name of Richard Southall of a call he had made to Mr Hill-Smith which stated:

> "I spoke to Alex Hill-Smith and asked if it was possible for me to come and speak to him regarding the fees in this case after my court attendance at the High Court which was tomorrow morning. He said that would be fine. I said I would telephone him once I finished my hearing to see if he was available to meet".

567. The attendance note of the meeting stated:

> "Attended at New Square Chambers and asked to speak to Alex Hill-Smith. I was then attended by Alex's clerk who said that Alex had informed him that I was in chambers to speak about these and as he was Alex's clerk it might be appropriate for me to speak to him, not Alex. I advised him I was attending chambers on a slightly more delicate matter and that it wasn't a specific fee which I wished to talk about but fees in general and that it was more appropriate for us to speak together, one member of the bar to the other.

> He said he could speak to Mr Hill-Smith and come back to me. I then spoke to Alex Hill-Smith in chambers and we went through to a large conference room for a discussion".

568. The attendance note was accurate regarding his agreement to some reduction on his fees. He had agreed to waive his uplift after the period of the payment into court and had been prepared to reduce his uplift to 50% and waive his uplift for the time the matter had been dealt with by Mr R Dhanji of the firm. Mr Hill-Smith said that Mr Dhanji had worked for the firm but he had not been a solicitor and had wasted a lot of time. The summary of the discussion had been accurate insofar as it reflected the points Mr Southall had made to Mr Hill-Smith.

569. Mr Hill-Smith had sent an email to Mr Southall and he said that this had referred to the firm's right to enforce a lien in relation to sums recovered. His CFA had provided that the firm should exercise a lien so that he would then have been paid out of the sums on exercise of the lien. Mr Hill-Smith said that he had not received any money from the firm.

570. The reply from the firm dated 22 October 2007 which apologised for the delay and enclosed a cheque for £36,000 for Mr Simon Monty QC's fees and the cheque had been signed by the First Respondent. Mr Hill-Smith said that he had not discussed his fees at any time with Mr Simon Monty QC. A letter sent by Mr Hill-Smith's clerk dated 21 September 2007 to the First Respondent which Mr Hill-Smith said he had vetted and seen before it had been sent stated:

> "I write further to my meeting on Tuesday 19th September with Richard [Mr Southall] and Caroline [the Second Respondent] to discuss Alex's fee note in this matter...Richard and Caroline, in your absence, passed on your thoughts/views that basically the entirety of Alex's fees in the above matter should be waived.
>
> ...
>
> ...It was naturally a shock when Richard passed on your thoughts that these fees should be waived in their entirety.
>
> The fee note rendered, including uplift under the Conditional FeeAgreement totalled £81,385 plus VAT. I had intended as stated above to agree a reduction of £28,385 plus VAT to a new total of £53,000 plus VAT, a 34% reduction, which was in my view a very generous and honest gratuitous offer Alex made in the light of the fact that it seemed to him that Rahim [Dhanji] had run up costs to a perhaps unnecessary extent and to reflect that Dean & Dean did not make full recovery of their costs from the Defendants".

571. Mr Hill-Smith said that he recalled that there had been insinuations that he should not receive his fees but the firm had refused to specify what it was he was alleged to have done wrong and he had not received any proper response to his letter.

572. His clerk had written again on 5 October 2007 and stated:

> "...Since that time we have spoken and you have reiterated your stance that you expect Alex to waive the entirety of his fees.

> This is of course very disappointing and as far as Alex is concerned, he is entitled to be paid under the terms of his CFA which as you know is a legally binding contract.".

573. There was no reply from the firm to that letter.

574. Mr Hill-Smith said that he had referred the matter to the Bar Council once the First Respondent had issued his defence and counter-claim and they had appointed Hill Dickinson Solicitors to act for him and they had produced a Reply on behalf of Mr Hill-Smith.

575. The Judgment of Master Foster stated:

> "(1) Judgement be entered for the Claimant [Mr Hill-Smith] in the sum of £101,492.31 inclusive of interest.
>
> (2) The Defendant's [the firm's] counterclaim is struck out.
>
> ...
>
> (4) The Defendant do pay £20,000 by way of payment on account of the Claimant's costs".

576. Nothing was paid under the Order and bankruptcy proceedings were issued by the Bar Council and were continuing. The Order had not been appealed by the firm.

<u>Cross-examination by the First Respondent</u>

577. The First Respondent said that Mr Hill-Smith had to be aware that when making a statement, all the facts had to be set out. He referred to the meeting between himself, Mr Hill-Smith and Mr A which Mr Hill-Smith denied had taken place and referred to the £600,000 advice he had given on quantum which Mr Hill-Smith denied. Mr Hill-Smith said that he had made a true statement and that he had not had any costs information which would have been required to enable him to estimate quantum. He recalled he had drafted the Particulars of Claim the following year and had had to leave out the costs information because he did not have it.

578. The First Respondent referred Mr Hill-Smith to the Dinkha Latchin ("DL case") case. Mr Hill-Smith said that he had been instructed after the trial of preliminary issues, for the Court of Appeal hearing. He confirmed that DLA had acted for Mr A in the DL case. The First Respondent said that one of the issues had been that DLA had failed to plead statute of limitation. Mr Hill-Smith said that he had suggested making the application to amend but acknowledged that the First Respondent had initially raised the limitation point. He said that the case against DL had been lost and the application to amend had failed. He did not agree with the First Respondent's summary of events.

579. Mr Hill-Smith said that he considered that DLA had been negligent. He denied that he had ever said that all of the costs would be recouped. It had been plain from the outset that only part of the costs were recoverable. Mr Hill-Smith said that he had given advice to the First Respondent on quantum in October 2006 but he could not remember the amount although he acknowledged that the claim had been pleaded high. The First Respondent put to Mr Hill-Smith that he had pleaded the claim in excess of £600,000 and Mr Hill-Smith said that he might have had done so.

580. Mr Hill-Smith said that he would not put his name to a claim that was false. He said that the purpose of a pleading was to set out the facts upon which a claim was based. He would not therefore put his name to a claim that contained facts which he knew to be untrue. Mr Hill-Smith said that he considered the Particulars of Claim to have been completely irrelevant.

581. Mr Hill-Smith said that he was quite happy to admit that he had pleaded the claim high and that he had probably pleaded all of the firm's costs because he thought that was properly arguable. Deciding what the proper quantum was in order to settle the claim had been a completely different matter. In relation to Mr Simon Monty QC, Mr Hill-Smith said that the fee note had only indicated a brief fee and made no reference to reading paperwork or an opinion on quantum. The First Respondent said that Mr Simon Monty QC had advised that the claim was wrong and that it was only worth in the region of £98,000. Mr Hill-Smith accepted that Mr Simon Monty QC had taken a more pessimistic view than he had.

582. Mr Hill-Smith had initially claimed for £600,000 but had then said that the maximum amount was £288,000. Mr Hill-Smith disagreed with the First Respondent's submission and said that he had considered that the court would very likely have awarded damages and "It must be emphasised that these figures represent my best estimate. There is a considerable level of uncertainty as to what sum may be eventually awarded...". Mr Hill-Smith said that he did not recall having been informed of Mr Simon Monty QC's Advice or of having said that his advice should be accepted.

583. The First Respondent put to Mr Hill-Smith that he had been absolutely wrong in his claim. Mr Hill-Smith denied this. He referred to the figure he had given of £228,208 and that he had said "From this principal sum, however, any entitlement of DLA in relation to the outstanding fees claim must be set off". The outstanding fees claim had been approximately £87,000 so what he had said had been very close to the sum in court. He said that on the First Respondent's instructions he had drafted a Part 36 letter within the twenty-one days for accepting the sum in court and had sought £230,000 with a view to the First Respondent then telephoning the other side to attempt to increase the sum in court by a few thousand so that Mr A could say that he had recovered £300,000 which was what he had wanted.

584. Mr Hill-Smith said that from the outset he would have had a number of informal chats with the First Respondent including about the principles upon which damages would have been calculated. He had not charged for those informal discussions. He said that it had been a loss of chance case and that damages would always have been reduced for the contingency of loss of a chance. Mr A had not appreciated that from the outset the defence they had failed to plead had only been a partial defence and that had made computation of the damages far more complicated.

585. The First Respondent said that what had really happened was that Mr Hill-Smith had pleaded one amount and had then, ten months later after costs and fees had been incurred, said the maximum would be £200,000. Mr Simon Monty QC had then said in his Advice that the more likely settlement would have been in the region of £98,000 to £100,000. Mr Hill-Smith repeated that as he had made clear in his Opinion, it had been a difficult assessment of quantum. In professional negligence cases, it was very often not the liability that was the problem but the quantum. Mr

Hill-Smith said that the sum of £220,000 had been paid to resolve the litigation and that had been the sum he had advised in his Opinion of 24 October 2006.

586. The First Respondent referred to the Judgment in the A5 litigation. He denied that he had personally owed A5 any money. Mr Malek said that he had read the Judgment and recalled that the Judge had said that as the First Respondent had not been a partner at the relevant time the litigation had been started, he was not liable as a partner. But he had said that as he had been behind the litigation, he might be liable for a costs order to make him personally liable.

587. Mr Hill-Smith said that he had acted for the firm for between seven and eight years. He had not been paid for all the work he had done and said that he had not been paid for the hearing in the A5 matter. He said he had appeared before Field J in relation to compromising the freezing order. He had no idea who had owned the firm in 2004, when the hearing had taken place and the First Respondent said that it had been Mr Tehrani.

588. The First Respondent put to Mr Hill-Smith that when the firm had been intervened in December 2008, his agreement with the firm for the £30,000 had been frustrated. Mr Hill-Smith did not agree. He said that he should have been paid the money when it had been received by the firm in July 2007.

589. The Tribunal pointed out that the difficulty was that there were documents on record in which Mr Hill-Smith had said "will you please set out your reasons (for non-payment of his fees)" yet no evidence had been produced by the First Respondent that had been done. He said that he had not had access to his files and there might be attendance notes of his discussions with Mr Hill-Smith's clerk in those files. The Tribunal noted that Mr Hill-Smith's evidence was that he had not been told directly that the First Respondent had alleged negligence against him and it had not been until receipt of the defence and counter claim that it had arisen. Whilst the First Respondent had not been satisfied with the answers from Mr Hill-Smith, those had been the answers given in that regard.

590. The First Respondent referred to Mr Hill-Smith's complaint to the Compensation Fund. Mr Hill-Smith said that he had not referred to the £30,000 because he had not accepted it; it had been conditional on the First Respondent having paid it to him. He said there had been no consent order or agreement. He said it had all been predicated by his legitimate concern that if it had not been paid in cleared funds, any arrangement would not have been worth the paper it was written on.

<u>Re-examination by Mr Malek</u>

591. Mr Malek referred to a handwritten list of outstanding counsels' fee notes which the Second Respondent had provided to the FIOs at the time on 9 December 2008 and had been appended to the first FI Report. The First Respondent refuted that they were all fees which had not been paid. He said that some of them were outstanding because clients had instructed the firm not to pay the fees due to negligent advice from counsel. He said that the Applicant submitted that they were fees which had just not been paid but that was incorrect.

Agreed Directions

592. The Tribunal gave the following further directions;

592.1 The parties to file and serve by 1 September 2011 any additional documents they wished to rely on at the final hearing commencing 17 November 2011;

592.2 The Applicant to collate the material in .1 and place it in numbered bundles, removing any duplicates of documents already in the bundles and having agreed an index, to file and serve them on the parties and the Tribunal by 15 September 2011. Any questions of admissibility of such documents produced to be determined by the Tribunal;

592.3 No further documents to be added save by consent of or with permission of the Tribunal;

592.4 By consent, the First Respondent to have permission to serve out of time the statements of Client H, Client G, Miss Melody Norris, Mr Nigel Carter and Mr Lawrence Greenbaum and call to give oral evidence.

592.5 There should be no further witness statements or witnesses save by consent or with the permission of the Tribunal. Permission to adduce the current statement of Mr Herbert was refused but liberty to apply was granted if the First Respondent filed and served the new statement by 1 August 2011; any argument as to admissibility to be dealt with on the first day of the resumed substantive hearing on 17 November 2011.

593. In relation to disclosure of the proceedings, the Tribunal stated that no transcripts or recordings of the proceedings should be released until conclusion of the proceedings and it reminded the press that nothing should be reported including photographs which could identify clients or intimidate witnesses.

594. Case adjourned to Thursday 17 November 2011 at 10am with a time estimate of three weeks.

Preliminary Matters in relation to the Resumed Substantive Hearing 30 May – 1 June 2012 and 11 – 21 June 2012

595. The substantive hearing had been listed to resume on Monday 28 May 2012 for one week and thereafter, from 11 June to 22 June 2012 for a further two weeks. On 28 and 29 May 2012 the First Respondent made two separate applications for adjournment, the first on medical grounds (1), which was heard in private and the second on the basis of proceedings issued in the United States and on a point of law (2).

596. Both applications were refused by the Tribunal and the substantive hearing resumed formally on Wednesday 30 May 2012.

597. Mr Malek informed the Tribunal that since the First Respondent was not present and not represented, both he and the Tribunal had to consider how to proceed and he referred the Tribunal to the authority of R v Hayward, Jones and Purvis [2001] EWCA Crim 168 and the judgment of Rose LJ, which stated:

"20. On behalf of Purvis, Mr. Davis adopted Mr. Solley's submissions. He stressed that in **Jones (No.2)** the court emphasised that the discretion to proceed in a defendant's absence must be exercised with great reluctance and with a view to the due administration of justice. Mr. Davis is a solicitor advocate and he told the court that the Law Society have no comparable provisions to the Code of Conduct and Guidance to the Bar which, he submitted, do not constitute rules of law.

21. For the Crown in Purvis, Mr. Taylor adopted Mr. Cornwall's submission in relation to the supremacy of the court. It is not permissible for a defendant to say "I will be tried when it is convenient to me.

22. In our judgment, in the light of the submissions which we have heard and the English and European authorities to which we have referred, the principles which should guide the English courts in relation to the trial of a defendant in his absence are these:

1 A defendant has, in general, a right to be present at his trial and a right to be legally represented.

2. Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in such a way as to obstruct the proper course of the proceedings and/or withdraws his instructions from those representing him.

3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.

4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.

5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;

(viii) the seriousness of the offence, which affects defendant, victim and public;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present.

6. If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits. In summing up he must warn the jury that absence is not an admission of guilt and adds nothing to the prosecution case".

598. Mr Malek acknowledged that these were not criminal proceedings as in Hayward, Jones and Purvis or High Court civil proceedings. Mr Malek said that given the complexity of these proceedings and in the absence of the First Respondent, he would put the First Respondent's case to witnesses and address any points which the First Respondent might have raised against the allegations. Mr Malek informed the Tribunal that he would not re-address points which had already been put to witnesses by the First Respondent such as the allegation of bribing witnesses as already put to Mr Mayne in cross-examination.

599. Mr Malek referred the Tribunal to the House of Lords case of R v Jones [2002] UKHL 5 and the Judgment of Lord Bingham on 20 February 2002, wherein he stated:

"13. I would accordingly answer Yes to the certified question and dismiss this appeal. In doing so I would stress, as the Court of Appeal did in

> paragraph 22 of its judgment, at pp 135-136, that the discretion to commence a trial in the absence of the defendant should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate unless the defendant is represented and asks that the trial should begin. The Court of Appeal's check-list of matters relevant to exercise of the discretion (see paragraph 22(5)) is not of course intended to be comprehensive or exhaustive but provides an invaluable guide. I would add two observations only.
>
> 14. First, I do not think that "the seriousness of the offence, which affects defendant, victim and public", listed in paragraph 22 (5) (viii) as a matter relevant to the exercise of discretion, is a matter which should be considered. The judge's overriding concern will be to ensure that the trial, if conducted in the absence of the defendant, will be as fair as circumstances permit and lead to a just outcome. These objects are equally important, whether the offence charged be serious or relatively minor".

600. Mr Malek submitted that it was important to remind the Tribunal and the First Respondent that he could have appointed someone to represent him before the Tribunal for the resumed substantive hearing. Mr Malek said that it was evident the First Respondent was instructing attorneys in the United States and he presumed as a result that the First Respondent not having done so in these proceedings was not due to lack of funds.

601. In relation to the criminal proceedings to which Mr Beaumont had referred in the adjournment application (2) regarding the US complaint, Mr Malek referred the Tribunal to a letter from the Los Angeles County District Attorney's Office, Bureau of Fraud and Corruptions Prosecutions, sent to the Applicant's US Attorneys Bird Marella and dated 3 January 2012, which stated:

> "Re: Solicitors Regulation Authority
>
> Dear Mr Gluck:
>
> The Justice System Integrity Division of the Los Angeles County District Attorney's Office has received and reviewed allegations against representatives of the Solicitors Regulation Authority. The Justice System Integrity Division did not initiate a criminal investigation regarding those allegations and will take no further action in this matter.
>
> Sincerely
> STEVE COOLEY
> District Attorney
> [Signed] By SERGIO GONZALEZ, Head Deputy
> Justice System Integrity Division".

602. Mr Malek informed the Tribunal that it was possible that the First Respondent, via Mr Beaumont had been referring to other criminal investigations but the Applicant was only aware of this one.

603. The Tribunal had regard to the matters raised by Mr Malek.

Mr David Middleton – Examination in Chief

604. Mr Middleton affirmed and confirmed the truth of his Statements dated 17 October 2008, 14 May 2009 and 15 March 2011.

605. He said that in October 2008 he had been the Legal Director of the Applicant and that he oversaw legal proceedings and investigations. In relation to his Statement dated 17 October 2008, Mr Middleton said that this had been prepared by him in relation to the proceedings brought by the firm against the Law Society and the Applicant for Judicial Review, the challenge to the Section 44B Notices and the ex parte injunction to halt the firm's inspection.

606. Mr Middleton said that his Statement of 14 May 2009 had been made by him for the contested intervention proceedings brought by the First and Second Respondents and his Statement of 15 March 2011 had been made by him for these proceedings.

607. Mr Malek reminded Mr Middleton that the First Respondent was not present and that he [Mr Malek] would therefore put allegations to Mr Middleton, within his knowledge, which the First Respondent had raised albeit some had already been put in cross-examination by the First Respondent during the first three weeks of the hearing.

608. Mr Malek referred Mr Middleton and the Tribunal to the First Respondent's Response to the Allegations, which stated:

> "In addition, the Tribunal will be well aware that its former chairman, Anthony Isaacs, resigned following pleaded allegations that the Legal Director of the SRA, David Middleton, had been recorded describing the SDT as a "rubber stamp" for his decisions. Moreover, whilst an application has been made to strike out that pleading, Mr Middleton has not denied the veracity of the recording in question. As the First Respondent in this matter accuses Mr Middleton of misfeasance and criminal conspiracy, there is no doubt that Mr Middleton's remarks and Mr Isaacs [sic] resignation give the appearance of bias in this Tribunal. The First Respondent will shortly be commencing a claim for misfeasance and criminal conspiracy against the SRA in the High Court and it is submitted that the High Court is the appropriate forum for determining the present application. The Tribunal should refer the matter to the High Court for this reason also".

609. Mr Middleton said that he understood that Mr Isaacs had retired as Chairman of the Tribunal but he was not aware that he had done so due to the First Respondent's accusations.

610. In relation to the "rubber stamp" allegation, Mr Middleton said that the Tribunal was not a "rubber stamp" for the Applicant and he denied that he had been recorded as having said so. Mr Middleton said that he recalled that the suggestion had originally come from Mr Baxendale-Walker who had been struck off by the Tribunal. He said that Mr Baxendale-Walker had telephoned him and Mr Isaacs and had adopted a false identity and that he had produced alleged recordings of those telephone conversations. These had been examined by an expert and Mr Middleton said that the expert indicated that the recordings had been edited. The proceedings had been struck out by Supperstone J and Mr Middleton confirmed that he had been the First Defendant, the

Law Society the Third Defendant, Mr Isaacs the Eighth Defendant and the Tribunal named as the Ninth Defendant in those proceedings.

611. Mr Malek referred Mr Middleton to the Judgment of Supperstone J and to the application for permission to appeal by Mr Baxendale-Walker which he said had been refused by Aikens LJ as "being totally without merit". The Judgment of Supperstone J dated 18 April 2011 stated:

> "84. On the third day of the hearing Mr Susman abandoned any reliance on the two telephone conversations with the First Defendant [Mr Middleton]. It followed, as Mr Susman accepted, that paragraphs 94-97 of the Particulars of Claim must be struck out in their entirety" and
>
> ...
>
> 139. On 18 September 2009 a person purporting to be "David Keys", an investigator contracted to HMRC, telephoned Mr Isaacs. The Claimant [Mr Baxendale-Walker] says that he was the person pretending to be Mr Keys. At paragraphs 99-101 of the Particulars of Claim the Claimant's pleaded case is that Mr Isaacs' statements in that conversation were to the effect that he had made a decision to strike off the Claimant because of his personal view of the Claimant's Remuneration Trust scheme and not for the reasons stated in the decision of the SDT. On 17 March 2010 a person purporting to be "Jeremy Swinburne" and to be a member of the Law Society's legal department telephoned Mr Isaacs... Both these telephone conversations were recorded... The Eighth and Ninth Defendants [Mr Isaacs and the Tribunal] have had the recording of the 17 March 2010 conversation examined by an expert in audio recording analysis, who has concluded that the recording has been "deliberately edited"...".

612. Mr Middleton confirmed that the First Respondent had brought proceedings in the High Court for misfeasance against The Law Society, Mr Townsend of the Applicant, himself and the Applicant as Defendants and which had been issued on 1 March 2011. He said that the Defendants had filed a Defence dated 31 March 2011. He said that to the best of his knowledge and belief that had been a true defence and the proceedings had been stayed by the High Court Master of his own motion. Mr Middleton said that he was not aware that the stay had been removed or application had been made to remove it.

613. Mr Malek referred Mr Middleton to the First Respondent's Response which referred to the Ouseley Report of July 2008. Mr Middleton said that the Applicant had accepted Lord Ouseley's Report and he acknowledged that there had been findings by Lord Ouseley of disproportionate regulatory outcomes in relation to minority ethnic solicitors' firms. Mr Middleton denied that the Applicant had pursued the First Respondent due to his involvement in Lord Ouseley's Report. He said that the Applicant had concerns regarding the First Respondent and the firm prior to July 2008.

614. Mr Middleton referred to his witness statement dated 14 May 2009, upon which he relied. He said that complaints against the firm had not been "investigated in an unfair and unnecessarily heavy-handed way as a result of racial prejudice on the part

of the staff of the Law Society". Mr Middleton said that his view was and remained that the pattern of complaints and their seriousness meant that they could only be properly investigated by an inspection rather than by correspondence which he said would have been ineffective. In relation to the complaints, Mr Middleton said that they disclosed similar allegations such as lack of adequate costs information, overcharging and misleading the Court. He said that he believed there had been no racial prejudice by the Applicant's staff and that the First Respondent had not been pursued because he was a Muslim or Iranian but in the public interest.

615. In relation to the First Respondent's allegations of criminal conspiracy by the Applicant, Mr Middleton said that there had been no such conspiracy and the inspection had been a proper inspection based on solid and genuine concerns.

616. Mr Middleton denied that the Applicant had acted in concert with the Daily Mail or that anyone from the Applicant or Mr Middleton himself had provided the First Respondent's education file to the Daily Mail. Mr Malek referred Mr Middleton to Mr Townsend's witness statement dated 15 March 2011 and the exhibit thereto being the letter from Mr Vaz to Mr Townsend, which was date stamped 4 September 2007 by the Applicant. Mr Middleton said that it would have been passed to Mr Garbutt; he was a complaints handler at the time. He acknowledged that the letter had appeared in the Daily Mail but said that he did not recall the copy in the Daily Mail being date stamped.

617. Mr Middleton confirmed that he had made enquiries of individuals employed by the Applicant he considered might have been aware of information arising from the Applicant's investigation of the First Respondent and which could have been reflected in the press articles. Mr Middleton found no evidence of a leak to the national press of confidential information concerning the Applicant's investigation. He had contacted Mr Negus who was the Applicant's Communications Officer. Mr Negus had also confirmed to him that he had not provided any information to the Daily Mail about the Applicant's investigation and Mr Middleton said he had no reason to doubt Mr Negus.

618. Much information about the First Respondent had been in the public domain. The Applicant had been approached by individuals who had provided information to it as had complainants. Mr Middleton gave as an example the case of Client O, which he said had been raised in Parliament and that Client O had been "to America to try and trace the false credentials of [the First Respondent]". Mr Middleton also said that he understood that the First Respondent had provided his form ET1 from his Employment Tribunal proceedings to the newspapers. Mr Malek referred to an email dated 27 May 2008 from Ms Clare Dyer of the Guardian to Kulwant Sokhal of the firm but addressed to the First Respondent, which stated:

> "Dear Sharokh
>
> The SRA has told me again today that it is correct that they have referred you to the solicitors' disciplinary tribunal. Your ET1 and grounds say so in the second last paragraph".

619. Mr Malek referred to a further letter dated 3 June 2008 from Bevan Brittan LLP Solicitors to the firm, which stated:

> "We are instructed by the Solicitors Regulation Authority...
>
> We understand that you appraised Ms Dyer seeking newspaper coverage of your discrimination claim against our client in the Employment Tribunal and provided her with a copy of your Claim Form...".

620. Mr Middleton said that he understood the Employment Tribunal proceedings, of which he believed there had been three sets of proceedings by the First Respondent, had been struck out. In relation to Ms Dyer, he recalled that she had contacted Mr Negus in the Applicant's press office and that whilst she had been told of the First Respondent's referral to the Tribunal, the First Respondent had referred to that in his own ET1 form. Mr Malek also referred Mr Middleton to the Hansard extract of Dr Vincent Cable on the 22 July 2008, which stated:

> "...but during the course of the battle, she sought legal advice from a firm called Dean and Dean. Its senior partner was Mr Tehrani, and Mr Mireskandari was a trainee solicitor... Dr O [Client O] entered a fixed fee arrangement for £1,000, but something went wrong in court... Sometime later, the solicitor presented a bill for more than £19,000, which has become a cause célèbre within the legal complaints process".

621. Mr Middleton had been aware of general concern regarding the firm.

622. Mr Malek referred Mr Middleton to the Daily Mail article dated 11 September 2008, which stated:

> "Race War Tearing The Yard To Pieces
>
> ... Today, in an extraordinary and disturbing twist, the Daily Mail can reveal that the flamboyant lawyer at the centre of the campaign which is tearing Scotland Yard apart is a convicted conman with suspect legal qualifications.
>
> Dr Sharokh Mireskandi...has a criminal conviction for fraud and obtained his law degree from a discredited 'mail drop' university in Hawaii.
>
> In addition, we can reveal that he is currently at the centre of a worldwide inquiry into his past by the UK solicitors' watchdog...".

623. Mr Middleton said that the Applicant had not to his knowledge told the Daily Mail about the conviction in America or that the First Respondent's degree had come from a "mail drop" university. Mr Middleton believed the Daily Mail had made those discoveries from their own sources, for example, Mr Brunton in Hawaii who had been the prosecutor of the AUH matter.

624. In relation to the adverse judicial comment and adverse litigation findings, Mr Malek said that this included Client A5 and the reduction of the bill of costs by Master Seager Berry and that the First Respondent had stated in his Response to the Rule 5 Statement that he was applying to set aside the decisions of Henderson J, Pitchford J, Blackburne J, Forbes J and other such judgments against him. Mr Middleton said that these had not been set aside to his knowledge, nor had they been appealed. He said that he was only aware of the ex parte injunction granted by Forbes J having been set aside by Pitchford J as a result of his findings against the First Respondent.

625. In relation to the Judgment of Blackburne J dated 9 February 2009 in the First Respondent's action against the Applicant, Mr John Gould and Mr Nigel Ingram Mr Middleton recalled that it had been an application by the First Respondent for Mr Gould and Russell-Cooke to produce documents for the First Respondent's Employment Tribunal proceedings against the Applicant. The application had been dismissed and by Order of Blackburne J dated 23 February 2009, costs had been assessed on an indemnity basis. With regard to the Order of Deputy Master Young dated 16 April 2009 this ordered that the First Respondent's application for permission to appeal dated 27 February 2009 and permission to rely on further evidence from the Order of Blackburne J dated 9 February 2009, be dismissed with no order for costs.

626. In relation to Henderson J's Judgment dated 4 September 2009, indemnity costs had been ordered against the First Respondent and had not been set aside as far as Mr Middleton was aware.

627. The First Respondent's Response to the Rule 5 Statement stated:

> "1.23 (e) The First Respondent contends that the intervention was a sham and was planned by Mr Middleton over a year earlier, following the First Respondent's involvement in the Ouseley Report.... It is therefore no surprise to the First Respondent that the SRA is not calling Mr Middleton as a witness before the Tribunal despite relying on his evidence throughout the High Court proceedings".

628. Mr Middleton denied that the intervention had been planned one year before it occurred. He had anticipated a lengthy investigation due to complex complaints and it had only been in the course of the inspection that that had changed due to the seriousness of the issues discovered by the investigators.

629. In relation to the First Respondent's pre-admission conduct, Mr Malek referred to the First Respondent's Response, wherein he denied making any misrepresentations to obtain a one year reduction in his training period. Mr Malek said that the First Respondent contended that Mr Lees and Mr Mayne had misled witnesses and had offered incentives to them in exchange for false testimony. Mr Middleton said that he was not aware of any sums having been offered to witnesses or incentives in exchange for false testimony. He said that he was not aware of witnesses ever having been offered money for testimony.

630. In relation to the alleged inspection of Carter-Ruck Solicitors by the Applicant, once they had been instructed by the First Respondent to access the First Respondent's files, Mr Middleton said that had not happened to his knowledge and no privileged information concerning the First Respondent had been sought. Mr Malek referred to the letter dated 17 April 2011 from Carter-Ruck, which stated:

> "There has been no "audit" and/or "investigation" of this firm in 2008 or at any time in which the SRA and/or anyone on their behalf have been given access to our files (including copies) relating to and/or concerning Mr Mireskandari. Furthermore, we have not given the SRA and/or anyone on their behalf access to our files (including copies) relating to and/or concerning Mr Mireskandari for any reason or at any time".

Mr Middleton said that this was not something the Applicant would ever do.

631. Mr Malek referred Mr Middleton to the Adjudicator's Decision of 26 October 2009 regarding Client D and the compensation payment which was ordered to be made to him. Mr Middleton said that the Applicant was not aware of any appeal of that decision having been made or pending. It was possible that it could have got lost but a member of his staff had attempted to locate the supposed appeal without success.

632. In relation to Client R there had been no conspiracy. He acknowledged that it had been alleged by the First Respondent that Client R had been urged not to pay his bills owed to the firm due to the pending intervention but Mr Middleton said this was not true. He said that he had not urged Client R not to pay and nor had anyone else to his knowledge. He had also not told Client R that the Applicant intended to close down the firm.

633. Mr Middleton denied that he had co-ordinated events relating to the First Respondent/the firm with Mr Townsend or other employees of the Applicant, the Daily Mail or officials of the Metropolitan Police as alleged by the First Respondent in his document "The SRA's Motivation and Conduct". Mr Malek referred to the First Respondent having alleged in that document that there had been an "improper motive" for the action taken against him by Mr Townsend and the Applicant. That was denied by Mr Middleton.

634. Mr Malek said that in relation to Mr Middleton's witness statement of 17 October 2008, the First Respondent alleged that that had been "dishonest" and based on evidence which "...Mr Middleton knew to be false". Mr Middleton denied that.

635. Mr Malek referred Mr Middleton to the First Respondent's allegation that he [Mr Middleton] had suppressed the First Respondent's educational records. Mr Middleton said that the request by the First Respondent for disclosure of his educational file had been declined. He said that such requests were often received by the Applicant and it could be a disruption tactic. He said that subsequently disclosure had been made in the course of the proceedings.

636. In response to the First Respondent's allegations against him of dishonesty, conspiracy to pervert the course of justice regarding the Employment Tribunal case, the Judicial Review and intervention proceedings, conspiracy to defraud and misfeasance in public office and offences under S1 of the Fraud Act 2006, Mr Middleton denied any such misconduct.

637. In relation to the complaints referred to in the Judicial Review proceedings, Mr Middleton said that there had been no intention to mislead the court. He said that the concern had been the cumulative effect of the complaints over a period of time and that had to be investigated properly, namely by the forensic investigation and the Section 44B Notices. Mr Middleton said that in relation to the intervention that had not been a sham and it was quite common for there to be a two man panel and for the decision to be made by telephone.

638. Mr Malek referred Mr Middleton to the First Respondent's allegations regarding Mr Mayne and Mr Lees having offered incentives and bribes and Mr Middleton said that it was extraordinary that it had been suggested they had behaved in such a way.

639. In response to a question from the Tribunal regarding the complaints against the firm, Mr Middleton said that when the firm had been looked at, a number of matters had been under investigation and other complaints had been closed, some by correspondence and some by the LCS. He told the Tribunal that there had to be a strategy for investigation where there were a large number of complaints and that the overall picture of the firm had been the concern. Mr Middleton said that in 2001 the Applicant had introduced the idea of a "multiple complaints" investigation which looked at the overall risk of a firm and at the time, complaints had been dealt with by both the LCS and by the Applicant in relation to conduct complaints.

640. Mr Middleton said that the adverse Judgments would have been identified by the Applicant's Risk Centre or by the Fraud Intelligence Bureau. His and the Applicant's concern had been the seriousness and patterns of the complaints, not necessarily the actual number of complaints; whilst some had been minor, others had involved very serious allegations.

641. In relation to the Daily Mail, Mr Middleton's view was that the email from Mr Negus of the Applicant which referred to "...top priority..." showed a difficult relationship with the Daily Mail/Mr Wright of the Daily Mail and he said that he had not been aware of the First Respondent having been treated as a top priority at all. He said that there had been other significant cases and from his perspective this case had been only one of a number of serious cases and he had certainly not referred to the First Respondent as being "top priority".

Cross-examination by the Second Respondent

642. The Second Respondent referred Mr Middleton to the email dated 30 September 2008 from Mr Negus of the Applicant which referred to various telephone conversations between Mr Negus and the Daily Mail and which suggested that Mr Negus had spoken to Mr Wright of the Daily Mail about the investigation. Mr Middleton said that Mr Negus had confirmed having routine contact with the Daily Mail and had stated in his email:

> "...Wright has repeatedly said that the Mail has received numerous communications from former clients of Mireskandari. He says that many of them are acutely critical of the Law Society and latterly the SRA. Wright also claims he has had recent conversations with Vince Cable.
>
> I have repeatedly explained that we can act only within the extent of our powers and that solicitors have rights of appeal, which, if exercised successfully, could derail us. We will not take inappropriate action in order to avoid difficult publicity".

643. Mr Middleton did not think that Mr Negus had commented regarding the investigation and nothing in his email suggested that. He said that ultimately, the email implied that the Applicant had been looking at matters pertaining to the firm. He acknowledged it referred to the "the past few weeks" and said that it was evident that the Daily Mail had been seeking to exert pressure on the Applicant which had been resisted by Mr Negus.

644. In relation to the complaints, Mr Middleton said that he had not looked at the complaint files himself for the purposes of inspection. He had exhibited the

information to his witness statement of 14 May 2009 for Mr Calvert's observance. There had been commonality of complaints but differing timescales for the complaints. Mr Middleton acknowledged that intelligence had also been considered in early 2008. In January 2008 there had been a Case Conference involving a number of people including himself, Mr Townsend and caseworkers and senior advisers and there had been a consensus that a multiple investigation into the firm was required.

645. Mr Middleton agreed that some cases had begun as Tehrani & Co and had been clients of Mr Tehrani but he said that it had been his understanding that the firm had been seen as one business which had merely changed constitution from time to time. He had not distinguished between Tehrani & Co and Dean & Dean.

646. In relation to the firm's client, T2, Mr Middleton acknowledged closure of the complaint file but that had been the LCS's decision. The professional conduct issues in the complaint had caused the Applicant concern. It subsequently transpired that there was a lengthy list of potential allegations against the firm once the investigation proceeded and they had to be narrowed as the Applicant decided what to pursue and focus upon.

647. In relation to the complaints as a whole, Mr Middleton said that he had not had in-depth knowledge of them. The Second Respondent raised the Client O complaint and that the court in that case had decided that there had been no fixed fee and had refused the client's application to appeal. Mr Middleton told the Tribunal that in deciding to investigate, the Applicant had not gone behind the Judgment nor disregarded it but the Court may have been misled. Disgruntled clients existed and it was only by proper investigation that the Applicant could see if there was a case to answer or not. Mr Middleton told the Tribunal that the Applicant relied upon its forensic evidence to decide what action to take regarding a firm and not that of disgruntled clients.

648. Mr Middleton identified the concerns of the Applicant regarding the firm, such as the adverse comments of Judges, the pattern of overcharging clients and lack of integrity and conflicts of interest. There had been wide-ranging and different sources of information in that regard. In relation to the adverse Judgments, Mr Middleton said that these had expressed serious concerns regarding the firm and the First Respondent, including the reference to an "appalling piece of litigation" regarding A5.

649. In relation to the Intervention Panel, Mr Middleton confirmed that the decision, including if made by telephone, was often only recorded in the resolution which would be detailed and there would have been no notes of the telephone conference. The Second Respondent submitted that the lack of such notes suggested a lack of transparency, the latter having been an issue identified by Lord Ouseley in his Report.

650. Mr Middleton acknowledged that the Second Respondent had been a salaried partner and had not, as far as he was aware, received a share of the firm's profits. He confirmed that it had been his understanding and there had been a very strong inference that the First Respondent had been in control of the accounts. It was fair to say that the Second Respondent might have had difficulties understanding the accounts.

Video Conferencing Application

651. Mr Malek referred the Tribunal to the email received from the First Respondent dated

31 May 2012 timed at 04.19 am with regard to his having requested an adjournment to 1 June 2012 when he had said he would be available by video link to participate in the trial.

652. Mr Malek said that video link evidence had already been discussed in April 2011 in the presence of the First Respondent and he referred the Tribunal to the transcript of Day 15 of the hearing on 21 April 2011, which stated:

> "MR MALEK: If there's going to be any applications for anyone to give evidence other than by coming to the Tribunal orally, that really does need to be sorted out well in advance and if Dr Mireskandari wants a videolink, he will have to fund that and ensure that the documents are both wherever that person is, and in London at a place that we can all go to. I don't want to have the chaos that we turn up in November and then we are told Mr X is not available and Miss Y is not available or we need to try to sort out a videolink. If it is going to be done it has to be sorted out in advance.
>
> It is not as easy as it sounds and looking at it, it is actually in my experience more expensive to have a videolink in the States than to bring someone over in practice because you have the disruption, the line cost is phenomenal, you have to hire the room, you have to have people on the other side and here, it is actually quite an expensive operation...
>
> In my own experience normally it is cheaper to bring a witness. But if Dr Mireskandari wants to do it by videolink, it has got to be sorted out well in advance. I am sure he understands that".

653. Mr Malek referred the Tribunal to the Civil Procedure Rules 1998, Practice Direction 32, Annex 3 in relation to video conferencing ("VCF") in the civil courts. He said that Annex 3 stated:

> "Video conferencing generally
>
> 5. Time zone differences need to be considered when a witness abroad is to be examined in England or Wales by VCF. The convenience of the witness, the parties, their representatives and the court must be taken into account. The cost of the use of a commercial studio is usually greater outside normal business hours.
>
> ...
>
> ...
>
> Preliminary arrangements
>
> 8. The court's permission is required for any part of any proceedings to be dealt with by means of VCF. Before seeking a direction, the applicant should notify the listing officer, diary manager or other appropriate court officer of the intention to seek it, and should enquire as to the availability of court VCF equipment for the day or days of the proposed VCF...
>
> 9. Subject to any order to the contrary, all costs of the transmission, including the costs of hiring equipment and technical personnel to operate it, will initially be the responsibility of, and must be met by, the VCF arranging party...

10. The local site will, if practicable, be a court room, but it may instead be an appropriate studio or conference room...".

654. Mr Malek said that since November 2008, the costs in the case had not been paid by the First Respondent yet he had continued to instruct solicitors and barristers to represent him and significant costs orders had been made against him. Mr Malek had reservations regarding the costs of video conferencing and informed the Tribunal that the Applicant would not fund it.

655. Mr Malek said that the First Respondent had had every opportunity to come to the United Kingdom and referred the Tribunal to the email of 13 April 2012 wherein reference had been made to his returning to London. Following that, Mr Malek said that there had been the medical records note of 11 May 2012, which stated that the First Respondent may return to London.

656. Mr Malek said that there had then been the adjournment application dated 23 May 2012 by the First Respondent based on his having issued a complaint in the United States. He said that following the report of Dr Scoma, the First Respondent had then sought a further adjournment on the basis of his ill-health and that he had been due to undergo a further medical procedure on 31 May 2012 and whilst Mr Malek said that he did not doubt that, he questioned why it could not have been done before or after the trial since it was an elective procedure.

657. Mr Malek asked the Tribunal to consider the history of adjournment applications by the First Respondent in the course of the disciplinary proceedings and he submitted that the First Respondent's application to give evidence by video link was another attempt by him to be disruptive and to derail the proceedings.

658. The Second Respondent said that her only point was that she believed enquiries were to be made regarding video conferencing.

659. Mr Malek said that he acknowledged everyone's right to a fair hearing and that the Tribunal had "bent over backwards" in order to facilitate that for the First Respondent. Mr Malek referred the Tribunal to the House of Lords case of R v Jones, which he said had already been relied upon and he submitted that by absenting oneself, as the First Respondent had done in these proceedings, the First Respondent could be said to have waived his Article 6 rights.

660. Mr Malek submitted that the Tribunal had to consider whether the First Respondent's further adjournment application was genuine or not, and it was the Applicant's position that it was not. Mr Malek submitted that the reason for the First Respondent seeking a further adjournment was that he wished to deal with the US proceedings and not the proceedings before the Tribunal.

The Tribunal's Decision

661. The Tribunal referred to the First Respondent's application to adjourn the proceedings to 1 June 2012 to enable him to participate by video link. The Tribunal stated that it was keen to ensure that every party who wanted to do so had the opportunity to participate in the proceedings but that had to be considered against the background of the trial. The Tribunal had refused two adjournment applications at the resumption of the substantive hearing and had now received a further application for a short

adjournment and video conferencing. It said that had not been mentioned at the final directions hearing on 19 April 2012 and the Tribunal took the view that this was a late application on the back of other failed applications to adjourn.

662. The Tribunal accepted that under Article 6 of the Human Rights Act 1998, everyone was entitled to a fair trial. It found however that in absenting himself and having failed to make himself available after he had been discharged by Dr Sokol on 11 May 2012, the First Respondent had waived his right to attend the resumed hearing; the Tribunal relied upon R v Jones in that regard. The Tribunal noted that the First Respondent had been represented for two days on 28 and 29 May 2012 by Counsel and thereafter, the substantive hearing had resumed on 30 May 2012 and would continue for two weeks as from 11 June 2012.

663. The Tribunal said that having considered the representations from all parties and the information provided by its administration office, it had decided to refuse the First Respondent's application for adjournment and video conferencing.

Continued Cross-Examination of David Middleton by the Second Respondent

664. The Second Respondent put to Mr Middleton that in relation to Client R, the firm had secured an £800,000 costs order against him and a lien over proceeds of sale in excess of $1 million in the US. She said that there had been a final costs certificate to enforce and no reason to have thought that the costs would not be recovered. The Second Respondent also informed the Tribunal that the First Respondent had been a man of means and had had three flats in London worth approximately £1 million each.

665. Mr Middleton did not agree with the Second Respondent as he said that the First Respondent's properties could have been subject to mortgage even if the properties themselves had been of substantial value.

666. Mr Middleton told the Tribunal that the evidence had to be looked at as a whole; for example, the firm's offer to pay Sinels by instalments and that by 3 November 2008 there had been the issue of the staff salaries being paid from client account. The Second Respondent said that she had not known that salaries were paid from the client account but Mr Middleton said that he had been talking about the firm's financial problems as a whole and that the overall picture of the firm had been one of serious issues. Mr Middleton said that if a law firm sought to pay a judgment debt by instalments he would view that as unusual whereas the Second Respondent disagreed.

667. Whilst RadcliffesLeBrasseur had been instructed in relation to the Judicial Review proceedings and likely would have advised on the evidence against the firm, Mr Middleton assumed that the firm would have been capable of dealing with litigation including Judicial Review. He referred to the statement of Ms O'Donnell appended to the letter from McGrath Solicitors LLP sent on her behalf dated 17 April 2009, which stated:

> "...I was not informed of the evidence served nor shown any correspondence from Dean & Dean's lawyers...".

668. Mr Middleton told the Tribunal that the Applicant had started from the point that the Second Respondent had been aware of its evidence which referred to the firm's financial position. The Second Respondent said that as an experienced regulatory

firm, she had reasonably assumed that RadcliffesLeBrasseur must have considered that the firm had an arguable case regarding the Judicial Review. Mr Middleton said that a lot of firms acted on instructions and he had seen many unmeritorious applications against the Applicant. He said that he was unable to state whether or not the firm's application had been so but it had been made, answered by the Applicant and Pitchford J had made his decision to dismiss it.

669. In relation to the Sinels' litigation, Mr Malek said that the Applicant accepted that the fees had been incurred between December 2005 and April 2006, at which time the Second Respondent had not been a partner in the firm. Mr Middleton said that to the best of his knowledge, the Second Respondent had not been a party to the litigation or involved in the defence filed but that she had been heavily involved in the costs issue. A number of the letters sent as to the Sinels' costs appeared to have included her reference. The Second Respondent said that the signature had not been hers but she accepted that her reference had continued to appear on the letters. Mr Middleton said that all he could accept was that the signatures on certain of the letters were different and that the signatures had not been personal but the name of the firm.

670. Mr Middleton said that in relation to the G2 matter, he noted that the court could not hold monies and that Mr Boardman had not had a client account. He accepted that there had to be a discussion about it and he accepted, as contended by the Second Respondent, that she had been misled by the First Respondent regarding misuse of the monies and that she was not aware that the Court had been misled at the time.

671. The Second Respondent referred Mr Middleton to the transfer of £100,000. She said that Client H's letter had referred to the monies having been the "private funds of Dr Mireskandari". Mr Middleton said that he accepted that they had not been client monies but that they had been paid into client account. He said that Mr Mercer had written to Client G4 by letter dated 11 May 2009, which stated:

> "... The Solicitors Regulation Authority is charged with regulating solicitors in England and Wales and during the course of our work we noted that two sums of money were advanced by a member of your group, FS SA, to the client bank account of Dean & Dean Solicitors, which we understand were not provided in relation to any legal matter that the firm was conducting.
>
> ...
>
> Although we have seen a correspondence address for GMH SA [G4] in Luxembourg for billing purposes we have chosen to write to you at your London address in the hope that this is the correct address to write to and also of achieving a quick response. We appreciate, however, that you might need to refer to colleagues in Luxembourg or elsewhere.
>
> The amounts and transfer dates are –
>
> | Date | Amount |
> |---|---|
> | 08-Oct-08 | £40,000.00 |
> | 07-Nov-08 | 100,000.00 |
> | | £140,000.00 |
>
> Miss Turbin, formerly a partner in Dean & Dean, has informed us verbally and in writing that these amounts were loans to Dr Mireskandari, with whom she was in partnership. At Attachment 1 are copies of bank advices we obtained from Russell-Cooke, solicitors, acting as intervention agents for the Law

> Society, which record in respect of the £40,000.00 "Part of the Loan to M Mireskandari" and in respect of the £100,000.00 "F [G3] Loan to Dean 1 Dean".
>
> At Attachment 2 is a copy of a letter dated 28 November 2008 from F [G3], which Dean & Dean gave to us. This letter, which we appreciate is signed by your Board Secretary, describes the funds as "the private funds of Dr S. Mireskandari". To help with the inconsistency in terminology –
>
> 1. We would be grateful if you would confirm the actual status of these monies, i.e. as to whether the funds were loans made by your Group and if so to whom they were loaned or alternatively for what purpose they were provided.
>
> 2. If the funds were loans to Dean & Dean, please would you please explain the terms on which the monies were advanced to the firm…".

672. The questions related to the status of the monies. Mr Middleton confirmed that Mr Mercer had not sought to clarify whether the Second Respondent had had conversations with the First Respondent and Client H regarding the monies but he said that the issue was that the Second Respondent had not mentioned having spoken to either initially and it had only been later at her interview on 2 December, that she had stated the monies had not been a loan.

673. Mr Middleton said that the investigators had a number of concerns regarding the £100,000; the client to office transfer, the fact that the monies had been referred to as a loan to the firm and subsequently that the monies had been the First Respondent's personal funds and whether or not the Second Respondent had or had not spoken to the First Respondent and/or Client H before the transfer of funds had taken place.

674. The Second Respondent referred to the Client R2 matter and the monies which had been held by the firm subject to undertaking. Mr Middleton said that he could not recall any evidence that the Second Respondent had been involved in the Client R2 matter. In relation to the outstanding counsels' fees, in normal terms equity partners carried the financial burden but there was a professional obligation to pay counsels' fees in a timely fashion.

675. Mr Middleton confirmed that in relation to the Client R2 matter, the missing monies had been replaced and similarly in relation to the matter of Client G2 and the bail monies, he said those monies had been replaced by the bridging loan from Weybridging Limited although he could not recall having seen any documentation for the bridging loan. He acknowledged that the Second Respondent had put in place a procedure for authorising withdrawals from client account once it had been brought to her attention by the investigators. In relation to the professional indemnity insurance, Mr Middleton said that the obligation was on all partners regarding the content of the application. He said that accuracy of the application should have been checked by the partners.

676. Mr Middleton said that on the firm's website in 2008 it had referred to the business having been set up in 1999 by Mr Tehrani and the First Respondent. He said that there was no real distinction between Tehrani & Co and Dean & Dean and that effectively, the firm appeared to have been a joint venture between the First Respondent and Mr Tehrani.

Re-examination by Mr Malek

677. Mr Middleton said that he believed that the obligations in relation to the SAR, SPR and SCC were the same for salaried partners as for equity partners.

678. The real matters of concern were the complaints regarding the firm, the issues these had raised and Judgments against the firm, involving amongst others, clients T2 and A5. In relation to the latter, Mr Malek referred to the Judgment of Master Seager Berry of 26 September 2005, which stated:

> "56. On the Friday before the resumed hearing on Monday 4 July witness statements were put in by Mr Tehrani and Mr F. The admissibility of that evidence was dealt with in the absence of Dr Mireskandari from the court room. He was then further questioned about the way in which the notes had been made. His evidence on the point had been, and continued to be, evasive.
>
> ...
>
> 58. If Dr Mireskandari had explained what had taken place, it would have given some credibility to his evidence. Regrettably he tried to duck and weave his way out of the predicament into which he had put himself. He may have misunderstood the point raised by Mr Browne because, on one version of events, the notes which appeared on the file were said to reflect the rough notes on scraps of paper. It is nevertheless a matter of grave concern that these pieces of paper have not been retained. Mr Tehrani, who had been personally involved in the earlier billing process, does not appear to have given any instruction for their preservation. It may be apparent from my judgment that I have many concerns about the evidence of Dr Mireskandari. I was able to observe him give evidence. He was frequently defensive and on many occasions evasive in his replies to simple questions.
>
> ...
>
> 84. I have reached the conclusion, and find, as a fact, that the manuscript notes on the file on ruled paper with the red marginal line were created between the order dated 28 May 2004 and the delivery of papers to the Defendant's costs draftsman.
>
> ...
>
> 147. ... There is insufficient evidence that Dr Mireskandari did give Mr A the letter dated 5 November 2001 on the terms of business...
>
> 148. A solicitor has a professional obligation to agree the terms of a retainer with the client at the outset and to provide an estimate on costs. The terms of the retainer must be set out in writing. Where the terms of the retainer are of an unusual nature there is a specific responsibility on the solicitor to make that clear to the client. Mr Tehrani and Dr Mireskandari both accept that the increase in hourly rate from £300 to £500 and the daily rate of £4,000 for visits to Romania were unusual terms. Dr Mireskandari has failed in his responsibility to bring these matters to the attention of Mr A so that he could make an informed decision about them. I find as a fact on the balance of probabilities that

> no such discussion took place. I am unable to accept Dr Mireskandari's evidence that there were frequent discussions about costs. There are no contemporaneous notes to support that evidence and any such discussions are denied by Mr A.
>
> ...
>
> 150. I can take the construction of the attendance notes shortly. Dr Mireskandari admitted that he wrote brief notes which were for himself. He thought some notes might have been left in boxes of papers returned to AA [A5]. He was deliberately evasive about their preparation at both the initial hearing and at the adjourned hearing... I regret to say that I have formed the impression from watching Dr Mireskandari give his evidence that he was deliberately trying to give the impression that the manuscript notes were made at the relevant time when it was clearly not the case...".

679. Regarding Client A5 and the Court of Appeal Judgment of Rix LJ dated 24 October 2006, Mr Malek referred Mr Middleton to the extracts from the Judgment which stated:

> " ...
>
> 20. On 7 March 2006 Dean & Dean applied for permission to appeal from the judgment of Master Seager Berry. Their grounds of appeal and skeleton argument were entirely premised on submissions that the Master's decision was unjust, in that he had proceeded to decide the issue at all "on a summary basis" (ie without hearing witnesses), inter alia because it depended on Romanian law, and that it was a perverse decision in the light of Dean & Dean's Romanian law evidence. There was, Dean & Dean submitted, a compelling need for cross-examination of the Romanian law experts. The appeal was also premised on the retainer issue relating throughout the whole period of the liquidation to date.
>
> 21. Holland J considered this application on the papers. He made an order on 28 March 2006. He agreed that there was a compelling reason for an appeal and that such an appeal should be a complete re-hearing; that one possibility was that L had never been retained by the judicial administrator and that the answer depended in great part on the Romanian law. He considered himself "bound" to give permission to appeal.
>
> 22. We consider that Holland J was seriously misled by the papers put before him...
>
> ...
>
> 28. As it is, we consider that Holland J was misled and if we have power, we would revoke his grant of permission to appeal. We consider that the existing appeal as obtained by Dean & Dean from Holland J, and, subject to our decision hearing, as directed by Treacy J, is, contrary to the interests of justice".

680. Regarding client A5 and the Judgment of Coulson J dated 30 June 2008, Mr Malek referred Mr Middleton to the Judgment which stated:

"2. This appeal comes at the end of what can only be described as an extraordinary saga. In May 2004, the appellant solicitors [Dean & Dean] rendered a bill of costs to the Respondent [A5] for some non-contentious work they had carried out for them in the sum of £444,705. The bill was subsequently assessed under s.70 of the Solicitors Act 1974. Following numerous hearings and unsuccessful appeals on the part of the appellant, the bill of costs was finally assessed by the Costs Judge in the sum of £99,449.65. This delivered a further round of complaints and appeals on the part of the appellant. Thus far disputes relating to the detailed assessment of these costs, including the numerous appeals, have occupied 50 days of court time and the participation of 24 different judges. There have been a total of 20 unsuccessful appeals thus far. The total costs incurred by the parties in respect of the detailed assessment, together with these appeals, is likely to be in the order of £1m.

3. When he dismissed an appeal on another aspect of this dispute, on 18 January 2007, [Mackay J] described this case as "an appalling piece of litigation". When, three months later, the same judge had to deal with another aspect of these disputes, he said:

> "The multiplicity of proceedings, appeals and applications is a product of what I consider to be an abuse of the process of the court by the proposed applicants, Dean and Dean".

4. Nor was [Mackay J] the only senior judge to express grave concerns about the appellant's conduct in this case. Earlier this year, [Dobbs J] noted that, although a number of costs orders had been made against the appellants, they had not paid any of them. She herself ordered them to pay the sum of £7,900.42 by way of costs by 6 March 2008. This sum too has not been paid. As I pointed out to Lord Brennan QC during the course of oral argument, it was unusual and highly unsatisfactory for a party who was in flagrant breach of other orders to expect the court to ignore such conduct, whilst at the same time asking for the court's assistance on other matters, as the appellant does on this appeal...".

681. Mr Middleton confirmed that the Applicant had had serious concerns as a result of these Judgments. The extracts read by Mr Malek gave an overview of the A5 litigation, which had been described by Mackay J as "an appalling piece of litigation". All of the various Judges' comments regarding the conduct of litigation and the First Respondent and the firm had been "strong" and "extraordinary".

682. Mr Malek referred the Tribunal the Judgment of Jack J dated 7 May 2008 regarding Client G2, which stated:

"21. In the light of that conclusion I can deal with the case made on behalf of Ms G [G2] that the order should be set aside for non-disclosure more shortly. Thirteen matters in all were raised. I will take the more important in turn.

(a) That Underhill J. was not told that Ms G had paid £403,000 on account of Dean & Dean's fees but only £49,000. It was submitted that this was highly relevant to risk of dissipation of

assets. In paragraph 38 of his affidavit of 9 January 2008 Dr Mireskandari refers to previous invoices up to 10 months old as having been paid. Page 3 of exhibit MS2 shows the payments. But apart from that paragraph and the exhibit there was no reference to £403,000. The skeleton argument before Underhill J. referred only to £50,000 and £49,000 and gave the impression that these were the only payments to have been made.

(b) That the problems with the invoices being pro forma was not referred to, nor that the bills included unpaid disbursements as to which substantial amounts were disputed by Dean & Dean. It is correct that these matters were not disclosed. It was submitted on behalf of Dean & Dean that Ms G was estopped from attacking the validity of the bills or invoices because she had asked for them to be assessed. I am not persuaded that by asking for an assessment she gave up any right to challenge the bills as bills: she was not making an election but protecting her position.

(c) That it was not drawn to the attention of Underhill J. that Dean & Dean were charging unusually high rates. This could be seen from the retainer and it could be seen from the computer print outs backing the invoices. But the judge was not otherwise alerted to it.

(d) That Underhill J. was not told that Ms G had put up £200,000 for her bail and that her brother had stood surety in a similar sum. Dr Mireskandari's affidavit referred to the variation of bail to permit her to travel to Moscow, but it did not state its terms.

(e) That Underhill J. was informed by Dr Mireskandari's affidavit that Ms G had control over L and BC and BO. It was, however, made clear in paragraph 40 that her mother also had an interest in L. The judge said that he had the impression that Ms G owned BO. He was then told that Dean & Dean did not know much about L – which I presume was then their position.

22. It was submitted on behalf of Dean & Dean that the issue was whether their case was fairly presented to Underhill J on 9 January. It was submitted that an applicant cannot foresee every matter that may later be raised. I accept both propositions. I think that each of the first three matters should have been drawn expressly to the judge's attention. I think the combination of the three meant that the Judge got the impression that the case was far more straightforward than it was. Likewise the substantial bail figures should have been mentioned. Taking these matters together I consider that they provide a second ground for refusing to continue the order".

683. Mr Middleton confirmed that, in addition to the Applicant's overall concerns regarding the First Respondent's/the firm's conduct of litigation, there were the issues of non-disclosure which were clearly in favour of the firm's own interests, namely its own costs recovery.

684. Mr Malek referred Mr Middleton to the reasons of the Employment Tribunal dated 12 and 13 June 2006, which stated:

> "7.7 ...One of the things alleged against the Claimant in this case and a crucially import [sic] piece of evidence, was that she had been guilty of using racist language about foreigners to another member of the reception staff, saying they should "go home" and that it had upset the member of staff. It was said that Dr Mireskandari had taken her to task over this, that he had pointed out that he himself was a "foreigner" in that sense, and was the Claimant suggesting that he should have gone home as well. According to Dr Mireskandari the Claimant said that to him as well.
>
> 7.8 As the history showed this matter arose at a fairly late stage in the events leading up to the Claimant's dismissal at a time when a number of concerns, if Dr Mireskandari's evidence is to be accepted, were already in his mind, and one would have expected that this sort of comment, made in a firm of solicitors in which the principal solicitor and a number of solicitors were from ethnic minority groups, would have been taken with the utmost gravity. Yet in this case as in relation to many others, not one shred of documentary evidence existed to support this. The evidence of Dr Mireskandari was that he asked Ms Massih to look into it, that she had spoken to the Claimant, that while he thought she should be dismissed for the event, Ms Massih pleaded on the Claimant's behalf, saying that she was young and did not appreciate fully what she was saying and that she should be given a further chance. There was no attendance note produced [sic] the Respondent and Ms Massih. Ms Massih did not give evidence about this. Inexplicably, as far as the Tribunal was concerned, there was not even a hint of a recorded or written warning. All parties in the case and the Tribunal agreed, that if that language was used, it would be an act of discrimination, it would be a patent act of gross misconduct and it would have entitled the Respondent to dismiss the Claimant at that time. Yet it did not do so. It did not do so in those circumstances but it raised the matter a month later or so, at the time when the Claimant's dismissal was being considered [sic] the Respondent.
>
> 7.9 We were urged by the parties to make a finding of fact in relation to that. Dr Mireskandari said it was not made up, why should he and all those people that he referred [sic] in his witness statement, put themselves at risk by saying something that was not true. That was a powerful point, but it was tempered by, in the Tribunal's judgment, a number of factors.
>
> 7.10 If it was said, then the Tribunal cannot conceive that it would not have led to some disciplinary procedure, rather than an informal chat with Ms Massih. If it was said, it was inconceivable, in the light of the way in which this Claimant's employment was dealt with, that it would not have led to some written record, even if it was only an attendance note by Ms Massih, who otherwise seems to have accurately recorded matters. Moreover, Dr Mireskandari himself had written two warnings in January and February 2005 concerning sickness absence and phoning in and some other point of office procedure in which the

> Claimant was said to be failing. This allegation was much more grave. Even allowing for all that, had this been the case of a different kind of employer, that is non-lawyers, we might have understood that there was no record of it, if indeed the reason that nothing was done was because Ms Massih interceded to Dr Mireskandari to say that the Claimant had not meant to offend, was sorry, was young and did not understand the nature of her actions. That might have been conceivable and just might have been credible, had that happened in the business that did not comprise a solicitors' firm. But that it should have happened in this firm and in the light of the history given by Dr Mireskandari was just incredible. The Tribunal rejected his evidence on that and on the balance of probabilities the Tribunal was not satisfied that that conversation had in fact occurred. Dr Mireskandari was vehement in his rehearsal of the fact that it occurred. His reliance upon it in the context of the case, not surprisingly, was because it was the single event that could be described properly as gross misconduct that was alleged against the Claimant, but regrettably the Tribunal was unable to accept his evidence on that point".

685. Mr Middleton confirmed that this had been part of the evidence which Mr Calvert of the Applicant had considered regarding the investigation in relation to the integrity of the First Respondent.

686. Mr Malek referred Mr Middleton to Mr Mercer's letter of 11 May 2009 to Client G4/G5 regarding Client G3 and the £100,000. He referred to the "Funds Transferred – Credit Advice" which referred to "Credit Amount 100,000.00 GBP" and "For Account Of: Dean and Dean Solicitors Clt Premium" "By Order of: GMH SA" and "Payment Details F loan to Dean 1 Dean". Mr Middleton said that this was evidence of Client G3's close association to Client G4/G5 and the addresses for G3, G4/G5 and Client H were the same. Mr Malek referred again to the Second Respondent's comments in her interview with the investigators on 21 November 2008, when she stated that the £100,000 was a loan by the client to the firm and in relation to the companies, that:

> "MISS TURBIN: Well they're a group of companies that operate – I think they operate under GM [G4/G5], I think that's the holding company, but they are all – F [G3] is one of its associated companies".

<u>Mr Mark Boardman – Examination in Chief</u>

687. Mr Boardman was sworn into evidence and confirmed that he was a solicitor with Boardmans Solicitors and the contents of his witness statement dated 11 March 2011 were true.

688. Mr Boardman was instructed by Client G2. In January 2008 Dean & Dean had commenced and obtained an ex parte freezing injunction against his client, which was set aside on 7 May 2008. Once Dean & Dean were no longer instructed by Client G2 there was no reason for the £200,000 bail security to be held by them. When it had been suggested that the firm pay the money in to court, Dean & Dean replied that they had a lien over the money.

689. A hearing was listed for 13 March 2008 to deal with the issue of the £200,000. Mr Boardman was unable to hold the money because he did not have a client account. He suggested that the money either be paid into court, or held by another solicitor. The outcome of the hearing was that the judge ordered the funds to be transferred to Greenwich Magistrates Court.

690. Mr Malek referred Mr Boardman to a "Court Attendance note" dated 13 March 2008 before His Honour Judge Byers in the Woolwich Crown Court in the G2 case, which stated:

> "9:55...
>
> HK [for the defence, Boardmans and G2] discussing the security money with BK [for the CPS] and IK [ditto] and pointed out that originally it was HHJ Byers himself that did not want to [sic] this to be paid into Court. HT [for the CPS] confirmed this and said that he did not know why the Judge made that decision but he did. HK also pointed out that Boardmans does not have a client account to hold the money. HK then left the court room to find her instructing solicitor to see what he would like her to do re. the £200,000 security.
>
> ...
>
> HK: ... The other concern I have is that Mr G stood surety for a very substantial amount of money and the security is still lodges [sic] with Dean & Dean. So he is at the moment in a situation where...
>
> J: (interrupts) Well I'm not going to make any findings at [sic] that the surety is to be forfeited. It should be transferred to the solicitors now acting.
>
> ...
>
> J: There's no facility here [at the court]. I will enquire as to whether it is possible to take a large sum of money.
>
> ...
>
> HK: Mr Boardman says he could offer another solicitors.
>
> J: Yes that may be a way around it. I am prepared to consider that if the Court cannot deal with it on the basis that a second solicitors holds it.
>
> BK: It may be that the information the Court had differs from the information the Crown has. The previous solicitors, Dean & Dean, held its money in guise as a lien in relation of monies outstanding. It was pointed out to Dean & Dean that this was not right.
>
> J: Yes. It was in effect pledged to this Court and if Dean & Dean are not prepared to release it they may face considerable force
>
> 10:35 - Mark Boardman shows NH [Negar Hakkaki for Dean & Dean] a copy of I's [Mr G's] Barclays bank statement and points out that it shows that the £200,00 [sic] surety was drawn by bankers draft from this account in I's own name. Mr Boardman said that he could provide a copy of this to Dean & Dean if we so requested.

> HK spoke with NH and asked her to tell SM [the First Respondent] that it's a very bad idea to try and exercise a lien over the £200,000 surety money as this is really the Court's money".

691. Mr Boardman said that this correctly reflected his understanding and recollection of matters, and nothing was incorrect. He said that the court had certainly not wanted the money to remain with Dean and Dean and the prosecution had been against that also.

692. Mr Malek referred Mr Boardman to the letter dated 13 March 2008 from Dean and Dean to him, which stated:

> "Further to the mention hearing that took place today in the Woolwich Crown Court today...
>
> ...
>
> As an officer of the court you have a duty not to mislead the court.
>
> ...
>
> We note that today you instructed Counsel that the sum of £200,000 held by this firm to the Order of the court should be either paid into court or transferred to another firm of Solicitors.
>
> During a telephone conversation on 24th January 2008 Mr Boardman informed our Dr Mireskandari that provided that we were prepared to continue to hold those funds that this was fine by him.".

Mr Boardman definitely did not recall having told the First Respondent that.

693. Mr Malek referred to Mr Boardman's letter in reply dated 14 March 2008, which stated:

> "We refer to your letter dated 13 March 2008, received by fax today at 10:15am. You did not enclose a copy of the letter you say you have written to HHJ Byers. If you have indeed sent such a letter, please provide a copy by return of fax.
>
> ...
>
> We do not understand your concern as to the £200,000 plus accrued interest, currently being held in your client account, being transferred to the court or another solicitor now that you are no longer acting for Ms G. We would remind you that this payment was made by banker's draft by Mr G from his personal account. The money, subject to the prior claim by the Crown Court, therefore belongs to Mr G. Accordingly, you have no right to attempt to assert a lien over those funds, as you have apparently attempted to do in correspondence with the CPS, in respect of any costs that might be payable to your firm by Ms G. Further, those funds are not affected by the freezing order.
>
> If you are intending to suggest that Mr Boardman consented to your retaining the bail security in your client account, that is false. During a telephone conversation, Mr Boardman suggested to Mr Mireskandari that it would be appropriate for the funds to be transferred into court as you were no longer acting. Mr Mireskandari said he would prefer to retain the money in client

account. As it was clear that Mr Mireskandari was not prepared to consent to release the money to the court, no resolution of the situation was agreed. Further, if you had disclosed to Mr Boardman that you intended to purport to assert a lien over Mr G's money, being held by you as officers of the court as security for Ms G's bail, we would have immediately made an application to the court to have the funds released from your custody and that any solicitor involved in such conduct be held in contempt".

694. Mr Boardman said that in March 2008 it had been his understanding that the £200,000 bail surety was being held by Dean and Dean in its client account but he had become concerned by the way in which the firm was behaving and that there might be a risk that the money would disappear.

695. Mr Malek referred to the G2 ledger, file number J01435:

"October 2007	Barclays Bankers Draft (NG)[G2]	200,000.00	credit [client]
26/10/07	Trsf re: inv 3131	66,098.60	credit [office]
26/10/07	[Ditto]	66,098.75	debit [client]
02/11/07	Trsf to G [G2] J01461 re: inv 3145	65,268.75	debit [client]
13/11/07	Cornelius Investment – UBS Zurich	50,000.00	credit [client]
15/11/07	Trsf Re: inv 3164	50,088.17	credit [office]
15/11/07	[Ditto]	50,088.17	debit [client]
23/11/07	Trsf Re: inv 3193	68,544.48	credit [office]
23/11/07	[Ditto]	68,544.48	debit [client]
23/11/07		0.00	[Balance]"

696. Mr Malek said that by 23 November 2007 the balance on the client ledger for Client G2 was nil and that was the case again by 17 January 2008 and 30 January 2008. Mr Boardman said that he questioned why the monies were held in client account at all as he would have expected them to have been held on a designated deposit account as it was surety money and it had seemed very odd to him.

697. Mr Malek referred to the letter dated 14 March 2008 from Dean and Dean to HHJ Byers, which stated:

> "We apologise for having to write to you, but we have some serious concerns which we ought to bring to your attention following the Mention Hearing before you yesterday in the above matter.
>
> ...
>
> <u>Surety of £200,000</u>
>
> At the Mention Hearing on 5th October 2007, you directed that the sum of £200,000 should be paid into Dean & Dean's Client Account as the Court was unable to hold it.
>
> You indicated yesterday that this money should be paid into Court or to another solicitors (sic) firm to be nominated by the Defendant's solicitors, Messrs Boardmans, because Messrs Boardmans do not have a client account.
>
> The issue that this firm faces is that if this money is to be held by another firm of solicitors or the Court and it is released back to Mr G, the funds would then not fall within the protection of this firm's Freezing Order.

You will recall from the hearing on 5th October 2008 that Baroness Helena Kennedy QC informed you that this sum of £200,000 had come from the family trust fund of which Ms G is a beneficiary.

Telephone Conversation – 24.01.08

On 24 January 2008, Mr Boardman of Boardman Solicitors informed Dr Mireskandari of this firm during a telephone conversation that provided this firm was prepared to continue to hold the sum of £200,000 surety that this was accepted by him. We are therefore concerned as to the sudden change in his position in this regard and the ulterior motive to claim this firm's costs.

Furthermore, we are deeply troubled that Messrs Boardmans do not have a client account as it is unheard of within the profession not to have a client account".

698. Mr Boardman denied that he had had a telephone conversation with the First Respondent to that effect. In any event, he would have had no such authority as the monies belonged to the court.

699. Mr Malek informed Mr Boardman that he had to put the First Respondent's case to him in the absence of the First Respondent. He referred him to the First Respondent's Response, which stated:

> "126. After my relationship with Ms G [G2] deteriorated, she instructed Mark Boardman of Boardman Solicitors.
>
> 127. I informed Mr Boardman that I had no personal animosity to Ms G but that Dean & Dean were owed substantial fees including serious outstanding Counsel's fees. Mr Boardman promised that Ms G would pay all of her outstanding fees if I assisted in getting Counsel to attend the hearing, as we had exercised a lien on the files. However, it turned out to be nothing but lies and therefore we had to issue injunction proceedings in order to preserve Dean & Dean's position, as we were aware that Ms G was not returning to the UK. She has since been tried in absentia and found guilty and has been sentenced to 10-years imprisonment...".

700. Mr Boardman denied that he had told any lies. He said that injunction proceedings had already been commenced by the First Respondent before Mr Boardman had been retained by Client G2. Mr Malek continued:

> "130. I had many discussions and meetings with Mr Boardman, especially after the Daily Mail articles. He advised me that Mr Healey had gone to him and asked whether his client would fund Mr Healey to go to America and investigate me in order to assist her to evade making payment. Mr Boardman also stated that FF, (who I shall deal with later) had also gone to him and also offered his services against Dean & Dean for money. Mr Boardman stated that he refused to cooperate with them and told me that he felt they were both extremely dishonest and believed that in his own words was [sic] a lunatic and that Mr Healey like most dishonest investigators overinflated their bill and never did any work.
>
> 131. It has now transpired that Mr Boardman lied as in a statement by

> Mr Healey to the Police, he states that Mr Boardman waived privilege on the G [G2] case and therefore Mr Healey was able to speak to the Police regarding me and Ali Dizaei. We now know that Mr Healey assisted Mr Barry Mayne and Mr Malcolm Lees in their investigation of me and Dean & Dean. I will deal with Mr Mayne and Mr Lees later on in this statement".

Mr Boardman denied that he had lied and said that the extract from the First Respondent's Response was complete fiction.

701. Mr Malek referred to the Second Respondent's witness statement dated 15 March 2011, which stated:

> "... One such client was MM [Client M6]. MM instructed Mark Boardman of Boardman & Co to represent her in disputing Dean & Dean's fees. I warned Mr Tehrani to be careful with his dealings with Mark Boardman because he had discussed matters with us on the telephone and then denied having had such conversations with us later...".

702. Mr Boardman said that he had not had a conversation which he had later denied and he denied absolutely that he had misled the court, as alleged by the Second Respondent in her statement.

Cross examination by the Second Respondent

703. The Second Respondent referred Mr Boardman to the firm's letter to him dated 13 March 2008 and the reference to the telephone conversation of 24 January 2008 between Mr Boardman and the First Respondent. Mr Boardman denied that the alleged telephone conversation of 24 January 2008 had taken place when it was alleged to have done. It would have been highly unlikely that he would not have time recorded such a telephone conversation. All outgoing calls were logged on his BlackBerry and he received the log for calls, including via his computer, so that it was automatically logged. He had checked his time records and no such call had been recorded. He had never used a landline, including in 2008.

704. Mr Boardman had not found out until much later that the money had been held by Dean and Dean as the firm had retained the file and he had not had any documents. Client G2 told him that the firm held the bail money, but he had not known that on 24 January 2008. His best recollection was that he had become aware that the firm held the money in March 2008.

705. Mr Boardman acknowledged that he had sometimes been aware that the First Respondent had spoken to him on speakerphone and that on one occasion he had greeted the Second Respondent, who had also been present, despite the First Respondent having said that no one else was there.

Ms Kay Georgiou Examination in Chief

706. Ms Georgiou was sworn into evidence and confirmed the truth of her witness statement dated 15 March 2011.

707. Mr Malek referred Ms Georgiou to various costs schedules relating to Client R2 and B in which the First Respondent had represented Client R2 and Ms Georgiou her client B. Various hourly rates had been stated for the First Respondent, including as a Grade 1 fee earner £350 plus VAT and £500 plus VAT, anticipated attendances at court on 15 and 16 April 2008 £1,500 respectively, an attendance on counsel £500 plus VAT and drafting an affidavit as at 9 July 2008 (7 hours) £3,500.

708. Mr Malek also referred Ms Georgiou to the firm's client ledger number K02214. He said that this showed the credit into client account on 3 July 2008 of £123,500 and the monies being transferred to the designated deposit client account on 4 July 2008 which left a nil balance on the client account. The designated deposit client account showed that there were four debits on 8 July 2008 of £7,303.05, £32,612.89, £42,830.62 and £40,000, all of which were described as "Loan to office (Authorisation from client)". The balance remaining was £753.44 as at 8 July 2008. Mr Malek said that the credit of £40,000 into the designated deposit client account was received on 15 July 2008 referred to as "From office return of loan" making the balance £40,753.44 which was debited from the designated deposit client account on 29 July 2008, again referred to as "Loan to office (Authorisation from client)".

709. In a letter dated 11 January 2008 from the firm, it stated that the firm would "give an undertaking that once in receipt of the funds, no monies will be released without your prior approval". Ms Georgiou confirmed that such an undertaking had been given by Dean and Dean to her firm had and that her client had agreed to the designated deposit client account/mortgage account being opened with Royal Bank of Canada to be used to discharge the mortgage interest payments. Ms Georgiou referred to her letter dated 30 June 2008 to Dean and Dean, which stated:

> "We now have our client's instructions and can confirm that we agree to the sum of £120,000 being transferred from the Lamborghini fund to a separate mortgage account for the purpose of making mortgage interest payments on the matrimonial home from 1 July 2008 to 30 June 2009.
>
> We also agree to the sum of £3,500 being withdrawn from the Lamborghini fund to meet the Royal Bank of Canada's charges in connection with the extension of the loan facility.
>
> We consent to the total sum of £123,500 only being transferred for the purpose of extending the loan facility for another year. Please confirm that this is the full extent of the sum that will be required".

710. Ms Georgiou had given her consent on behalf of her client to the monies being withdrawn to be held to pay the mortgage interest on the matrimonial home and which had been part and parcel of the Freezing Order. She said that there were two cars worth a significant amount of money and agreement was reached to sell one car to meet her client's liabilities, including in relation to the mortgage.

711. Mr Malek referred Ms Georgiou again to the client ledger. By 8 July 2008 the whole of the £123,500 had been debited from the designated deposit client account. Ms Georgiou said that had been improper use of the account by Dean and Dean/the First Respondent and had not been in accordance with the undertaking given to her firm. Her client had not consented to the monies being debited and neither had she. She was not aware that the Royal Bank of Canada had consented as she had seen no

such correspondence, but, in any event, her consent would still also have been required.

712. Mr Malek referred to the letter dated 24 September 2008 to Ms Georgiou from Dean and Dean. Ms Georgiou said that the letter confirmed that Dean and Dean had written to the Royal Bank of Canada enclosing a cheque for £25,923.21 to discharge the quarterly interest payment in respect of the matrimonial home and that the monies had been debited from the joint designated deposit bank account. Ms Georgiou had not been aware of any other debits on that account as she had only seen and been sent the ledger exhibited to her witness statement which showed the receipt on 4 July 2008 of the £123,500 in the designated deposit client account and on 7 October 2008, the debit of £25,923.21. She had not seen the other client ledger showing the various debits on 8 July, 15 July, 6 August and 11 August 2008. Ms Georgiou had not been aware of the existence of a parallel ledger.

713. Mr Malek referred to Mr Shaw's evidence on Day 13 of the hearing and the First Respondent's contention that there had been a new undertaking to the Royal Bank of Canada once the funds had been removed. Ms Georgiou said that was not correct. Not to her knowledge had the Royal Bank of Canada consented to the withdrawals and in any event, the undertaking had been given to her firm, to hold the monies to her order and her authority for any withdrawals other than for payment of the mortgage interest would have been required.

714. Mr Malek said that it had also been suggested that the transfers/debits from the designated deposit client account had been properly authorised by Dean and Dean's Client R2. Ms Georgiou said that Client R2 had no such authority and certainly not once the undertaking had been given to her firm. Such loans to the office account were against a solicitor's professional rules.

Second Respondent Examination in Chief

715. The Second Respondent affirmed and confirmed the truth of her witness statement dated 15 March 2011. She said that she also relied upon her undated Response to the allegations.

716. The Second Respondent accepted that she was bound by the SPR, SCC and SAR and that she had a duty to know and adhere to them. She qualified as a solicitor in 1992 and was formally made a partner at Dean and Dean on 16 October 2007, having joined Tehrani & Co in October 2004. By 2008 she had been at the firm for approximately three/four years but definitely not as long as the First Respondent who was the senior partner, albeit she had been a solicitor for longer than him.

717. The Second Respondent acknowledged that she was an experienced solicitor by 2006, and although she had not been involved in the financial side of running a firm before, she accepted that she had duties under the SAR. She could not recall her hourly rate for 2008 as it had varied from client to client, but £350 per hour would not have surprised her.

718. The Second Respondent acknowledged that as a solicitor, she was an officer of the court, and that she had responsibilities to clients, the court and other members of the profession which required her to act with the highest degree of probity. In relation to client money, she confirmed that it had to be properly accounted for and protected.

The Second Respondent agreed that "borrowing" client monies for short periods of time was misuse and very serious and warranted the most stringent sanctions.

719. Mr Malek referred the Second Respondent to the Authorities' Bundle and cited the SAR Rules 1, 2(2)(r)(ii), 4, 6, 7, 15, 19, 22 and 23. The Second Respondent accepted that she had to comply with the requirements of Rule 1 of the SCC. In relation to the SAR, amongst other things, she had to keep client money separate and safe. She accepted that she was a principal of the firm and that the SAR applied to her throughout her time as a partner, and as a principal she was responsible for compliance with the SAR. The Second Respondent agreed that she had a duty to remedy breaches of the SAR, to ensure correct use of client account, to follow the correct procedures regarding the transfer and receipt of costs, to follow the correct procedure for withdrawals from client account and to ensure that there was a method and authority for withdrawals from client account.

720. The Second Respondent accepted that there were very substantial breaches of the SAR at the firm.

721. The Second Respondent accepted the requirements and obligations placed upon her by Rules 1.01, 1.02, 1.03, 1.04 and 1.06 of the SCC. In relation to the latter, she agreed that if a firm was criticised by a court, it was not just that firm which suffered but also the reputation of the profession as a whole. She understood her obligations under Rule 5.01 and the guidance to the rule which stated:

> "Principals are responsible in law and in conduct for their firms, including exercising proper control over their staff, and the rule lays these duties, as a matter of conduct, on a recognised body and its managers and on the recognised sole practitioner...".

722. Mr Malek referred the Second Respondent to Rule 10.05 in relation to undertakings. She confirmed that she understood the rule and the obligations it placed upon a solicitor where the undertaking was given in the course of practice and how important that was.

723. Mr Malek also referred the Second Respondent to Rule 1 of the SPR and the basic principles which were effectively mirrored by the SCC. The Second Respondent accepted that she was bound by the SPR at the relevant time.

724. The Second Respondent acknowledged that she had a duty to obey court orders and an obligation to comply with them, including orders as to costs. She acknowledged that solicitors had to be frank and open with the Law Society/the Applicant as their regulator. She confirmed that she had therefore owed duties to the court and to comply with undertakings, particularly any undertaking given to the court.

725. The Second Respondent was unsure whether there would have been a duty upon her to have brought to the attention of the court that it had been misled or an undertaking to it had been breached by the firm. If, for example, the undertaking had been breached in error and the error rectified, she was not sure whether it had to be brought to the attention of the court. Similarly, if she had personally made representations to the court, which she had believed at the time to be true but had subsequently realised were incorrect, she was unsure whether she would have been obliged to bring that to the attention of the court.

726. When asked whether it was acceptable to conceal breach of an undertaking and not disclose it to the court, the Second Respondent confirmed that it should be brought to the attention of the court in those circumstances.

727. The Second Respondent accepted that the obligation to be honest also included towards counsel. Misleading instructions should not be given to counsel since that might inadvertently mislead the court on the basis that counsel had relied upon the instructions given. She also agreed that there was a duty on solicitors/firms to pay counsels' fees within a reasonable period of time and within a certain period of time if such had been agreed. It would be inappropriate not to pay counsels' fees if agreement had been made to pay them and then further fees had been incurred.

728. Mr Malek asked the Second Respondent about her relationship with the First Respondent. She said that she had not always complied with the First Respondent's instructions but had not always been capable of standing up to him. He had done things she had not considered to be sensible, such as pursuing claims where she thought it might have been better to settle. She accepted that it would be wrong to stand by if someone else in the firm was acting improperly or to condone that. She said that in relation to the information within her own knowledge, she had acted properly at the firm.

729. The Applicant's investigation had begun in October/November 2008. In relation to any practices which had caused her concern at that time, the Second Respondent said that she was unhappy about the large amount of outstanding counsels' fees, but she was unable to deal with those because there were lots of matters she was not involved in. In some matters the First Respondent was in effect the client and was responsible for payment. The First Respondent failed to take money on account from his own clients which resulted in a lot of counsels' fees being outstanding and he had to sue clients, resulting in a significant amount of litigation. She acknowledged that a number of clients had disputed fees, which was a significant problem for the firm.

730. The Second Respondent became aware of further concerns regarding the firm when the investigation resumed after 6 November 2008 and prior to the intervention. In relation to Client R2, the monies had been transferred to office account from the designated deposit client account with the narrative "loan to office account". Similar transfers had happened in the past but she had not been in a position to do anything about it.

731. In relation to the payment of staff salaries from client account, the Second Respondent said that she had seen that monies were available at the time and that there had been no resulting losses to clients.

732. The Second Respondent said she had ensured that held-back cheques for disbursements were issued and sent out immediately she had become aware that they had been held back. The lack of authorisation to transfer monies had been brought to her attention by the investigators but she had no control over that. She thought that bookkeepers always had the power to carry out transfers at the press of a button and that what had been missing was any record. She accepted that there had been a continuing breach of Rule 22 SAR, but having spoken to Barclays Bank, she had been told that there was a device which could randomly generate numbers to authorise transfers and it was not unusual for that to be done by the bookkeeper.

733. The Second Respondent said that the bookkeeper at the firm, Ms Emma Ahanchi, had not been trained in the operation of the SAR and that she had had codes and had carried out transfers without supervision. Until the investigation the Second Respondent had understood that Ms Ahanchi had had training but then discovered that not to have been the case. Ms Ahanchi was very close to the First Respondent and that they had spoken Farsi together which the Second Respondent did not understand.

734. The Second Respondent was unable to locate the files for Clients D, D4 and D5 and so was unable to determine what had happened. The First Respondent had had conduct of the matters.

735. The Second Respondent did not feel any sense of loyalty to the First Respondent although she had at the time because they had worked together for a couple of years. She had not known his "modus operandi". He had kept a lot of matters to himself, such as the A5 litigation which was dealt with by him. She had not been involved in the A5 litigation; her first involvement was before Coulson J when he gave his Judgment in 2008. The Second Respondent said that she had only become a partner in October 2007 and had never read any of the A5 litigation judgments. She was unsure whether she had seen the Judgment of Master Seager Berry until she had had to comply with the Section 44B Notices and the First Respondent had kept the Judgment to himself.

736. The Second Respondent said that by 2008 her salary was approximately £60,000/£65,000 and it had been the best salary she had had in her career. Since the intervention into the firm she had worked as a Personal Assistant for a barrister and she had helped the First Respondent from time to time, for example photocopying bundles. She had also assisted Mr Tehrani in 2009 when he had sought to collect the firm's fees. She had thought it in her interests and those of the firm's creditors to assist. She did not know whether any fees had been recovered.

737. The Second Respondent had received no payment from the First Respondent since the intervention and no promises of payment. She said that she had been paid by Mr Tehrani but her expenses only. She had also received payment of expenses from Mr Baxendale-Walker which she said was arranged between Mr Baxendale-Walker and the First Respondent for her assistance with photocopying. She said she imagined that they had been working closely together as they were both involved in a claim in the United States.

738. The Second Respondent acknowledged that there had been a number of critical Judgments against the firm and the First Respondent. She had not been aware of the Judgment of Master Seager Berry until she attended for the Judgment of Coulson J in June 2008 regarding the A5 litigation. She had been made aware that the First Respondent had complained about Master Seager Berry and that the complaint had been dismissed. She had only discovered subsequently that if adverse findings were made against the First Respondent or he was criticised, the Judge/Master in question would be vilified and criticised by the First Respondent.

739. The Second Respondent acknowledged that there had been application after application including the ex parte injunction, the delivery up proceedings and the Tribunal proceedings where costs orders against the firm, herself and the First Respondent had not been paid. She accepted that it was of concern that substantial costs orders had not been paid. She agreed that she had been a party to the ex parte

injunction. It had been put to her by the First Respondent that he believed there had been other ulterior reasons for the investigation. She had relied on RadcliffesLeBrasseur regarding the injunction and acknowledged that they had only known what they had been told.

740. The Second Respondent acknowledged regarding the G2 matter that the Judgment of Jack J dated 7 May 2008 was critical of the firm. In relation to the Employment Tribunal proceedings she was aware that the hearing had taken place but she did not recall having seen the decision. The Second Respondent accepted that she had known that the First Respondent's evidence had been disbelieved but she had been told by him that he intended to appeal. She was also assured by the First Respondent that he was raising funds to discharge the liabilities of the firm.

741. The Second Respondent did not think the adverse Judgments and costs orders against the firm had given rise to particular problems in the firm or were a sign of a cash flow issue. There had not necessarily been issues about costs orders not having been paid, for example in the A5 litigation the First Respondent had not paid as there had been further appeals to be lodged. The Second Respondent said that, whilst she accepted that costs orders had to be paid, she had been given to believe that it was reasonable for payment not to have been made.

742. In relation to the Sinels Judgment, the Second Respondent did not think that it was that unusual to pay by instalments and spread the payments.

743. The Second Respondent denied that she had been oblivious to the firm's cash flow problems until the intervention. The only issue had been the Sinels' instalments issue up to that time.

Client V

744. Mr Malek made it clear that there were no allegations against the Second Respondent regarding Client V. The Second Respondent confirmed that she had been involved in the subsequent litigation and said that she was aware of the allegations against the First Respondent. She said that, in relation to the First FI Report dated 11 December 2008, she had sought to convey that she had had nothing to do with how the Client V matter had arisen and the context in which the reconstructed photographs had been produced. Her involvement had been only in relation to the costs proceedings, and by the time she became involved, she was aware of the photographs having been reconstructed and believed it to be improper and dishonest to have passed the photographs off as genuine. She accepted that she had filed a witness statement and attended court in the costs proceedings and that correspondence had contained her reference.

745. The Second Respondent said that the First Respondent was involved in the drafting of the letter to the Home Secretary dated 23 March 2006.

746. Mr Malek referred to an email from the Second Respondent to the First Respondent dated 29 December 2006, which stated:

> "Sean.
>
> If you are going to recommend to LV [Client V] that she and LP Limited

> instruct their own Solicitors my draft letter to LV needs to be amended accordingly.
>
> Are we going to recommend to her who she should instruct or are we going to leave it to her to find her own Solicitors?
>
> Bell Yard will soon be asking for directions for the service of witness statements and the new Solicitors need to be instructed as soon as possible.
>
> In the meantime I have prepared draft witness statements for yourself and LV anyway which I have attached.
>
> The letter sent to the Home Secretary, which was prepared for LV by this firm says: –
>
> > "Finally, I enclose a photograph of the injuries I suffered."
>
> I am not sure how we explain what was meant by that and I think we need to put something in your witness statement as I think if I had received that letter I would have assumed that LV meant that they were photographs of the actual injuries LV had suffered and that they were not reconstructions".

747. The Second Respondent accepted that the letter was misleading and she appreciated that the First Respondent's conduct in the Client V matter had been misleading and that he had passed off the reconstructed photographs as originals.

Client G2

748. The Second Respondent said that she had had no involvement in the criminal proceedings involving G2. She had issued the injunction application and dealt with the court and correspondence, including with G2's new solicitors. She had continued to conduct the injunction application before Jack J, which had been dismissed.

749. The Second Respondent agreed that on an ex parte application, the Judge would only hear one side and there was a duty of full and frank disclosure. She was aware that the key matters had not been addressed before the Judge and that had been a failure on her part. She should have read all of the papers properly before she attended court and applied for the ex parte injunction. It was correct that no mention of the bail monies was made in the papers.

750. The Second Respondent said that she had also been involved in correspondence with the court and Mr Boardman as to whether the £200,000 bail money should be retained in the firm's client account. She acted upon the First Respondent's instructions and had gone along with his instructions that the bail money should be retained by the firm. She accepted that the First Respondent was keen to retain the money because, as she now knew, it was no longer in the client account. At the time he had not shared that information with her. The Second Respondent informed the Tribunal that she felt she had been dishonestly misled by the First Respondent in relation to the G2 matter and dissipation of the £200,000 bail monies by the First Respondent.

751. The Second Respondent acknowledged that by mid-January 2008 and March 2008 the respective balances on G2's client account were nil.

752. The Second Respondent accepted that it was extremely serious to use money held to the order of the court and that once she became aware that that had happened, there

had been a duty on her to inform the court immediately. She said that she became aware of the transfer out of the £200,000 when she asked the bookkeeper Emma Ahanchi for a banker's draft to pay to Woolwich Magistrates Court in approximately April 2008. Ms Ahanchi told her that she could not have the £200,000. A few days later Ms Ahanchi produced the banker's draft.

753. The Second Respondent said that on 14 March 2008 the Judge had indicated that he wanted the monies removed from the firm's client account and paid in to court, but she had not made enquiries about the money until that order was made and not immediately. Whilst she had requested the G2 ledgers in relation to applying for the injunction, she accepted that she had not looked at them in detail as she had not had time and she should have paid closer attention. She said that she would not necessarily have looked at the ledgers to prepare the First Respondent's statements as she had hoped to see statements of account from the fee earner who had had conduct of the matter.

754. Mr Malek put to the Second Respondent that rather than having not paid sufficient attention to the G2 ledgers when preparing the First Respondent's statement, she had known that the £200,000 had been withdrawn from the G2 client account, that the First Respondent's statement had not referred to the bail money at all and that she had seen the client ledgers in order to prepare his statement. The Second Respondent denied that she had used the client ledgers; she had relied upon the statements of account from the fee earner.

755. The Second Respondent accepted that by early April 2008 an undertaking had been breached and misleading documentation had been provided to the Crown Court Judge and to Mr Boardman. With hindsight, she agreed that the Crown Court should have been told the truth but, at the time, she was unsure what to do. She admitted that she had discovered that the £200,000 had been misappropriated and she had not told the court or Mr Boardman.

756. Mr Malek said that there were two versions of the alleged telephone conversation between the First Respondent and Mr Boardman on 24 January 2008. According to the First Respondent, the conversation took place and Mr Boardman agreed to the £200,000 being retained in the firm's client account. According to Mr Boardman's evidence, he had not had a telephone conversation with the First Respondent on that date, and although there had been a conversation about the £200,000, he had said that the money should be paid into court on the basis that the firm was no longer acting for the client.

757. The Second Respondent recalled that there had been a conversation. The First Respondent often conducted telephone conversations by speakerphone, and on at least one occasion she had been there when he had done so. The First Respondent discussed the £200,000 with Mr Boardman and the latter agreed for the time being that the money should remain with the firm, which was in accordance with the terms of the court order. The Second Respondent said that Mr Boardman had lied to the Tribunal.

758. The Second Respondent accepted that she had not discussed in interview having overheard the telephone conversation between the First Respondent and Mr Boardman. She acknowledged that the first time she mentioned it had been on 29 June 2009 in response to Mr Middleton's witness statement prior to the hearing

before Henderson J. She did not recall having been asked for an account of the conversation prior to June 2009. Mr Malek put to the Second Respondent that she had only given evidence that she had overheard the telephone conversation in order to bolster the First Respondent's story. The Second Respondent denied that and said that it had only come to mind gradually. In relation to her Response of 7 April 2009, she said it had not been alleged at that time that the telephone conversation had not taken place and it had not been raised in her interview so she had not responded to it.

759. The letter dated 14 March 2008 from the firm to HHJ Byers was written by the Second Respondent on behalf of the firm/First Respondent. Mr Malek said that the Second Respondent did not mention in that letter to the Judge having overheard the telephone conversation between Mr Boardman and the First Respondent on 24 January 2008, although the telephone conversation was referred to. The Second Respondent agreed that she had not mentioned the conversation and accepted that it had been misleading not to have done so. The First Respondent approved the letter and assisted with the wording. She accepted that anyone who was involved with the letter and who knew that the £200,000 was missing had acted dishonestly.

760. The Second Respondent accepted that Mr Boardman had been misled regarding the money.

761. The Second Respondent acknowledged that the office account had been credited with £250,000 borrowed by the First Respondent from Weybridging Limited which she believed was a loan company. She accepted that the monies had to be borrowed as the £200,000 had been missing and had been wrongfully extracted from client account.

Client R2

762. The Second Respondent admitted responsibility as a partner for the breach regarding the R2 matter involving £123,500. She agreed that the First Respondent had been aware that the money was subject to an undertaking and she accepted that the breach of undertaking was serious. She could not understand how it would have happened unless the First Respondent had been behind it.

Counsels' fees

763. After a short break, the Second Respondent confirmed the allegations she admitted namely allegations 2.1, 2.2, 2.4 and 2.5. She denied allegation 2.3. She said that she had known that counsels' fees were outstanding and that there had been delays in paying those and that Sinels' costs had not been paid. In relation to Client D2, she said that counsel should have been paid and she had lost sight of that.

Held back cheques

764. In relation to the held back cheques, the Second Respondent said that approximately £34,000 had been held back, dating back to April 2008. She informed the Tribunal that once she had become aware of that she had taken steps to have the cheques sent out. As the First Respondent was on sabbatical, it had not been discussed with him. She had formed a view and taken action. Although she had met with the First Respondent on 13 November 2008 and had discussed various concerns, she had not spoken to him about the withheld cheques and he had not come into the office after

6 November 2008. Once she had seen the bank accounts, which she had not seen before, she realised that the withholding of the cheques had been due to the pressure on the office account and that there were cash flow problems.

765. The Second Respondent confirmed that in interview she said that the bookkeeper, Emma Ahanchi held back cheques as there had been insufficient funds in the accounts. Emma told her and Ms O'Donnell about the payment of staff salaries from the client account. The Second Respondent got the impression that Emma had taken that decision without reference to the First Respondent.

766. Mr Malek referred to a letter dated 24 April 2009 from the Applicant to the bookkeeper which set out a series of questions regarding matters which might have been within her responsibility and/or knowledge or experience, including:

> "10. Did you make any transfers between client and office bank account without reference to anyone else and if so please explain in what circumstances you made such transactions?".

767. Mr Malek said that the bookkeeper's response to question 10 was "No"; her position was that she had acted on the instructions of others.

Clients D and Q

768. In relation to allegation 2.6 and the anticipated disbursements, the Second Respondent accepted that the relevant rules had been breached but said that she had not been involved at all in the two matters.

769. The Second Respondent confirmed her belief that the invoices were devices to obtain money from client account when the office account needed it.

770. The Second Respondent agreed in relation to allegation 2.7 that use of client funds to pay staff salaries was a very serious breach. However the Respondents' position had been that it was a breach which could never have been remedied. Her understanding was that invoices had been issued so that there was sufficient money to pay the salaries. She had not however carried out investigations to determine whether the bills had been served on the relevant clients on the days in question. The Second Respondent acknowledged that she had been aware that the salaries were late.

771. The Second Respondent said that she knew there had been a cash flow problem at the firm and that cheques had bounced. She had been concerned regarding the salaries but until the end of September 2008, salaries had been paid on time. She acknowledged that it was clear from Mr Middleton's witness statement dated 17 October 2008 that there were financial concerns about the firm although she had not been given his statement immediately and had had very limited access to papers which were retained by the First Respondent.

772. The Second Respondent accepted the breaches in relation to allegation 2.7 and in relation to Rule 23 of the SAR that there had been no necessary written instruction.

773. During the course of the cross-examination of the Second Respondent on Day 19, Mr Malek referred the Tribunal to the Order of Hickinbottom J dated 8 June 2012 in

relation to the First Respondent's application for interim relief regarding the resumed substantive hearing. It stated:

> "On the Claimant's Application for Urgent Consideration
>
> ...
>
> Order by the Honourable Hickinbottom J
>
> 1. The Defendant and Interested party [the Applicant] shall lodge and serve an Acknowledgement of Service and Summary Grounds by 4 pm on 15 June 2012.
>
> 2. The application for permission and disclosure shall be referred to a judge within 5 days thereafter. That judge will also then consider the application for expedition of any hearing, if appropriate.
>
> 3. Permission to apply.
>
> Observations
>
> The Claimant seeks to challenge the Defendant's [the Tribunal] decision of 29 May 2012 to refuse an adjournment of the continuing hearing set down for Monday 11 June 2011 [sic]. The claim was issued yesterday (Thursday 7 June 2012). There is no explanation for the delay.
>
> The Claimant contends that his hearing before the defendant cannot be fair if it continues in his absence. If that is right then, if it does continue to a conclusion and decision, then that decision will be challengeable. Certainly, this is not a claim which can properly be dealt with without a considered response from the Defendant and Interested Party. I have given directions accordingly.
>
> For the avoidance of doubt, of course this Order does not require the Defendant to adjourn or delay the hearing fixed to recommence on Monday".

774. Mr Malek said that there had also been email correspondence with the First Respondent's counsel, Mr Beaumont, in which he had indicated that the First Respondent wished to make a further adjournment application on medical grounds and that had been listed for 2pm on Wednesday, 13 June 2012 before the Tribunal. In addition, Mr Malek said that the Tribunal had given the First Respondent until Tuesday 12 June 2012 to make his arrangements for the video link but no response had been received from him to date.

775. Mr Malek said that the Applicant did not want a further "ambush" by the First Respondent and in relation to Dr Sokol that at the very least he should have to provide the First Respondent's medical notes since a further uncorroborated Report from Dr Sokol could not be entertained. Mr Malek asked that any further medical report the First Respondent sought to rely upon be produced forthwith together with the medical notes relied upon and if not, that inferences could be drawn.

776. The Tribunal expressed the view that any further Report from Dr Sokol had to be received by 11 June 2012 and that it would be helpful if the medical notes relied upon in production of said Report could be appended. The Tribunal confirmed that the further adjournment application on behalf of the First Respondent would be dealt with on Wednesday, 13 June 2012 at 2pm.

Cross-examination of the Second Respondent (Continued)

777. The Second Respondent accepted that all partners were obliged to comply with Rule 7 SAR. She acknowledged that there had been numerous transfers from client to office account which had been improper.

778. Until the First Respondent had gone on sabbatical, she had not been involved at all in the day to day dealings with the bank accounts but she accepted that with hindsight, client to office transfers should have been recorded and there had been weaknesses in the accounts controls; she had acknowledged that in interview.

779. In relation to the £100,000, the Second Respondent admitted that she had given an oral instruction for the transfer of that sum to office account, and by doing so, had breached Rule 23 of the SAR.

780. In relation to the office manual, the Second Respondent could not recall the last time she had looked at it. The manual stated:

> "3 Financial management.
>
> 3.1 Responsibility for financial management.
>
> Whilst all partners have a responsibility for financial management Dr Sean Mireskandari has the direct responsibility to the firm for overseeing and managing financial affairs.
>
> Individual fee earners are responsible for the financial management of their client matters especially as required by the Solicitors' Accounts Rules and the detailed instructions that follow.
>
> If anyone has cause to be concerned about any aspect of financial management, especially as related to client monies, they should refer their concern to the managing partner or other partner at once.
>
> ...
>
> 3.9 Transfers
>
> A transfer form is to be used for authorising transfers of client and office monies. Two copies of the form should be raised, the top copy to be sent to the accounts department for action and the duplicate retained on the client matter file. On occasions it may be necessary to support the transfer form with a note of explanation.
>
> The proper transferring of monies is directly the responsibility of fee earners and verbal instructions will not be accepted by the accounts department.
>
> 3.10 Payment out of client monies.
>
> Payment out of client monies by cheque or transfer, irrespective of the amount, can be authorised only by Dr Sean Mireskandari".

781. The Second Respondent agreed that verbal instructions had been accepted by the bookkeeper and that she had actioned the Second Respondent's verbal instruction regarding transfer of the £100,000. In relation to payment out of client monies, the Second Respondent said that the bookkeeper had told her that she had made payments

in relation to the salaries without recourse to the First Respondent or written instructions. Mr Malek suggested that was not plausible.

782. The Second Respondent admitted breach of Rule 23 of the SAR regarding the method of and withdrawal from client account. She confirmed that there were no safeguards in relation to the CHAPS terminal and agreed that a written audit trail was required. She accepted that having no procedure for withdrawals from client account was disturbing and client monies were at risk. She said that it had not been compliant with the requirements of the SAR, let alone exceeded them.

Sinels

783. The Second Respondent said that in relation to allegation 2.13 and the Sinels matter, she had addressed this in her Response to the Interim FI Report and the EWW dated 5 February 2009 from the case worker Ms Ku Patel, which stated:

> "Para 22
>
> I think I joined Dean & Dean in October 2004.
>
> The reason I was made a partner was because SM [the First Respondent] asked me to represent the firm at a court hearing relating to a costs dispute in Jersey.
>
> I spoke to a clerk of the Jersey Court. They advised me that as an English solicitor I did not have rights of audience in the Jersey Courts. She advised me that only a partner of the firm could attend as a litigant in person.
>
> I told SM that I could not do it as I did not have rights of audience. He said that he would make me a partner and then I could do it. That was how I became a partner. A letter was sent to the SRA advising that I had become a partner.
>
> Although I became a partner there was no change to my day to day activities. I continued to have the role and responsibility of an assistant solicitor. I did not take on any additional management responsibilities.
>
> SM only made me a partner as he wanted me to act for the firm in Jersey to save costs of instructing the Jersey advocate".

784. She said that she had been an Assistant Solicitor when she joined the firm and as stated, became a partner in October 2007. The other partners were the First and Third Respondents and another. The First Respondent was the Managing Partner and it was him who decided to make her a partner; she believed it had been his unilateral decision. She had not been a partner before and the Third Respondent gave her a booklet on being a partner. She accepted that being a partner brought with it stringent responsibilities which included the client account and financial management.

785. In relation to the Sinels litigation, the Second Respondent had had some involvement including preparing lists of documents and corresponding with solicitors for the firm regarding the settlement. She had also filed a Skeleton Argument with the assistance of the First Respondent.

786. The Second Respondent acknowledged that there had been serious criticism in the Sinels Judgment of the firm's defence. She was told by the First Respondent that

Sinels had not been asked to carry out any work and she believed him and relied on his instructions.

787. The Second Respondent acknowledged that the Judgment was joint and several against all of the named partners, namely herself, the First Respondent and Mr Tehrani. She acknowledged also that indemnity costs were ordered against them as the conduct of the litigation had been "out of the norm".

788. Mr Malek referred to the Judgment on Costs dated 6 November 2007, which stated:

> "4. All in all I am satisfied that this is a case which calls for indemnity costs and I so order".

789. The Second Respondent said that she could not recall when the decision to abandon the defence had been taken but that it had been obvious to her after the witness evidence that the defence should not have been pursued by the firm. She said that she did not think the case had been completely misconceived as some parts of the bill had been disallowed.

790. Mr Malek referred to the letter dated 23 November 2007 from Sinels' solicitors, HR, to the LCS, which stated:

> "... At the handing down of the Judgment, the Court explained to Ms Turbin (a partner of Dean & Dean and joined as a Defendant and who attended in person in place of BB), that the judgment sum was payable "forthwith". However, Dean & Dean failed to make the payment forthwith, and only confirmed their intention to do so on 21st November, 2007 after the threat of further enforcement proceedings was made. At the time of writing, we still await the actual arrival of the monies in our account but trust that they have indeed been ordered to be transferred".

791. The Second Respondent confirmed that was correct and said that the costs had only been paid once enforcement had been threatened against the firm/partners.

792. Mr Malek referred to the witness statement of Mr Philip Sinel dated 7 November 2008 in which he confirmed that the costs ordered in his favour against the firm/partners in the Sinels litigation amounted to £23,955.15 plus interest.

793. The Second Respondent confirmed that there had been no appeal and accepted that there had been an obligation therefore to make payment forthwith. The First Respondent had been very cross and wanted to "string it out". She had not known at the time of the firm's financial difficulties yet she accepted that by October there had been signs of cash flow problems.

794. The Second Respondent said that, ultimately, enforcement proceedings were taken against her due to non-payment in the Sinels matter and she pressed the First Respondent to make payment. He told her that he was sorting it out. She said that she would have wanted the Judgment paid in full immediately and she accepted that it was a serious matter for the regulator.

795. Mr Malek referred to the letter dated 1 May 2008 from the firm to HR, the solicitors for Sinels, which stated:

> "... In the meantime, we propose to settle the sum of £23,955.15 in monthly instalments of £5,000. We will make the first payment immediately upon receipt of your written agreement to this proposal and pay the further instalments on a monthly basis thereafter until the sum is cleared".

796. The Second Respondent said that at that time, the partners had been herself and the First and Third Respondents and Dr Bajwa. She was aware of the proposal to pay by instalments. At that time, the First Respondent had taken delivery of a Silver Shadow Rolls Royce and so he had given the impression that he was financially secure. She had not assumed simply because an offer had been made to pay by instalments that the firm was necessarily in financial difficulties. She acknowledged that the offer of instalments was rejected by Sinels' solicitors by fax dated 2 May 2008.

797. The Second Respondent denied that it was unacceptable to pay by instalments and said that it had been open to Sinels' solicitors to cash the cheques sent by the firm.

798. The Second Respondent acknowledged that Sinels had never received settlement of their costs. She agreed that not to honour a Judgment or Costs Order brought the profession into disrepute. She said that as a result of the Sinels matter a bankruptcy order had been made against her on 17 September 2009. She recalled that Mr Tehrani had also been made bankrupt. She did not know whether the First Respondent had been made bankrupt.

799. Whilst the Second Respondent admitted that she could have met the liability out of assets she owned at the time, she said there had then been the intervention and she had as a result been unable to pay as the firm's debts which far exceeded her assets. She had not been a partner of the firm at the time the debt had accrued. There were numerous other liabilities, including unfair dismissal proceedings brought by employees of the firm, a claim by the firm's accountants for unpaid fees and other creditors.

<u>Mr Spearman QC's and Mr Strachan's Fees</u>

800. Mr Malek acknowledged that there was no allegation against the Second Respondent in relation to Mr Spearman's outstanding fees or that she had been dishonest in that regard.

801. The Second Respondent accepted that it would be dishonest to owe counsel money and to incur further counsels' fees and not pay. An email dated 1 October 2008 from Mr Spearman to the Third Respondent as the firm's Managing Partner (as stated on the firm's website), stated:

> "... If the firm had the money to pay, surely it was dishonest not to pay sums which were indisputably due and in respect of which this promise of payment had been made? Conversely, however, if, as was later suggested – as also appears below – the firm did not have the means to make payment, then surely it was dishonest to promise a payment that could not be made, to say nothing of getting my junior and me to do further work by deceiving us into believing that payment could and would be made?"

802. The Second Respondent agreed with that premise if it was correct and that there was an obligation to pay counsels' fees even if the firm was not in funds from client.

Whilst the Second Respondent accepted that there were cash flow problems at the firm by October 2008, she said that the firm had secured a Judgment for £800,000 and had a lien over sale proceeds in a matter so she had known the costs were due to the firm.

803. The Second Respondent agreed that she had written in reply to Mr Spearman's letter by email dated 6 October 2008 to his clerk, which stated:

> "I apologise for not having responded to you earlier today as promised.
>
> As you will be aware Dr Mireskandari met with you and has voiced his concerns about this case.
>
> Dr Mireskandari has informed me that prior to the issue of the proceedings Richard Spearman QC did not advise him that [redacted] stated that they would reconsider their decision that this would in effect bring an end to the judicial review proceedings.
>
> Had Dr Mireskandari been aware of this then he would have amended the letter before action accordingly to give [redacted] the opportunity to reconsider before the proceedings were issued so that we could claim our costs in the event that they decided to take such action after the issue of the judicial review proceedings had been issued
>
> ...
>
> You will therefore appreciate that we feel frustrated by the lack of progress in the judicial review proceedings
>
> That said we recognise that both Mr Spearman QC and Mr Strachan have carried out a considerable amount of work on this matter and it is our intention to discharge counsel's invoices by the end of this week".

804. The Second Respondent told the Tribunal that the First Respondent had instructed her that he would have the funds to pay counsel. She sent an email to the First Respondent dated 6 October 2008, which was a draft of the final email dated and sent to Mr Spearman the same day. The First Respondent approved the email before it was sent but deleted the last line which read:

> "Please can you confirm in the circumstances that you will not now be taking this matter further with the SRA".

805. By 10 October 2008, the end of that week, Mr Malek said that counsels' invoices had not been paid by the First Respondent but should have been. The Second Respondent agreed that the invoices had not been paid and that the office account was overdrawn. She was concerned that she had represented that counsels' fees would be paid and they had not been with the result that she had made a representation which might have been false. She had complained to the First Respondent about it and he had agreed to resolve the situation.

806. Whilst in charge, the Second Respondent only had access to limited funds and had not been in a position to pay all of the outstanding liabilities. She had not had details of the office account and it had been her understanding that the First Respondent was raising funds from other sources. She admitted that she had been very worried that liabilities were not being paid.

807. Mr Malek put to the Second Respondent that by 4 November 2008 the Sinels Judgment and Costs Order had not been met by the firm and the dishonoured cheques and the fees of Mr Spearman and those of his junior had not been paid by 10 October 2008 despite the Second Respondent having stated in writing that they would be settled by that date. The Second Respondent agreed that it was a serious financial situation.

808. The Second FI Report dated 22 May 2009, stated:

> "On 5 February 2009 Ms Ku Patel, Investigation Officer in the SRA's Casework Investigations and Operations department wrote to Dr Mireskandari, Ms Turbin and Respondent 3 (Name Redacted) to seek their explanations in respect of matters raised in the First interim Forensic Investigation Report and the Office report, that were considered by the Adjudication Panels, and in relation to a 'Withdrawal of Credit Scheme Direction' received from the Bar Council issued against Dean & Dean on 5 December 2008 on the alleged grounds of non-payments of Counsels' fees".

The Second Respondent said that she had never had a Withdrawal of Credit Scheme Direction at any firm she had worked at previously although it had been threatened.

809. The First FI Report dated 11 December 2008 referred to the outstanding fees to counsel as follows:

> "162. In relation to the first of the points in the above paragraph, the SRA officers had asked for a schedule of the firm's liabilities on a number of occasions. On 10 December 2008 they were presented with a list of debts owed to Counsel which totals £913,792.63. This list is attached to the report as Appendix 38. It is not known at the stage of completing this interim report whether any amounts provided by clients to meet these liabilities are still being held in client bank account...".

810. The schedule of "Current fee notes (08/09)" which was appended to the Report was provided by the Second Respondent. The schedule confirmed the total of counsels' fees outstanding in the sum of £913,792.63. The Second Respondent said that she recalled in relation to one counsel the matter had been dealt with by a CFA and so fees had not been owed as such and the case had not been resolved. She could not recall any other matters which had been hers and said that the fees related either to clients of the First Respondent or his own litigation matters. The Second Respondent said that the schedule itself was the product of her work alone.

811. The Second FI Report stated:

> "145...a list of counsel's fees which Russell Cooke have identified as outstanding at the time of the intervention. It was prepared from fee notes received after the intervention and from the firm's own records. The schedule contains a total inclusive of VAT of £1,144,753.20 and $773.77".

812. The Second Respondent acknowledged that there were substantial liabilities by the time of the Judicial Review proceedings. Counsels' fees had not been paid but monies had been due from clients to meet some of the outstanding fees. The First Respondent had personal assets which, she said, could have been realised to meet the

liabilities but had not been. The Second Respondent acknowledged that an invoice dated 27 October 2008 was a reminder invoice in the sum of £580 for a medical report in the D2 case which had not been paid at the time. The invoice had been annotated:

> "I went up to see Emma. A cheque request has been done, cheque is ready but it can't go out as there isnt [sic] money in the bank, so if it does go out the cheque would bounce anyway".

813. In relation to allegation 2.10 the Second Respondent accepted that she had failed to pay counsels' fees in a timely fashion but had been financially unable to do so. She accepted that there had been a clear default by the firm, which also fell on her as a partner and she accepted that default on this scale brought both the firm and the profession into dispute, contrary to Rule 1 SCC.

814. The Schedule to the Tomlin Order dated 31 October 2008 in relation to the proceedings brought by Haymarket Management Services Ltd ("HMSL") against the firm stated:

> "Within seven days of the date of this agreement, the Defendant [the firm] shall pay to the Claimant [HMSL] the sum of £89,704.78 ("The Settlement Sum") time being of the essence".

815. Mr Malek said that the sum had not been paid, albeit the firm was under an obligation to pay £89,704.76 by 7 November 2008. The Second Respondent acknowledged that payment had not been made, but said that it should have been paid by the partners at the time and not her. She had had some involvement in the litigation, which had been settled on the First Respondent's instructions. She said that the £100,000 received from Client G3 had been received on the day that HMSL was due to have been paid but that there had been numerous other liabilities to pay. She did not know if HMSL had been paid at all.

816. The Second Respondent acknowledged that by 8 October 2008, there had been the A5 Judgment, the Sinels Judgment and Costs Order, the bounced cheques, payment of staff salaries from client account and Mr Spearman's outstanding fees. She accepted that the Applicant had concerns regarding the First Respondent but said that the Section 44B Notices had only requested documents and had not set out those concerns.

817. The Second Respondent said that when the issues pertaining to the First Respondent's qualifications and US convictions had come to her attention, she had been concerned and had spoken to the First Respondent. He told her that they were untrue and that he had instructed Carter-Ruck Solicitors to bring libel proceedings. She acknowledged that Carter-Ruck had then sued the First Respondent for fees. The impression she had been given by the First Respondent was that he had never been convicted or been the subject of criminal proceedings in the United States.

818. The Second Respondent accepted that she had known of the intention to apply for an injunction to halt the Applicant's investigation of the firm.

819. In relation to the ex parte injunction applied for by the firm to halt the investigation, the Second Respondent said that she had taken files to court on the day in question and she had been involved to that extent.

820. In relation to the investigators' return to the office on the afternoon of 10 October 2008, the Second Respondent said that the firm had been cooperative and files had been collated for handover to them. She had known about the injunction at the time and had not told the investigators because she believed it had been left in the hands of RadcliffesLeBrasseur. She assumed that they would have told the Applicant about the injunction application. She accepted that she had no reason to believe that the investigators/Applicant knew about the injunction. Mr Malek suggested that the Second Respondent had merely been playing for time which she denied.

821. The Second Respondent said that she was unsure whether she had seen the RadcliffesLeBrasseur letter dated 27 October 2008, which stated:

> "2. We have confirmed written instructions from Dr Mireskandari and Ms Caroline Turbin. We are informed that the other partners have consented to our instruction and await written confirmation of the same in view of the other partners having been engaged on other matters and being out of the office".

822. The Second Respondent said that she could now see that RadcliffesLeBrasseur had not communicated with the Applicant until after the injunction had been obtained. She acknowledged that there had probably been no basis for the injunction application having been made without notice.

823. The Second Respondent now accepted that there had been genuine concerns regarding the firm, which had justified the inspection and investigation. Mr Malek suggested that it had been incumbent upon the Second Respondent to have told RadcliffesLeBrasseur about the firm's financial difficulties. The Second Respondent's position was that, apart from the meeting on 10 October 2008, she had not been involved in the giving of instructions to RadcliffesLeBrasseur.

824. The Second Respondent acknowledged the substantial concerns there had been in relation to the firm's finances. She said that the First Respondent's witness statement dated 31 October 2008 in the Judicial Review proceedings had been in response to that statement of Mr Middleton and that she had seen a draft of his statement by the 6 November 2008 hearing. She acknowledged that his statement denied that the firm had been in financial difficulties. Mr Malek referred the Second Respondent to the First Respondent's witness statement dated 31 October 2008, which stated:

> "5. My firm has always complied with the Solicitors [sic] Accounts Rules and I have detailed below the additional and extremely stringent measures we have in place to endure [sic] compliance. Our record with respect to complaints is excellent and there has never been a formal finding against us, save in matters which are currently under review by the SRA. We are confident, for the reasons detail below that we can compare our complaints histories to any comparable firm.
>
> ...
>
> 8.1 I am not bankrupt, nor in financial difficulties. The contested bankruptcy hearing listed for November has been adjourned and will now be heard together with all matters outstanding from the A5 litigation in January 2009. The court is asked to note that the outstanding matters include my application to set aside the statutory

demand upon which the petition is based and the firm's application in connection with the validity of the underlying orders costs.

8.2 The firm is not in financial difficulties. If the Court believes it necessary, bearing in mind that the validity of the Order for costs and the conduct of Master Seager Berry is under investigation as detailed fully below, the firm will arrange to provide security for the costs orders by way of bank guarantee or a payment into Court".

825. The Second Respondent informed the Tribunal that the First Respondent had equity in flats owned by him over which he could have obtained a charge albeit she did not know if he had done so. She said that having subsequently seen all financial information regarding the firm, she did not agree with the First Respondent's assertions and in relation to paragraph 8.2 of his witness statement, she believed that had been a lie. She accepted that if there was poor cash flow, this would mean financial difficulties existed.

826. The First Respondent's witness statement in the Judicial Review proceedings stated:

> "16. My firm is a successful London firm in excellent financial health. Our turnover last year was over £5.5 million and we have 42 employees. We have an excellent relationship with our bank and an excellent credit rating. The various matters relied upon by the SRA to indicate that the firm is not in good financial health are genuine disputes in which the SRA is aware that the points on which they rely are not indicators of poor financial health. A copy of three months client account bank reconciliations appears at tab 5 of SM2".

Mr Malek said that the reference to the firm's turnover for the previous year having been £5.5 million was misleading and relevant also to the material misrepresentations made on completion of the professional indemnity insurance application forms. The Second Respondent agreed that the figure cited by the First Respondent had been "over-egging the position".

827. Mr Malek continued in relation to the First Respondent's witness statement:

> "I believe that the practices of Dean & Dean are second to none in our accounting procedures. Not only are our accounts fully compliant, we have procedures in place which go over and above SRA best practice requirements...".

828. The Second Respondent confirmed that she had subsequently discovered that not to have been the case.

829. The letter dated 31 October 2008 from RadcliffesLeBrasseur on behalf of the firm to the Administrative Court stated:

> "... We would also confirm that with respect to the SRA's concerns about financial difficulties, our client is in excellent financial health and is in the course of obtaining a bank guarantee to confirm that it can cover the costs orders which are the subject [sic] an outstanding appeal and upon which contested bankruptcy proceedings are based. Our client will say that the

bankruptcy proceedings are wholly misconceived and an abuse of process since the underlying "debt" is subject to an outstanding appeal and the costs orders cannot therefore be relied upon as a liquidated debt payable immediately".

830. The Second Respondent did not believe the bank guarantee had ever been requested by the First Respondent and she was not aware that it had ever been given. In relation to the assertion that the firm was in "excellent financial health", the Second Respondent accepted that had been a lie. She acknowledged that the letter from RadcliffesLeBrasseur had been written on her behalf but said that the instructions had been given by the First Respondent. In her Response to the allegations in the disciplinary proceedings, the Second Respondent acknowledged that she had stated:

> "2.14. I was not shown the witness statement before it was served and I did not approve it. I did not give instructions to RadcliffesLeBrasseur to write the letter of 31 October 2008 and I do not recall having seen it before it went out. I was not in a position as at October 2008 to give an opinion as to the financial status of the firm in any event as I did not have access to the accounts to be able to form such a view".

831. The Second Respondent denied that she had sought to be misleading by saying that she had seen a draft and not the final version of the witness statement. She said that she knew that the First Respondent objected to the allegations that the firm was in financial difficulties and that he sought to oppose the inspection on the grounds that there had been no breaches of the SAR. The Second Respondent's witness statement before the Tribunal dated 15 March 2011 stated:

> "9. I had little involvement in the proceedings issued by Dean & Dean against the Law Society in October 2008. I did not approve the contents of the witness statement of Dr Mireskandari complained of before it was served.
>
> 10. I did not have access to the accounting records of Dean & Dean in October 2008. I was not therefore in a position to give an opinion as to the firm's financial position.
>
> 11. I do not have access to Dean & Dean's accounting records now or have the expertise to give an accurate opinion as to the firm's financial position as at October 2008.
>
> 12. I did not give instructions to RadcliffesLeBrasseur to send their letter of 31 October 2008. The letter was not therefore sent on my authority".

The Second Respondent confirmed that this was true.

832. Mr Malek referred to the Judgment of Pitchford J on 6 November 2008, which stated:

> "49. The fact that Dr Mireskandari needs to descend to detail, to make justification, to make accusations of dishonesty and unreliability against others, including members of his own profession, simply serves in my view to undermine his case that the Law Society has issued its notices for unmeritorious and contrived reasons. In particular,

> Dr Mireskandari has in his second witness statement sought to assure the court by evidence contained within it and by documents exhibited to it that both he and the firm are substantially sound".

833. Mr Malek put to the Second Respondent that as a solicitor and officer of the court, it had been incumbent upon her to inform the court that the First Respondent's witness statement contained untruths. The Second Respondent said that she had known the firm was due substantial costs and as a result it had appeared to her that the firm was financially sound, albeit there were cash flow problems. She accepted that there had to have been a lack of integrity to allow false or misleading evidence to be put before the court and she had given her authority for the firm to bring the proceedings. She acknowledged that Pitchford J found that the court had been misled in relation to the original ex parte injunction application by the firm/First Respondent.

834. The Second Respondent acknowledged that the injunction had been set aside and indemnity costs had been ordered against the firm, which had never been paid, including the requirement that the firm make an interim payment on account of £70,000 by 20 November 2008; that had not been done. The Second Respondent told the Tribunal that her difficulty had been that only certain funds were being received by the firm after 6 November 2008 and they did not cover all of the firm's liabilities. The Second Respondent agreed that not honouring costs orders brought the firm and the profession into disrepute.

835. By 7 November 2008, the Second Respondent agreed that there were numerous grounds for concern regarding the firm, including Mr Spearman's unpaid fees, the Sinels costs order and dishonoured cheques, the G2 matter and staff salaries paid from client account. She accepted that she was aware of the Applicant's concerns regarding the firm's financial position and the First Respondent. She had not seen the Judgment of Pitchford J until January 2009. She had not received communications from RadcliffesLeBrasseur: they had communicated with the First Respondent and had continued to take instructions from him alone.

<u>Clients G3, G4 and G5</u>

836. In relation to allegations 2.11 and 2.12, the Second Respondent acknowledged that £100,000 was paid into client account on 7 November 2008, which had come from Client G3. At the time she was aware of cheques having bounced on the office account and had accepted that in interview. She orally instructed the bookkeeper to transfer the £100,000 and she accepted that there had been a breach of Rule 23 SAR as there had not been written authority for the transfer. She also accepted that there had been a breach of Rule 22(1)(a) SAR as it had to be a "proper" transfer. She accepted that it had been incumbent upon her to have ensured that and she had failed to do so.

837. On the G3 matter the Second Respondent admitted that she had not told the client/Client H to take independent legal advice. As at 7 November 2008 she had been told that the "loan" had been arranged some time before. She had treated it as a concluded matter as those involved were very experienced businessmen.

838. The Second Respondent accepted that she had known the firm was in financial difficulties but she had relied upon the First Respondent's explanation as to why the "loan" had been made. In relation to Clients G4 and G5, the Second Respondent

acknowledged that they disputed the fees of Mr Hill-Smith, but it had never been pursued. She had not been aware that the clients had been charged in excess of £60,000 for the firm to negotiate a reduction in counsel's fees and said that had she known, it would have been of real concern to her.

839. Whilst the Second Respondent acknowledged that there appeared to be inconsistencies in her evidence, namely that the £100,000 had not been a loan and she initially said that it had been and that she now admitted to having spoken to Client H prior to the transfer having been made on 7 November 2008, she had not remember the conversation until later and it had all been "a bit of a blur" which had added to her confusion.

840. In relation to the intervention, the Second Respondent now realised that it had been inevitable. She acknowledged that when the intervention was on the horizon, the First Respondent had left the firm, and as a result the responsibility for the firm had fallen on her. She had to deal with telling staff about the First Respondent's sabbatical. She did not accept that it had merely been a device to fend off the intervention but accepted that it had been hoped the intervention would be avoided; the First Respondent had been in the United States over lengthy periods, dealing with evidence for his defamation case and he would not have had time otherwise.

841. The Second Respondent denied that she had had any interest in the firm as she was only a salaried partner. She repeated that she was only made a partner in order to represent the firm in the Jersey proceedings.

842. The Second Respondent agreed that she should have spent more time looking into matters rather than relying upon what she was told by the First Respondent. Having looked at it in the round and with hindsight, she saw those aspects which were suspect; Client G2 and the £200,000, Client V and the reconstructed photographs, Sinels and the dishonoured cheques and the A5 litigation. She admitted that she had not known the true financial position of the firm and that she had allowed herself to be reassured by the First Respondent that all of the financial issues would be resolved. She told the Tribunal that she had been placed in a very difficult position and had sought to carry on and collect fees in an attempt to resolve the financial problems.

843. The Second Respondent agreed that the First Respondent was still a partner in the firm after 6 November 2008 as he had retained a financial interest in the partnership. She had seen him on 13 November 2008 and possibly four times in total but never at the office, and after 6 November 2008 the Third Respondent had taken over managing the firm as the only other equity partner and principal. Ms O'Donnell and the Third Respondent resigned as at 14 November 2008; the Third Respondent wanted to resign earlier but had not done so until then. Ms O'Donnell was horrified by the developments at the firm and left. The Second Respondent felt that there would have been no hope of the firm addressing all its liabilities had she also resigned.

844. The Second Respondent denied that she had been too close to the First Respondent or had been his "loyal lieutenant" as had been put to her by Mr Malek.

845. The Second Respondent confirmed that she had issued her own challenge to the intervention and that she had in the Particulars of Claim referred to the practice as that of Mr Tehrani. She denied that had been a sham and said that Mr Tehrani had become involved by that time. She was an equity partner and needed his help. She

told the Tribunal that the guidance on the Law Society website regarding bankruptcy/striking off recommended transferring the business to a third party. She admitted that clients' consent to the transfer of the business had not been obtained.

846. The Second Respondent confirmed that in light of what she now knew, she did not consider that the intervention into the firm had been motivated by racial discrimination on the part of the Applicant.

Re-examination of the Second Respondent (Acting in Person)

847. The Second Respondent referred the Tribunal to the A5 litigation and the allegations that the Judge had been misled. She had sympathised with the First Respondent's frustration that Master Seager Berry had found against him and why he had chosen to pursue the case; whilst she had not been involved with the case she felt she had to speak on behalf of the First Respondent as he was not present.

848. In relation to the costs of the A5 litigation, Pitchford J found Mr Tehrani and the First Respondent to have been parties to the proceedings but she had become involved only shortly before Coulson J's Judgment. The proceedings were struck out in January 2009 but all of the files were seized in December 2008 and she had therefore had no files to prepare instructions to counsel to oppose the application and no resources to pay counsel's fees. The Second Respondent believed that there was a good cause of action against Lindales Solicitors/A5 and therefore against the bankruptcy proceedings.

849. In Client V's case, the Second Respondent had only filed a witness statement to enable the firm to come off the court record.

850. The Second Respondent said that it had been suggested that she/the firm had misled the court in the G2 matter. She told the Tribunal that counsel had been provided with all of the invoices, charging rates and bills marked "pro-forma" so counsel had all of the necessary information for the Judge. She acknowledged that she had relied too heavily on counsel.

851. In relation to the injunction proceedings against the Applicant, the Second Respondent said that she had very little involvement with RadcliffesLeBrasseur and had given no instructions to them.

852. The Second Respondent said that she had hoped to keep the practice running and to rectify the breaches and she had been able to send out the held back cheques. Thereafter, she had been halted by the intervention and any liens had been released when Russell-Cooke had collected the client files. The firm had not been entitled to the files post-intervention and it had been difficult to access files and bills. When clients obtained their files they told Mr Tehrani that he would have to pay to photocopy the whole file. A number of clients considered that as a result of the intervention they did not have to pay their bills. The Second Respondent had seen schedules suggesting that approximately £4 million of fees was available to be collected by the firm which she doubted would happen as a result of the intervention.

853. In response to a question from the Tribunal, the Second Respondent confirmed that the post was always opened by a solicitor and they used to take that duty in turns. That had continued after the First Respondent went on sabbatical.

854. The Second Respondent would not necessarily have seen letters bearing her reference but which she had not written or signed or the responses as they would have gone to the fee earner with conduct of the matter.

855. The Second Respondent had not told the investigators that the firm had applied for an injunction as she felt that the matter was in the hands of RadcliffesLeBrasseur and she had left it to them to do what they considered to be appropriate. She denied that she had shown no interest in such serious proceedings. It was the First Respondent's firm and she had no influence over matters being progressed. She admitted that the First Respondent was a very forceful character and she had not been in a position to change his mind. She thought the injunction to have been an unusual application since it was the job of the regulator to investigate firms but she had thought at the time that there were potential reasons to justify the injunction, such as the First Respondent's complaints about the Applicant.

856. In relation to the Daily Mail articles, the Second Respondent said that she had thought parts of the articles were untrue.

857. The Second Respondent now felt that the First Respondent had not been open and candid with her. He had told her that everything was untrue including his convictions, but it had subsequently come to light that he had been prosecuted and convicted in the United States. He had never admitted it to her, but now she had seen the evidence. She had not been particularly fond of the First Respondent and they had often fallen out. The First Respondent had often injected funds into the business but she did not know from where the funds had come.

858. The Second Respondent confirmed that she had been held out as a partner and she had considered herself a partner in the firm. She had not thought about her obligations as a partner due to the manner in which she had been appointed.

859. In response to a question from the Tribunal, the Second Respondent denied that she had not taken seriously matters, such as witness statements, Judgments and letters. She had not always had knowledge of such documents, for example when continuation of the injunction was refused, there was no Judgment available and the transcript had only come later.

860. The Second Respondent confirmed that she had been concerned about possible disciplinary proceedings after the Judgment of Pitchford J.

861. In response to a question from the Tribunal, the Second Respondent said that she did not have a full time job. She had undertaken some ad hoc work for the First Respondent and Mr Baxendale-Walker preparing bundles and Instructions to Counsel in 2009 and more recently within the last three to four weeks. Mr Baxendale-Walker paid her expenses as the First Respondent had no funds with which to pay her.

Miscellaneous

862. Mr Malek referred the Tribunal to the application by the First Respondent dated 4 June 2012 for video-conferencing facilities to be arranged for him. Mr Malek said that the Tribunal had directed that it would be for the First Respondent to arrange and that he should have done so by midday on Tuesday, 12 June 2012, the substantive hearing having resumed on Monday, 11 June 2012. There had been no further

communication by the First Respondent or on his behalf with regard to video-conferencing since then and the deadline had passed.

863. Mr Malek confirmed that the repeated adjournment application on medical grounds was due to be heard on Wednesday, 13 June 2012, at 2 pm. Further medical reports had been provided, including two reports on behalf of the First Respondent from two different medical practitioners. Mr Malek submitted that this was a further barrage of expert reports in relation to which the Applicant reserved its position.

864. Mr Malek referred the Tribunal to the First Respondent's "evidence in writing" which he said had been referred to in Mr Beaumont's email dated 4 June 2012. The First Respondent had filed a witness statement but it was unclear from Mr Beaumont's email whether the First Respondent wished to file anything else. Mr Malek acknowledged that, in addition to the First Respondent's witness statement, there were also files numbered 27, 28, 29 and 30 which made up his four volumes of responses in the disciplinary proceedings.

865. Mr Malek submitted that no witness statements could be accepted as evidence in the absence of calling the witness. He referred the Tribunal to the witness statements dated 15 March 2011 and submitted that those statements went to collateral issues but none of the witnesses had been called and were not therefore evidence. In the course of the first three weeks of the substantive hearing in April 2011 further witness statements were filed to which he raised no objection, subject to those persons attending at the Tribunal or via video conferencing to give evidence.

866. Mr Malek submitted that, in September 2011, a third tranche of witness statements were filed from the First Respondent's United States witnesses. Permission had not been sought from or given by the Tribunal for those witness statements to be filed and served out of time, despite hearings having taken place since.

867. Mr Malek submitted that the only exception to that was the First Respondent's own statement and his four volumes of response material.

868. The First Respondent made a further application for adjournment on medical grounds which the Tribunal heard in private on 13 June 2012.

869. The Tribunal refused the First Respondent's application for adjournment. It directed the Applicant to file its schedule of costs within seven days and the First Respondent to file his representations seven days thereafter.

Third Respondent

870. On behalf of the Third Respondent, Mr Atkins referred the Tribunal to his Skeleton Argument dated 13 June 2012.

871. The Third Respondent was sworn into evidence and confirmed the truth of his witness statement dated 13 September 2010.

Cross examination by Mr Malek

872. The Third Respondent confirmed that he was admitted as a solicitor on 1 March 1974. In 2008, the time of the events in question, he considered himself to be an

experienced solicitor, having spent thirty-two years as a public prosecutor including as the Chief Crown Prosecutor for Essex.

873. The Third Respondent thought that the First Respondent was proud to have him as a partner in the firm and he had been held out as such. He believed that the First Respondent wanted the Third Respondent's name on the firm's letterhead to afford the firm credibility. He admitted that there had been some benefit in being held out as a partner in a successful firm. He acknowledged that as a partner of the firm he was also liable for its debts.

874. The Third Respondent said that it was not part of his case that he had not been aware of his duties under the SCC 2007 and the SAR 1998.

875. The Third Respondent had been recommended to the First Respondent by a friend. He was initially employed as a Consultant. In approximately November 2006 he was asked to become a partner. When he asked about the basis upon which he was to become a partner, the First Respondent was hesitant. The Third Respondent asked about profit share and was told by the First Respondent that all profits of the firm belonged to him.

876. The Third Respondent had a consultancy agreement with the First Respondent and he was paid £4,000 per month by the firm. After 1 November 2006 his name appeared on the firm's letterhead but his employment conditions had not altered; he was still paid £4,000 per month. The Third Respondent had agreed to play no part in the running of the business. He had never been consulted by the First Respondent about the appointment of staff, including the Second Respondent who was made a partner on 16 October 2007 in order to represent the firm in the Sinels litigation. The Third Respondent could not go to Jersey and it was correct that the Second Respondent could not represent the firm unless she was a partner.

877. The First Respondent ran the firm, received all of the profits and no-one else had any authority or made any major decisions pertaining to the firm.

878. In relation to the first FI Report dated 11 December 2008, the Third Respondent was aware that the investigators attended at the firm in October 2008 and that they had served notices. He only attended at the firm twice a week (on Tuesdays and Wednesdays) so could not recall the exact date of the inspection. He thought that he was on holiday on 8 October 2008. The Third Respondent told the Tribunal that he had no part in the Judicial Review application and saw no evidence in those proceedings. He knew nothing about it until after the event.

879. Mr Malek referred the Third Respondent to the FI Report dated 11 December 2008 and his interview by Mr Mercer, with the Second Respondent and Ms O' Donnell. The Third Respondent accepted that he had signed the unaudited partnership accounts for the year ended 31 May 2007. The FI Report stated:

> "19. It is understood from the discussions with *Respondent 3*, Ms Turbin and Ms O' Donnell that there was no written partnership agreement. *Respondent 3* signed the unaudited partnership accounts for the year ended 31 May 2007. No other evidence has been seen to substantiate that *Respondent 3* was an equity partner.

20. Mr Mercer telephoned *Respondent 3* on 10 December 2008 to ask him whether he had confirmed his resignation as a partner in writing to the other partners and as to what had been agreed in respect of his equity share. On this occasion, *Respondent 3* said that his equity share was in reality only something like 0.001% and that it was as a result of Dr Mireskandari preferring that he pay his own tax and national insurance contributions rather than being dealt with through the firm's PAYE procedures…".

880. Mr Malek put to the Third Respondent that on 21 November 2008 he told the investigators that he was an equity partner. The Third Respondent accepted that but said that at the time he had not been in receipt of counsel's advice. He told the Tribunal that he was neither equity nor a salaried partner as he had not been employed and he was not, in legal terms, a partner of the firm. He had always accepted that he had been held out as a partner.

881. The Third Respondent accepted that he signed the partnership accounts and referred the Tribunal to his witness statement. He received advice from the accountants and signed the accounts for the year ended 31 May 2007, but had not done so thereafter. He was given assurances that the accounts he was signing were correct and he had signed them in good faith, which Mr Malek accepted.

882. The Third Respondent confirmed that he was on the bank mandate, that he was the Anti-Money Laundering Officer and that he was the complaints handler albeit in name only as he had very rarely dealt with complaints.

883. The Third Respondent accepted that non-payment of counsels' fees brought the profession into disrepute. He was not aware that significant counsels' fees were outstanding and had not seen any complaints concerning that. He acknowledged that Mr Spearman had corresponded with him directly in relation to his complaint. The Third Respondent said that he was away on holiday when Mr Spearman's email of 1 October 2008 was received. If he had known about it at the time he would have left the firm immediately. He was not aware of Mr Spearman's complaint until the inspection had taken place.

884. Mr Malek referred to an article which appeared in the Daily Mail in September 2008. The Third Respondent confirmed that he became aware of the article and its content. He was assured by the First Respondent that allegations that the latter had false qualifications and convictions in the United States were in themselves false. He said that the Second Respondent had told the Tribunal that she had also spoken to the First Respondent and he had denied those allegations outright.

885. The Third Respondent accepted that by calling himself "Dr", this had afforded the First Respondent credibility in the profession. The Third Respondent said that calling himself "Dr" had made little difference to him personally but it had made a tremendous difference to clients of the firm. He agreed that if the Tribunal found the allegation regarding the First Respondent's alleged false qualifications proved, it would have been a deplorable deception.

886. In relation to the hearing on 6 November 2008 when the injunction was set aside, the Third Respondent said that he was not in the office that day but thought he had known about it prior to the investigators returning to the firm on 11 November 2008. He had

not learned of the content of Pitchford J's Judgment until he had left the firm. He accepted that he made no enquiries about the injunction.

887. The Third Respondent resigned on 14 November 2008 when he saw the First and Second Respondents and told them of his decision to leave. Concerns had come to light, including the SAR irregularities, and he had not wanted to be associated with the firm. He agreed that he had been told of the cash shortages by 14 November 2008.

888. In relation to the PII, the Third Respondent agreed that it was very important to protect the public and the firm by having effective indemnity insurance in place. He acknowledged that there existed a duty of the utmost good faith in making a PII application and that if there was a material misrepresentation in an insurance form, the insurance could be set aside.

889. Mr Malek referred the Third Respondent to the PII form signed by him dated 16 September 2008. The Third Respondent acknowledged that the form referred to him as being a "Partner" employed by the practice and the fee income for the past year (31 May 2008) having been £1,326,420 and for the current year (31 May 2009) having been £1,132,233.

890. Mr Malek said that the First Respondent in the Judicial Review proceedings had stated that the firm's fee income/turnover was £5.5 million. Mr Malek submitted that the figures stated in the PII application were completely wrong. The Third Respondent told the Tribunal that he sought an assurance that the figures were correct prior to signing the application; had they not been he would not have signed the form.

891. Mr Malek referred to the declaration on the PII application form which stated, inter alia:

> "19) Declaration
>
> We declare that to the best of our knowledge or belief that the particulars and statements given in this application are true and complete and this application, declaration and information shall be the basis of the contract between ourselves and the insurer."

892. Mr Malek highlighted that the application was signed by the Third Respondent and dated 16 September 2008. The Third Respondent said that the reference to "the best of our knowledge or belief" applied to him as he was given the assurance that the figures were correct. It must have been the bookkeeper, Ms Ahanchi from whom he sought the assurance (and not Mr Cousins who had given evidence that it had not been him).

893. The Third Respondent accepted that it was incumbent on him to make sure that the PII application was correct. He questioned what else he could have done. He relied on information given to him by someone he thought reliable, and he shared an office with Mr Richardson, the firm's financial consultant, who he was sure would have told him if the information was incorrect. He could have refused to sign the form but there had been no-one else in the office to do it. With hindsight, he would not have done anything differently and if assured that the information was correct, he would sign the form again.

894. Mr Malek referred the Third Respondent to the letter dated 15 January 2010 from his solicitors, Jameson & Hill, to Russell-Cooke, which stated:

> "...
>
> - He bitterly regrets allowing his name to go on the firm's notepaper...
>
> ...
>
> - It is abundantly clear that *Respondent 3* is the victim here rather than the perpetrator. In short, he has been used by Dr Mireskandari and feels hugely embarrassed about this. His total lack of previous experience of private practice led him to behave in an uncharacteristically naive way, for which he apologises whole heartedly".

895. The Third Respondent confirmed that the content of the letter from his solicitors was correct.

Re-examination by Mr Atkins

896. Mr Atkins asked the Third Respondent what his understanding of an "equity partner" had been. The Third Respondent said that he thought he would receive some part of the firm but that had never happened and he had no interest in the firm. He had always doubted his status in the firm as there was no Partnership Agreement. He agreed that it was difficult to describe his position to the investigators.

897. In response to a question from the Tribunal, the Third Respondent said that he was described in the Law Society/Applicant's records as a partner of the firm.

898. In response to a further question from the Tribunal, the Third Respondent said that he assumed that the PII form was completed by Ms Ahanchi or by Mr Cousins (albeit that the latter said in his evidence that it was not him). The Third Respondent admitted that he did not look at the previous year's application form and undertook no investigations of his own.

Cross-examination by the Second Respondent

899. In response to a question from the Second Respondent, the Third Respondent said that he had not been asked to sign the accounts to the year ended April 2008. He told the Tribunal that he had not been asked to sign them and knew nothing about them. There were other accounts but he had not signed them, and he had no figures so had to rely on other people providing him with information.

The Second Respondent's Closing Submissions

- She accepted that she was a partner in the firm and that she had had obligations under the SAR and the SCC;

- She admitted allegations 2.1, 2.4, 2.5, 2.6, 2.7 and 2.9;

- The First Respondent had had close control over the firm, including the accounts;

- Mr Cousins in evidence had confirmed that the First Respondent reviewed all post sent out and partners' letters and was fully aware of what happened at the firm;

- With hindsight, she should have seen the Reconciliations and the firm's accounts;

- She had accepted the First Respondent's denial of the allegations against him in the Daily Mail and the Third Respondent had confirmed that;

- She had limited contact with the bookkeeper until 7 November 2008 when the First Respondent had taken his sabbatical and she had never previously had full access to the accounts;

- In relation to allegation 2.8, the £200,000 in relation to G2 had been repaid to the client account;

- In relation to allegation 2.4, the £123,500 in relation to R2 had been repaid;

- In relation to allegation 2.5, she had done all she could to pay the disbursements and most of the cheques had cleared through the client account;

- In relation to allegation 2.7, she had understood that as bills were rendered, there was money which could be transferred to office account and repayment to client account was not required;

- In relation to allegation 2.6, she accepted that she had not been able to determine what had happened and she had failed to ensure the transfers for the anticipated disbursements had not happened;

- She had not had available funds to rectify the breaches;

- In relation to allegation 2.9, she had ensured that a system was adopted which required that a form was completed by the relevant fee earner;

- In relation to allegation 2.10, she accepted that counsels' fees were not paid in a timely fashion but certain of them had been disputed and she had not known of the full extent until November 2008. The First Respondent said he would discharge counsels' fees but had not done so;
- In relation to allegation 2.2, which included dishonesty, her evidence was that all correspondence was sent on the instruction of the First Respondent and he had approved all such documentation.

- She maintained that she had overheard a conversation between the First Respondent and Mr Boardman where money being held to order had been discussed and that Mr Boardman had acknowledged that the First Respondent would have telephone conversations with others in the room;

- In relation to allegation 2.11 she accepted that the transfer of £100,000 was made from client to office account and that the breach was her failure to have given written instructions for the transfer;

- In relation to allegation 2.12, she was assured that the monies were a loan to the First Respondent and that it was the personal money of the First Respondent;

- In relation to allegation 2.13, she accepted that the Sinels costs order had been breached;

- In relation to allegation 2.14, which included dishonesty, she had not had access to the accounts information and had not been in a position to give her opinion as to the firm's finances. She had believed that there were outstanding fees owed to the firm of approximately £1 million and a Judgment of £800,000;

- The First Respondent had given the impression of being wealthy, having had substantial assets and that had not suggested to her serious financial problems for the firm;

- Once RadcliffesLeBrasseur were instructed on her behalf, she left it in their hands, but she accepted that there had not been grounds for the injunction or Judicial Review albeit she had thought at the time there had been;

- She had not sought to conceal matters, including the G2 matter, and she had brought matters to the attention of the investigators as the inspection progressed.

The Third Respondent's Closing Submissions

- The extent of the Third Respondent's role in the firm from 1 November 2006 until 14 November 2008 was that he was held out as a partner on the notepaper and he was a partner and principal for the purposes of the SAR;

- He accepted that he had not been an equity partner and that he was wrong in interview when he said that he had been;

- The nature of his relationship with the firm had not altered after his name was put on the letterhead, including no profit share, no capital investment, no involvement in management decisions and no equity share;

- He had only signed administrative documentation and in the absence of the First Respondent;

- He had been the complaints handler in name only;

- The Third Respondent accepted the breaches of the SAR in allegations 3.1 to 3.6 and 3.8 albeit he had not been in a position to prevent any of the breaches due to his limited role at the firm. He accepted that his liability under Rule 6 was strict;

- The Third Respondent was not aware that any funds had been misappropriated until after he had left the firm;

- The Third Respondent denied that he was liable for any of the SAR breaches as alleged at 3.1 to 3.6 and 3.8 or under any of the provisions of the SCC. SCC Rule 1.01 was not applicable, Rule 1.02 was inadvertently breached, if at all, Rule 1.03 was

not applicable and Rule 1.06 was not breached as the Third Respondent had not conducted himself so as to bring the profession into disrepute;

- The Third Respondent denied having breached Rule 3.01 of the SCC as he had not been a partner for the purposes of the SCC and similarly he denied having breached Rule 10.05 of the SCC;

- The Third Respondent had not known about G2, R2, the "anticipated disbursements", outstanding counsels' fees, the improper retention of monies by the firm or payment of staff salaries from client account. He could not have lacked integrity or damaged trust in the profession when he had had no knowledge and it had not been his job to deal with such matters;

- Rule 7 SAR required that any breach of the SAR "must be remedied promptly upon discovery". The Third Respondent had not discovered any of the breaches at any time before he left the firm;

- The Third Respondent accepted that there was a misrepresentation in the firm's PII application for the year 2008/2009 and that he signed the form. He had only done so after having sought confirmation that the content of the form was correct and he had been assured that it was. There were no breaches of the SCC, including Rule 5.01 which was misconceived as he had not been a partner in the firm;

- The Third Respondent denied that he had been reckless with regard to allegation 3.10. He signed the PII form believing it to be true and he had not been reckless or careless to a high degree.

The Applicant's Closing Submissions

900. Mr Malek referred the Tribunal to his Schedules 1 (the Applicant's allegations against the Respondents dated 18 June 2012) and 2 (the First Respondent's allegations of abuse dated 15 June 2012), upon which he relied in their entirety.

The Tribunal's Findings

901. The Tribunal applied its usual standard of proof, namely "beyond reasonable doubt".

902. The Tribunal had heard evidence from the Second and Third Respondents that the First Respondent had overall control of the firm, including the accounts, and a close relationship with the bookkeeper, Ms Ahanchi.

903. The Tribunal noted that throughout the early part of the proceedings, disclosure had been raised as an issue and this was a recurring theme throughout the First Respondent's defence. As far back as 1 March 2011 a division of the Tribunal had made directions in relation to disclosure which had not been taken up by the First Respondent, even after the directions had been revisited at the hearing on 21 April 2011.

904. The Tribunal began with consideration of the First Respondent's allegations of abuse of process against the Applicant in bringing actions against him arising out of alleged self-interest following the Ouseley Report, namely the investigation, the intervention,

and the disciplinary proceedings. The Respondent's case was that no action could be founded on illegal and immoral conduct, as alleged by him against the Applicant. The Tribunal noted that the First Respondent had also alleged bias in relation to the Tribunal and an application for recusal made in October 2011 had been refused by the Tribunal.

Allegations of Abuse of Process by the First Respondent

905. The Tribunal had regard to the First Respondent's allegations of abuse which had been summarised by the Applicant in its Schedule 2 and took the form of nine heads of complaints. The Tribunal dealt with the First Respondent's abuse of process allegations first in time because it was his case that if those allegations were proved the Tribunal should not proceed to consider the Rule 5 allegations against the three Respondents.

906. The Tribunal noted that the First Respondent's position was that the Applicant's true motivation for pursuing the Respondents had arisen out of self-interest due to the First Respondent's involvement in complaints and concerns about unfair treatment of, or disproportionate intervention into, ethnic minority solicitors' firms. The Tribunal had heard that the First Respondent had been involved with a number of MPs and had been involved in the Ouseley Report. The principal way the First Respondent believed that he was likely to have come onto the Law Society or Applicant's radar was in respect of his profile in connection with this and other race-related matters.

(1) Wrongful service of inspection notices and wrongful intervention.

907. The First Respondent had challenged the inspection notices of 7 and 8 October 2008 by way of an application for Judicial Review on 10 October 2008.

908. The Tribunal heard that the First Respondent had been successful in securing an ex parte injunction from Forbes J, which had been continued by Stadlen J until 6 November 2008 when the matter was heard on notice before Pitchford J who had discharged the injunction. The First Respondent had contended before the Tribunal:

(1) That the Section 44B Notices had been secured in bad faith;

(2) That the Judgment of Pitchford J could not be relied upon unless the evidence before the court was properly and fairly reviewed;

(3) That the Applicant had relied on the Judgment of Pitchford J which they knew had been obtained by fraud and deceit;

(4) That the Applicant had relied on ambush;

(5) Distinguished leading counsel had been deployed against him; and

(6) There was in this case a poisoned atmosphere which had undoubtedly affected some members of the judiciary.

909. The Tribunal noted that the Applicant contended that there had been significant concerns which had arisen and which justified the inspection. These included client complaints, critical court judgments, the uncertain financial position of the firm, the

US convictions of the First Respondent and the First Respondent's educational background.

910. In relation to the Judgment of Pitchford J, the Tribunal found that the sole question had been whether the Applicant had proper grounds upon which to issue the notices it did. Pitchford J had said:

> "I have found nothing in the preparation or execution of the notices which remotely justified a suspicion, let alone an inference that the defendants may have acted for oblique motives. As the Defendants have demonstrated, I am satisfied they were forced to act in response to information from several different sources."

911. The Tribunal had had regard to the Judgments of Pitchford J [6 November 2008] and Henderson J [4 September 2009] regarding the Judicial Review proceedings and intervention challenge, neither of which had been appealed. The Tribunal had also had regard to the Tribunal's Findings in the case of Advani [Case Number 10865-2011] in which the Tribunal had found that it could give determinative weight to prior Judgments against a respondent when having regard to the issues before it.

912. The Tribunal had heard on behalf of the Applicant, on the question of the intervention, that there had been no pre-conceived plan to intervene into the firm at the time of service of the inspection notices on 8 October 2008. The intervention had been sought and ordered in the light of the investigation.

913. The Tribunal acknowledged that the First Respondent had objections to the method and speed at which the decision to intervene had been made.

914. The Tribunal found that, in view of what had been identified as a result of the investigation, expeditious action by the Applicant had been fully justified and no injustice had resulted from it. The Tribunal noted that the merits of the intervention had been subject to detailed consideration by Henderson J and costs had been awarded against the First Respondent on an indemnity basis, as in Pitchford J's Judgment. The Tribunal did not find the First Respondent's complaint substantiated regarding the inspection notices or that the intervention had been wrongful or a sham.

(2) Conspiracy with the Daily Mail in leaking the First Respondent's educational file.

915. The Tribunal heard that the First Respondent alleged that Mr Mayne of the Applicant had leaked information about the First Respondent's educational background. Mr Mayne had given evidence before the Tribunal and had denied the allegation. The Tribunal had found him to have been an experienced investigator and credible witness and his direct evidence to have been entirely credible.

916. The Applicant had denied that it had provided confidential information to the Daily Mail and said the SRA had not provided any educational file; the Daily Mail would have had its own sources. It was also denied that the SRA had leaked the letter from Mr Vaz MP to the Daily Mail and that had been denied by Mr Townsend in his evidence.

917. The Tribunal noted that the First Respondent had also alleged that the firm of Carter-Ruck Solicitors had been inspected by the Applicant as a "fishing expedition" in order

to obtain privileged communications of the First Respondent. The Tribunal was satisfied that Carter-Ruck Solicitors had not been inspected and it found that that allegation was baseless.

918. The Tribunal also noted that the allegation had been dismissed by Pitchford J in the Judicial Review proceedings and the Tribunal attached determinative weight to that. The Tribunal found no credible evidence of conspiracy as alleged by the First Respondent.

(3) The listing of the Judicial Review hearing on 6 November 2008.

919. The First Respondent had complained about the listing of the hearing for Judicial Review in connection with the ex parte injunction which had prevented the inspection of his firm. The Tribunal noted that the First Respondent had specifically complained about the date set for the hearing.

920. Stadlen J had directed that the oral hearing take place on the first open date after 5 November 2008. The matter appeared to have been listed for 20 November 2008 and had then been re-listed for 6 November 2008, which the First Respondent felt had been an attempt to exclude the firm from the listing process. The firm had applied to adjourn the 6 November 2008 hearing but the application had been unsuccessful.

921. The Applicant's submission was that listing had not been a matter for it but for the court and that it had been an urgent matter since the firm, as a result of the injunction, had been the only firm in the United Kingdom which could not be inspected. The Tribunal accepted that as fact.

922. The Tribunal found that, in the light of the ex parte injunction obtained by the First Respondent, the office of the Administrative Court had acted with commendable speed in listing the return date hearing for 6 November 2008 and not 20 November 2008.

(4) Blackmail attempt by Mr R Spearman QC.

923. The Tribunal had heard various allegations by the First Respondent against Mr Spearman; that he had conspired to scupper the Judicial Review, that he had attempted to blackmail the First Respondent into paying his fees and that he had made a false complaint against the firm.

924. The Tribunal had heard evidence from Mr Spearman QC over two days and found it to have been perfectly reasonable for leading counsel to refer a complaint to the First Respondent's regulator without facing allegations of blackmail or false complaint. Mr Spearman had denied such allegations and the Tribunal found him to have been a credible witness and entirely trustworthy.

925. The Tribunal also heard that the First Respondent had alleged that Mr Kaplan, Mr Spearman's clerk, had conspired with Mr Malek QC to delay and scupper the Judicial Review in the client matter of R. He had alleged tactical delays to prevent the listing of the firm's application for permission for Judicial Review. The First Respondent had submitted that Mr Kaplan knew of the Applicant's intention to intervene into the firm and so he had failed to arrange the hearing. The Tribunal did not accept or find proved that counsel's clerk had intended to scupper the Judicial Review.

926. The Tribunal did not find proved the allegations of the First Respondent against Mr Spearman QC.

(5) Improper conduct of investigations in the US.

927. Mr Mayne had given evidence before the Tribunal and the Tribunal had already found him to be an experienced investigator and credible witness. It also found that there had been no evidence to support the First Respondent's allegations of Mr Mayne putting pressure on witnesses, or procuring false statements or of offering payments and bribes for information about the First Respondent.

928. The Tribunal found that the witness evidence/statements for the First Respondent had been filed out of time in September 2011 without consent in relation to this particular allegation by the First Respondent. The Tribunal had therefore attached no weight to it/them, having read the statements.

929. The Tribunal did not find the allegation to have been made out.

(6) Improper pressure put on Mr Beatty.

930. The First Respondent alleged that the Applicant had sought to persuade Mr Beatty to change his evidence. The Tribunal noted that Mr Carter's evidence of 31 March 2011 had confirmed his attendance on Mr Beatty on several occasions. On 8 July 2009 Mr Carter had said that Mr Beatty's demeanour and attitude had changed towards him and he had inferred that the Applicant had told Mr Beatty not to cooperate with the First Respondent. The Tribunal had attached little weight to Mr Carter's evidence since it had not been tested and he had not attended to give evidence in person.

931. Mr and Mrs Beatty denied in their respective witness statements that pressure had been put upon them in that way by the Applicant and Mr Beatty gave oral evidence to the Tribunal to that effect which it accepted.

932. The Tribunal did not endorse that inference and did not find that that there had been any improper pressure put upon Mr Beatty by the Applicant or its agents.

(7) Advising or cajoling a former client of Dean & Dean, namely Client R, not to pay his bills.

933. The First Respondent alleged that Client R had refused to pay his bills to the firm as a result of advice from the Applicant not to do so. The Tribunal found that there was no credible evidence to support that assertion. The Tribunal felt that it was important to note that the dispute between Client R and the First Respondent had begun some three years earlier, i.e. in 2005. The view of the Tribunal was that it was of no surprise that Client R was continuing to hold that position into 2008.

934. The Tribunal had regard to the witness statements of Ms Rahbari and Mr Livingstone and considered that even if the statements had accurately reported statements of Client R, there had been no credible evidence to support the assertion by the First Respondent of the Applicant having advised or cajoled Client R not to pay the firm's bills. The Tribunal did not find that to have occurred.

(8) Bad faith by Mr D. Middleton and/or Mr A. Townsend of the Applicant.

935. The First Respondent asserted that the firm had become the most famous ethnic minority law firm in England with a range of high calibre clients.

936. The Tribunal noted that the First Respondent had alleged that the intervention had been a deliberate and dishonest act of discrimination and victimisation; that there was a history of victimisation and direct discrimination by the Applicant; that the Applicant had spent an extraordinary and disproportionate amount of money in trying to find anything to damage the First Respondent, including sending investigators to Hawaii, Los Angeles, Washington and Pennsylvania; that the Applicant had intentionally misled the courts in the UK and the USA; that the Applicant had made statements to witnesses such that the First Respondent was in prison, that the First Respondent had bribed Judges and that he was under criminal investigation and a terrorist.

937. The First Respondent also alleged that, prior to intervention, there had been a campaign by the Applicant to damage the firm and the First Respondent personally; that the Applicant had improperly investigated issues which were seven to eight years old; that Mr Middleton had described the Tribunal as a "rubber stamp" for the Applicant; that the intervention had been designed to frustrate an Employment Tribunal hearing of 21 January 2009 and that various judgments had been procured by fraud or mistake or misrepresentation by the Applicant.

938. The Tribunal heard that the allegations against senior officers were denied by the Applicant and the allegations had been put to the Applicant's key witnesses in evidence and had been denied. The Applicant maintained that it had carried out its regulatory duties in good faith and for proper reasons. In giving evidence, the Tribunal found Mr Townsend to have been clear and forthright. He had answered with clarity and had confirmed the fact that the First Respondent was an Iranian Muslim had been irrelevant and the current proceedings had not been brought because the First Respondent had criticised the Law Society/the Applicant for alleged racial discrimination. The Tribunal was satisfied that the inspection and intervention had been carried out in the public interest on the basis of the evidence available.

939. On the evidence heard by the Tribunal from those witnesses [Mr Middleton and Mr Townsend], the Tribunal was satisfied that the actions of both Mr Townsend and Mr Middleton had not been motivated by bad faith and that the Applicant had carried out the inspection and intervention in the public interest. The Tribunal commented that it was unusual for it to hear evidence from the Chief Executive of the Applicant, who had also been subjected to cross-examination by the First Respondent. The evidence of Mr Middleton, the Legal Director at the SRA, had been given in the absence of the First Respondent, and he had vehemently denied having been a party to any alleged "conspiracy".

940. The Tribunal heard that the "rubber stamp" comments had been obtained by Mr Baxendale-Walker who had misrepresented himself to the Applicant and to Mr Isaacs of the Tribunal. Whilst Mr Baxendale-Walker denied that tapes of the relevant conversations had been doctored, his counsel had not ultimately relied upon them. The Tribunal heard that Supperstone J had struck out the proceedings.

941. The Tribunal heard that the First Respondent was of the view that the Applicant could only consider complaints of less than six months old. The Tribunal was satisfied that the inspection letter to the firm dated 8 October 2008 made it clear that the Applicant would consider complaints going back six years from the date of the inspection letter, and not six months as alleged by the First Respondent.

942. The Tribunal found that there was no evidential basis for the First Respondent's assertion of bad faith on the part of Mr Middleton or Mr Townsend and so rejected this allegation.

(9) The failure to provide early disclosure of the First Respondent's education file and the alleged misleading of Pitchford J as to the First Respondent's academic credentials.

943. The First Respondent had requested advance disclosure of his educational file from the Applicant following queries about his academic qualifications. The Tribunal heard that the Applicant had taken the view that the First Respondent could answer questions about his own academic qualifications without having advance disclosure and the Tribunal was satisfied that had to be correct. That view had been endorsed by Slade J on 5 November 2008. The principal documents from the file had already been disclosed with a letter from the Applicant dated 3 October 2008 and the full file had been released to the First Respondent on 14 February 2011.

944. The Tribunal found that Pitchford J had not been misled by the Applicant. In her Judgment dated 5 November 2008, Slade J had confirmed that amongst documents before the court were an early warning (EWW) letter dated 3 October 2008, RadcliffesLeBrasseur's response of 27 October 2008 and the First Respondent's own response to the Rule 5 Statement.

945. The Tribunal did not find proved that the Applicant had failed to provide proper disclosure of the First Respondent's educational file or that Pitchford J had been misled by the Applicant as to the First Respondent's academic credentials.

Tribunal's Findings on allegation of abuse of process

946. The Tribunal had reviewed all of the allegations of the First Respondent against the Applicant, by which he maintained that they demonstrated an abuse of process by the Applicant in pursuing matters against him and maintained that if such abuse of process was accepted by the Tribunal, then that would be the end of the matter with no need to proceed any further with the substantive allegations against the three Respondents.

947. The Tribunal had given lengthy and serious consideration to all of the allegations/complaints made but, in the light of all of the circumstances of the case and all of the evidence it had both seen and heard, the Tribunal concluded that there had not been an abuse of process by the Applicant. The Tribunal commented that, when asked about the intervention during her evidence, the Second Respondent had said:

> "In the light of what I know now, the intervention was not racially motivated."

948. In reaching its conclusion, the Tribunal had given determinative weight to the Judgment of Henderson J, who had found very strong prima facie grounds to suspect

the First Respondent of dishonesty when the first intervention notice had been served. Notwithstanding Henderson J's comments, the Tribunal found that there had been no abuse of process in bringing the matter before it and it stated that the substantive issues now had to be adjudicated upon.

Tribunal's Findings on the substantive allegations

949. For ease of reference, the Tribunal, in giving its findings on the allegations against the three Respondents, set out the relevant Rules of the SPR 1990, SCC 2007 and SAR 1998, which Rules could be found through a link referred to on the Tribunal's website.

950. Dealing with the First Respondent, the Tribunal acknowledged that whilst the First Respondent might have admitted some of the facts within some of the allegations that fell short of an admission of any wrongdoing. In his absence from the second half of the hearing 28 May – 1 June 2012 and 11 June – 21 June 2012 the Tribunal treated the allegations against the First Respondent as denied in their entirety.

951. In determining the case, the Tribunal stated that it had not been influenced by the First Respondent's repeated attempts to halt the proceedings by making various applications including those for adjournment and Judicial Review. The Tribunal acknowledged that the First Respondent had exercised those rights, as he was entitled to do.

952. The Tribunal noted that allegations of dishonesty had been made against both the First and Second Respondents. Where dishonesty was alleged, the Tribunal had applied the test in Twinsectra v Yardley [2002] UKHL 12 having regard to the comments of Lord Hutton as to the test to be applied:

> "…before there can be a finding of dishonesty it must 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" (per para. 27) ; and
>
> "…dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people although he should not escape a finding of dishonesty because he set his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standard of honest conduct" (per para. 36).

953. The Tribunal noted that the First Respondent had had the opportunity of cross-examining all of the Applicant's witnesses with the exception of Mr Middleton, Ms Georgiou and Mr Boardman.

First Respondent

954. **Allegation 1.1: In breach of Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) of the Solicitors' Accounts Rules 1998 ("SAR") and the Solicitors' Code of Conduct 2007 ("SCC") Rules 1.02, 1.04 and 1.06, he transferred (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the office account of Dean & Dean ("the firm") in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G**

[Client G2], and/or despite being a principal failed to ensure that the firm did not act as aforesaid.

Dishonesty was alleged in relation to 1.1.

954.1 The Tribunal found breaches of Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR but did not find a breach of Rule 19 of the SAR. The First Respondent had denied any breach of the SAR but had admitted that the sum of £200,000 had been transferred from client account to office account.

954.2 The Tribunal was satisfied that the £200,000 bail money of Client G2 had been transferred from client account to office account and had been used for the firm's purposes; a number of transfers had been identified between 26 October 2007 and 23 November 2007 from the client account to the firm's office account, which had reduced the balance on G2's client account to nil.

954.3 The £200,000 had not been required for any purpose other than to be held to the order of the court as a condition of bail granted to G2. The First Respondent had not been entitled to appropriate that sum for the firm's own costs and disbursements, even had it been owed to the firm and the Tribunal was satisfied that the bookkeeper Ms Ahanchi had acted on the instructions of the First Respondent in making the transfers.

954.4 The Tribunal found breaches of Rules 1.02, 1.04 and 1.06 of the SCC; the Tribunal found that the First Respondent had not acted with integrity by having utilised the court bail money, he had failed to act in the best interests of his client, G2, in using the funds and by his conduct, he would have undermined the public's confidence and the trust of the public by acting in the way in which he had in relation to the £200,000. The Tribunal found allegation 1.1 proved.

954.5 The Tribunal also found that the First Respondent had been dishonest by his conduct, by making withdrawals from G2's client account over a period of time. The Tribunal was satisfied that he had realised it was wrong by the ordinary standards of reasonable and honest people because he had needed the money to prop up the practice as the office account had reached its overdraft limit. The First Respondent had held off re-payment of the £200,000 until he had had no choice and had then taken a loan from Weybridging Limited to replace the funds; £250,000 had been credited to office account on 3 April 2008 and £200,000 from that had been used to fund the repayment of G2's bail money on 17 April 2008. The Tribunal was satisfied that this demonstrated the First Respondent's knowledge that he should not have withdrawn the funds in the first place and by his conduct, the objective and subjective tests had been met.

955. **Allegation 1.2: In breach of SCC Rules 1.01, 1.02 and 1.06, he gave a false impression to the court and/or another solicitor (in a telephone conversation and in correspondence) that the firm retained the £200,000 which was to be held to the order of the court, at times when it had been paid away, and/or failed to correct the aforesaid false impressions given to the court and/or another solicitor.**

Dishonesty was alleged in relation to 1.2.

955.1 The Tribunal found Rules 1.01, 1.02 and 1.06 to have been breached.

955.2 The Tribunal found that the First Respondent had given a false impression to the court and to Mr Boardman that the firm had retained the £200,000 when it had been paid away and that had not been corrected by the First Respondent. It did not accept that there had been a misunderstanding and/or a mistake as had been suggested by the First Respondent.

955.3 Mr Boardman had given evidence to the Tribunal and had been cross-examined by the Second Respondent. Mr Boardman had stated in evidence that the First Respondent had resisted releasing the G2 funds to him. The First Respondent had maintained that Mr Boardman had said in a telephone conversation on 24 January 2008 that he could retain the money. The Tribunal preferred and accepted Mr Boardman's account that he had not agreed to the retention of the monies by the firm.

955.4 The Tribunal found allegation 1.2 proved.

955.5 The Tribunal considered that the First Respondent had acted dishonestly on the Twinsectra objective and subjective tests and it considered that this was a very serious matter regarding the giving of a false impression to the court and to another solicitor by the First Respondent.

956. **Allegation 1.3: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, he misused client monies held by the firm (on behalf of Mr R) [Client R2] in a designated deposit account by transferring the same to the office account, and/or despite being a principal failed to ensure that the firm did not act as aforesaid**

Dishonesty was alleged in relation to 1.3.

956.1 The First Respondent denied having authorised the debits which totalled £123,500, out of Mr R's designated deposit client account but the Tribunal noted that the First Respondent had accepted that the transfers might have been made in breach of the SAR. The Tribunal agreed with the First Respondent that there had been a breach.

956.2 The First Respondent said that the Royal Bank of Canada had consented to the withdrawal. Ms Georgiou had given evidence that was untrue and her evidence had been entirely credible. The First Respondent had also asserted that the client had authorised the release but Ms Georgiou's evidence had been that the client had no authority to do so as the undertaking had been held to her firm's order.

956.3 The Tribunal was satisfied that the First Respondent had been a partner and principal of the firm when this had occurred in June/July 2008 and so he was liable for the breach of undertaking. The designated deposit client account had shown the monies coming in on 4 July 2008 and there had then been four debits between 8 and 14 July 2008. On 15 July 2008 there had been a credit to the account which had read "Office return of loan" and those words had also appeared on 31 July 2008. It was evident that the transfers would have relieved pressure on the office account which had been significantly overdrawn as at 14 July 2008 and without the £123,500, would have exceeded the overdraft facility of £225,000 considerably.

956.4 The Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached and Rule 23 as there had been no procedure in the firm at the relevant time

requiring the withdrawal to be signed by a solicitor. It did not find Rule 19 of the SAR to have been breached.

956.5 The Tribunal found Rules 1.01, 1.02, 1.04 and 1.06 of the SCC to have been breached. In relation to Rule 10.05 of the SCC regarding undertakings, the Tribunal found that to have been breached as an undertaking given in the course of practice.

956.6 The Tribunal found that in breach of a court order and an undertaking to the Royal Bank of Canada, the First Respondent had misused client monies held on behalf of Client R and it found allegation 1.3 proved.

956.7 The Tribunal was satisfied that the First Respondent had known of the existence of the undertaking and that to take monies subject to an undertaking and embargoed in that way had to be wrong. He knew that he should not have withdrawn the designated client monies held to pay the client's mortgage and which had been subject to an undertaking to Ms Georgiou's firm. The Tribunal found him to have been dishonest in relation to allegation 1.3 on the objective and subjective limbs of the combined test in Twinsectra.

957**. Allegation 1.4: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, he improperly retained client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements and/or despite being a principal failed to ensure that the firm did not act as aforesaid**

Dishonesty was alleged in relation to 1.4.

957.1 The Tribunal noted that the First Respondent had contended that he had instructions from some clients to withhold counsels' fees as some had been disputed but no evidence of that had been seen or produced. A number of cheques had been written out but not sent to counsel and were found to have been held back during the investigation. Specifically, a schedule of held back cheques had been produced showing cheques valued at £28,545 as at November 2008. A second later schedule produced another £4,000.

957.2 The Tribunal heard that schedules had also regularly been produced for the First Respondent by the bookkeeper to keep track of client funds where cheques had not been paid out and the Tribunal was satisfied that the First Respondent had been fully aware of that.

957.3 The Tribunal was satisfied that monies had been transferred from client account to office account allegedly in respect of professional disbursements and cheques had then been drawn on the office account but had not been sent out and therefore had not been presented for payment.

957.4 The Tribunal found Rules 1(a), 1(c) and 6 of the SAR had been breached. Unless the cheques were sent out, client money was being placed into the firm which belonged to clients or other professionals and the First Respondent did not keep it separate from the firm but used it to fund the firm.

957.5 The Tribunal found Rule 15 of the SAR to have been breached. Client money had been removed from client account yet certain of the sums were allegedly disputed professional fees. The money should have remained in client account or the cheques should have been sent out. If the amounts were disputed the Tribunal found that the question remained why the cheques had been drawn at all.

957.6 The Tribunal found Rule 19 to have been breached because the First Respondent had failed by the end of the second working day following receipt to have paid the unpaid professional disbursements and Rule 22(1) was found to have been breached because the monies had not been properly required.

957.7 The Tribunal found Rules 1.02, 1.04 and 1.06 of the SCC to have been breached. The Tribunal found allegation 1.4 proved.

957.8 The Tribunal was satisfied that the First Respondent had known what he was doing and that he had deliberately instructed the withholding of cheques so that the firm could make use of the funds to ease the pressure on the office account overdraft. The Tribunal found that he had known by the ordinary standards of reasonable and honest people that his conduct had been dishonest. The Tribunal found him to have been dishonest in relation to allegation 1.4 on the objective and subjective limbs of the combined test.

958. **Allegation 1.5: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01, he transferred monies from client account for "anticipated disbursements" in respect of two clients (D and Q), and/or despite being a principal failed to ensure that the firm did not act as aforesaid.**

Dishonesty was alleged in relation to 1.5.

958.1 The First Respondent had denied a breach and had said in the Client D matter that it involved a fixed fee agreement. As for Client Q, the Tribunal noted that the First Respondent said that she had consented to the transfer and she had filed a witness statement in the proceedings in support of that.

958.2 The First Respondent alleged that Mr Cousins, the office manager, had overseen the accounts and had given the instructions for use of the words "anticipated disbursements". Mr Cousins, in giving evidence, denied any meaningful involvement in the firm's internal accounting function and said that the First Respondent had been in close control of the accounts.

958.3 The Tribunal rejected the assertion that in relation to Client D there had been a fixed fee arrangement as such an arrangement required a written agreement and none had been seen or produced. The Tribunal found that it was unclear whether any work had actually been done for Client D by the First Respondent/the firm. There was no evidence to show that any disbursements in the relevant amounts had been incurred. An "anticipated disbursement" was money received for disbursements anticipated but not yet incurred and a payment on account, so it was therefore client money. The payment received from Client D had not been treated as a fixed fee in the accounting records of the practice.

958.4 The Tribunal found Rules 1(a) and 1(c) of the SAR to have been breached as the First

Respondent had taken the money of Client D and Client Q and the monies had been used for his own purposes. Rule 6 of the SAR had been breached because as a principal of the firm the First Respondent had failed to ensure compliance with the SAR and Rule 15 had been breached because money had been taken out of client account as an anticipated disbursement when no disbursement had been incurred.

958.5 The Tribunal found Rule 19 of the SAR to have been breached as a payment on account of costs was client money and the £40,000 was money on account of immigration work. Rule 22(1) of the SAR was found to have been breached because an anticipated disbursement was not "properly required"; borrowing from a client without proper authority in writing, when such a transaction was not for the convenience of the client, the Tribunal found most certainly to have been a breach.

958.6 The Tribunal found Rules 1.02, 1.04 and 1.06 of the SCC to have been breached; the money had been paid on account and spent before any work had been undertaken. The Tribunal also found Rule 3.01 of the SCC to have been breached in relation to conflict of interest regarding Client Q. Client Q, although stating she had approved the transfer from client account, the Tribunal found that there had been no contemporaneous record of that; to utilise a client's money had to be subject to the client seeking independent legal advice. Even on Client Q's own evidence the Tribunal noted that she had not taken independent legal advice nor had she been advised to do so.

958.7 The Tribunal found allegation 1.5 proved.

958.8 The Tribunal found that in relation to the First Respondent, he knew that he had not sought either of the clients' authority to transfer the monies and he knew that he had not carried out any work. The Tribunal was satisfied that the First Respondent knew that he had not incurred any disbursements and it had therefore been wrong to transfer money from client to office account and that had plainly been dishonest on the part of the First Respondent on the objective and subjective tests.

959. **Allegation 1.6: In breach of SCC Rules 1.01, 1.02, 1.03, 1.04, 1.06 and/or 3.01, he procured a letter dated 17 May 2009 from Client D on the basis of false representations as to his intention to repay a particular sum (which was not then paid) and/or following the exertion of "pressure" on Client D.**

Dishonesty was alleged in relation to 1.6.

959.1 The Tribunal heard from Client D that he had made a formal complaint to the LCS to recover the £40,000 he had paid on account to Dean & Dean. Client D had given evidence to the Tribunal that he had then been pressured by the First Respondent to withdraw the complaint.

959.2 The Tribunal found that Client D had been pressured by the First Respondent into signing a letter to the LCS which purported to withdraw his complaint. That letter had been dated 17 May 2009 and the Tribunal accepted that it had been signed by Client D on the basis of representations made to him by the First Respondent that the £40,000 would be returned to the client. Client D had then written to the LCS again on 13 July 2009 to say that he had been tricked by the First Respondent into signing the letter of 17 May 2009. The £40,000 had never been repaid to the client.

959.3 The First Respondent had denied that he had pressured or sought to exert pressure on Client D or his father to withdraw the complaint but the Tribunal accepted the Applicant's case that the First Respondent had failed to provide any account as to how he had otherwise secured the letter of 17 May 2009 from Client D.

959.4 The Tribunal found Rules 1.01, 1.02, 1.04 and 1.06 of the SCC to have been breached. The Tribunal did not find Rule 1.03 to have been breached as the allegation was pleaded. The Tribunal found Rule 3.01 of the SCC to have been breached as to conflict of interest in that the First Respondent's interests had conflicted with that of his client, Client D, as the First Respondent had pressured Client D to do something for his [the First Respondent's] own interests.

959.5 The Tribunal found allegation 1.6 proved.

959.6 The Tribunal found that the conduct of the First Respondent and breaches of the relevant Rules including breaches of the core duties demonstrated serious dishonesty on the part of the First Respondent, particularly the false representations he had made regarding re-payment of the money to Client D if he withdrew the complaint which, as stated, had not been repaid to date. The Tribunal was particularly concerned by that. The Tribunal found that the First Respondent had been dishonest by the ordinary standards of reasonable and honest people and that he knew, by his conduct, that he had been dishonest.

959.7 The Tribunal noted further that the Adjudicator's finding on 26 October 2009 was that the First Respondent had failed to take action regarding Client D's visa applications and he had been ordered to pay £1,500 compensation which had never been paid. The Tribunal noted that the First Respondent had suggested that the client claim the money back from the Compensation Fund which suggested, and which the Tribunal accepted, confirmed the First Respondent knew he was culpable.

960. **Allegation 1.7: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04 and 1.06 he paid staff salaries direct from client account in October and November 2008 and/or despite being the principal failed to ensure that the firm did not act as aforesaid.**

Dishonesty was alleged in relation to 1.7

960.1 The Tribunal heard that the First Respondent denied that he had authorised the payment of staff salaries out of client account and that he had only become aware of it after going on sabbatical on 6 November 2008. The Tribunal found that even if that were true, the First Respondent had been a partner and principal at the relevant time. The First Respondent had admitted a technical breach but had denied any client account cash shortage. The First Respondent had also referred again to Mr Cousins having been in charge of the accounts but the Tribunal did not accept that and accepted Mr Cousins' evidence that he had not been nor had he ever been a partner/principal of the firm.

960.2 The Tribunal heard that the September salaries had been paid on 2 October 2008 when the office account had been overdrawn by £502,362.68 against a facility of £475,000. The salaries had been paid directly from client account in the sum of £20,574.07.

960.3 On 3 November 2008, the salaries had been paid directly from client account again, in the sum of £27,262.97 when at the same time the office account had been overdrawn by £489,487.21 with the overdraft facility remaining at £475,000.

960.4 It was clear from the documentation produced to the Tribunal that the monies had been taken from individual client ledgers. As a result, the Tribunal did not accept the First Respondent's contentions that there had been no cash shortages on client accounts. The Tribunal also noted that in his Judgment dated 4 September 2009, Henderson J had found that this money, improperly withdrawn, had never been replaced. Moreover, the Tribunal noted that there had been no system of signed written authority for the payments to be made.

960.5 The First Respondent had relied upon the Daily Mail articles and his allegations that the Applicant had advised clients not to pay their bills, in order to explain why funding into the firm's office account had been restricted. The Tribunal rejected the argument that the Applicant had advised clients not to pay their bills as there was no evidential basis for that. The Tribunal also rejected the First Respondent's assertion that it was a technical breach only. The Tribunal found that the monies had been withdrawn from the client account to prop up the business of the firm.

960.6 The Tribunal found Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 of the SAR to have been breached and Rules 1.02, 1.04 and 1.06 of the SCC to have been breached.

960.7 The Tribunal found allegation 1.7 proved.

960.8 The Tribunal found that using client money to pay staff salaries was improper. The First Respondent had admitted a technical breach. He knew that he was drawing from client account in circumstances not permitted by his professional rules. The Tribunal found that the systemic failure was the responsibility of the First Respondent and that without doubt he had authorised the particular payments out of client account.

960.9 The Tribunal found that the First Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people in paying staff salaries from client account and he knew by those standards that his conduct was dishonest. The Tribunal found the First Respondent to have been dishonest in relation to allegation 1.7.

961. **Allegation 1.8: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.01, 102, 1.03, 1.04 and 1.06, he removed from client account the sum of £60,947.54 purportedly in respect of negotiations relating to disputed Counsel's fees but without any legitimate basis for so doing and/or despite being a principal failed to ensure that the firm did not act as aforesaid.**

Dishonesty was alleged in relation to 1.8.

961.1 The First Respondent contended that the client had instructed the firm not to pay the fees of Mr Hill-Smith of counsel. He asserted that the advice from Mr Hill-Smith had been totally misconceived, so the First Respondent had instructed Mr Simon Monty QC, who had given contrary advice. On that basis the First Respondent contended that the client had instructed him not to pay Mr Hill-Smith.

961.2 The allegation was that the First Respondent had removed from client account the sum of £60,947.54 in respect of negotiations relating to counsel's disputed fees, without a legitimate basis for having done so.

961.3 The Tribunal found that there had been a meeting with Mr Hill-Smith of counsel seeking a reduction in fees, but in the end nothing had finally been agreed. On 25 July 2007 the firm had issued a bill of costs for £60,947.54 as the firm's charges in respect of the disputed fees of Mr Hill-Smith, which had not been reduced, and to whom nothing had been paid and no reduction agreed. That sum had been credited from the client to the office account on 27 July 2007.

961.4 The Tribunal had heard evidence from Mr Hill-Smith, who had been cross-examined and re-examined and it had found him to have been a credible witness and experienced counsel. In cross-examination the First Respondent had accused Mr Hill-Smith of having given dishonest evidence and of having intentionally lied, but the Tribunal found these to have been unfounded allegations and no evidence had been produced by the First Respondent.

961.5 Mr Hill-Smith had confirmed in his evidence that he had secured judgment against the First Respondent/the firm in the sum of £101,492.31 and costs of £20,000 as at 23 January 2009 in relation to his unpaid fees. This judgment remained unpaid and it had not been appealed or struck out.

961.6 The Tribunal was satisfied that no significant work had been done in negotiating a reduction of Mr Hill-Smith's fees and certainly nothing approaching £60,947.54. The Tribunal found that this had been a device for making withdrawals from client account to office account of monies properly due to others and there had been no reduction in counsel's fees which the First Respondent was said to have been negotiating.

961.7 The Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. Rule 19 was not found to have been breached in the alternative. Rules 1.01, 1.02, 1.04 and 1.06 were found to have been breached. Rule 1.03 of the SCC was not found to have been breached as the allegation was pleaded.

961.8 The Tribunal found allegation 1.8 proved.

961.9 The Tribunal found that the First Respondent knew that he was doing wrong in the act of taking the money out of client account when he had not done the work to that value and that by the ordinary standards of reasonable and honest people his conduct was dishonest.

962. **Allegation 1.9: In breach of SAR Rule 7, he failed to remedy, properly or at all, the resulting cash shortages described at allegations 1.1, 1.3, 1.4, 1.5, 1.7, and 1.8.**

Dishonesty was alleged in relation to 1.9.

962.1 The Tribunal had regard to Rule 7 of the SAR in relation to allegation 1.9. It required that:

> "Any breach of the rules must be remedied promptly upon discovery and principals are expected to do so from their own resources."

962.2 It had been submitted on behalf of the Applicant that to the extent that the cash shortages had been remedied, if at all, they had not been remedied promptly upon discovery which was the duty of the partners.

962.3 The Tribunal noted that the First Respondent had remedied the cash shortages in two of the instances; one was in relation to the matter of G2, because he had sought the loan of £250,000 from Weybridging Limited to cover the bail money and in the case of Mr R he had replaced the £123,500. The remedy however had not been prompt and, in all other cases, the Tribunal found that the First Respondent had failed to remedy the cash shortage at all.

962.4 The Tribunal had already found dishonesty in relation to the G2 and R2 matters and also in the remaining cases where the cash shortages had never been replaced. The Tribunal found allegation 1.9 proved and dishonesty found on the part of the First Respondent on the basis that by the standards of reasonable and honest people he knew that his conduct was dishonest.

963. **Allegation 1.10: As a principal of the firm, pursuant to SAR Rule 6 he was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account).**

963.1 The office manual stated that verbal instructions would not be accepted in accounting matters and that payments out of client account could only be authorised by the First Respondent. The First Respondent had denied the allegation of systemic failure on the basis that the firm's internal procedure required that all bills had to be signed by a partner and thereby a solicitor and his position had been that that was the authority.

963.2 The Tribunal did not accept that the signing of bills as described by the First Respondent was Rule 23 compliant. By his own submission, the First Respondent had been in breach of his own office manual and the Tribunal noted that there were other transfers which had been made without any written authorisation; the G2 and R2 matters, the payment of the staff salaries from client account, the £100,000 Client G3 monies and the book keeper, Ms Ahanchi who had effected transfers using bank codes without any written authority on a regular basis.

963.3 The Tribunal found that, as the principal of the firm, the First Respondent had been responsible for the systemic failure, contrary to Rule 23 of the SAR.

963.4 The Tribunal found allegation 1.10 proved.

964. **Allegation 1.11: In breach of the Solicitors' Practice Rules 1990 ("SPR") Rules 1(a), 1(c) and 1(d), he (a) participated in an improper scheme to create reconstructed photographs of the injuries of a former client (Client V) and to release them to the media and the Home Secretary as genuine photographs of her injuries and (b) falsely informed Ms Riley (a public relations consultant) that the photographs he gave her were police photographs when he knew they were reconstructions.**

Dishonesty was alleged in relation to 1.11.

964.1 It was alleged that the First Respondent had participated in an improper scheme to create reconstructed photographs of injuries of a former client, Client V, and he had

falsely informed Ms Melanie Riley, a public relations consultant, that the photographs he had given her were the original police photographs.

964.2 The Tribunal noted that the First Respondent had denied that he had entered an improper scheme to create reconstructed photos and that the client, Client V, had arranged it on the advice of Ms Riley. At all times the First Respondent said that Ms Riley had known the photographs were reconstructed.

964.3 Client V had given evidence before the Tribunal and confirmed that the First Respondent had been present during the reconstruction. That evidence had been supported by the evidence of Ms Lorna Rhodes, the make-up artist who had also given oral evidence. The Applicant contended that the letter to the Home Secretary had been misleading, in that the First Respondent had represented that the photographs were originals. The Tribunal agreed with the Applicant's contention.

964.4 During cross-examination the First Respondent had failed to challenge key parts of Ms Riley's evidence, which included that the First Respondent had prepared the letter to the Home Secretary and that he had said he had the real police photographs. Ms Riley had told the court that the First Respondent had told her that the photographs had been obtained from the police photographer. She said that he had become agitated when he had been asked to sign the photos off as originals. The Tribunal found Ms Riley to have been a very lucid witness who had stood her ground.

964.5 The Second Respondent's evidence before the Tribunal had been that she had pointed out to the First Respondent in an email dated 29 December 2006 that the letter to the Home Secretary had been misleading.

964.6 The Tribunal found Rules 1(a), 1(c) and 1(d) of the SPR to have been breached, namely integrity, best interests of clients and the good repute of solicitors and the profession.

964.7 The Tribunal found allegation 1.11 proved.

964.8 The Tribunal found by the First Respondent's conduct in having participated in an improper scheme to create reconstructed photographs of injuries of his former client, Client V, and by his having falsely informed Ms Riley that the photographs he had given her were the police photographs, he had conducted himself dishonestly by the objective and subjective tests.

965. **Allegation 1.12: In breach of SPR Rules 1(a), 1(c), 1(d) and 1(f), he made a witness statement, in proceedings brought by Ms Riley's firm relating to the matters at allegation 1.11, in which he gave untrue evidence to the effect that (i) the idea to secure reconstructions was Ms Riley's and that he had had little involvement therein and (ii) "Ms Riley at all times knew how the photographs had been produced".**

Dishonesty was alleged in relation to 1.12.

965.1 The Tribunal heard that the First Respondent had provided a witness statement in proceedings brought by Ms Riley's firm in which he had given untrue evidence. The Applicant asserted that, following on from the previous allegation, the content of the witness statement by the First Respondent had been untrue.

965.2 The First Respondent had denied the allegation. It was his case that it had not been his idea to pass the photographs off as genuine and that he had not been present during the reconstruction of the photographs.

965.3 Three witnesses had appeared before the Tribunal, namely Client V, Ms Riley and Ms Rhodes, all of whom the Tribunal found had given straightforward, credible evidence that the First Respondent had been present whilst the reconstruction had taken place and the photographs had been taken.

965.4 The Tribunal had found that the First Respondent had participated in an improper scheme and that he had falsely informed Melanie Riley that the photographs were genuine as to allegation 1.11 and that he had filed an untrue statement within the county court proceedings in that case as to allegation 1.12. The Tribunal gave determinative weight to the Judgment dated 4 September 2009 of Henderson J, wherein he had stated that the First Respondent's witness statement made on 29 June 2009 had been "deplorable".

965.5 The Tribunal found Rules 1(a), 1(c), 1(d) and 1(f) of the SPR to have been breached and the Tribunal found allegation 1.12 proved.

965.6 The Tribunal found that misleading the Home Secretary and stating untruths in a witness statement before the county court were without a doubt dishonest on the objective and subjective tests. The First Respondent had known that the photographs were reconstructions and the reconstruction had been carried out on his advice and in his presence. The Tribunal accepted the evidence of the three witnesses that the First Respondent had been present during the reconstruction and taking of the photographs.

966. **Allegation 1.13: In breach of SCC Rules 1.02, 1.06 and 10.05, he made promises of payment of outstanding fees to Richard Spearman QC, which he did not intend to and/or did not in fact honour within a reasonable period or at all and gave instructions for Mr Spearman QC (and a junior) to do further work representing (falsely) that they would be paid for earlier work.**

Dishonesty was alleged in relation to 1.13.

966.1 The Tribunal had heard evidence from Mr Richard Spearman QC and had been taken to email exchanges which showed that he had sought to recover fees due for work undertaken on behalf of the firm. The Tribunal noted that had never been disputed by the firm. The correspondence seen by the Tribunal had shown repeated promises of payment by the firm but these had never been honoured.

966.2 The Tribunal found that there had been an added aggravation that the promises to pay by the First Respondent/the firm had been motivated by the First Respondent's desire to procure further work to be undertaken by Mr Spearman and his Junior, Mr Strachan.

966.3 The Tribunal found Rules 1.02 and 1.06 and Rule 10.05 of the SCC to have been breached. The Tribunal found that this had been a promise by a solicitor to make payments to counsel, which had not been made and so there had been a breach of an undertaking.

966.4 The Tribunal found allegation 1.13 proved against the First Respondent.

966.5 The Tribunal had been directed to Mr Spearman QC's email to the firm dated 1 August 2008, which had stated:

> "If the firm had the money to pay surely it was dishonest not to pay sums which were indisputably due and in respect of which this promise of payment had been made. Conversely, however, if as was later suggested, the firm did not have the means to make payment, then surely it was dishonest to promise a payment that could not be made."

966.6 The Tribunal found that this had been eloquently put by Mr Spearman QC and the Tribunal endorsed his comments and found on the objective and subjective tests that this had been dishonest conduct by the First Respondent and dishonesty was proved in relation to allegation 1.13.

967. **Allegation 1.14: In breach of SCC Rules 1.02 and 1.06, he failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008, of at least £900,000.**

Dishonesty was alleged in relation to 1.14.

967.1 The First Respondent's case was that all firms had outstanding liabilities and that the firm had been owed £4 million pre-intervention. The First Respondent alleged that the Applicant had told clients not to pay the bills of the firm but this had not been proved by him or tested in evidence. The Tribunal had also heard no evidence to support the assertion about fees due to the firm.

967.2 The schedule of outstanding counsels' fees produced by the Second Respondent to the investigators on 9 December 2008 had totalled £913,726.63. The fee notes outstanding numbered at least 150. The Tribunal noted that the Bar Council had issued a "Withdrawal of Credit Direction" on 5 December 2008 and this had served to demonstrate the view of the Bar.

967.3 The Tribunal found Rules 1.02 and 1.06 of the SCC to have been breached and found allegation 1.14 proved.

967.4 The Tribunal found that the fees in the schedule dated back over some years. The Tribunal was satisfied, on the objective and subjective tests, that the First Respondent knew the failure to pay counsel was dishonest. The First Respondent had been a partner in the practice since 1 November 2005. The Tribunal found that the First Respondent's dishonesty was compounded by the size of the debt to counsel which had been shown to the Tribunal to be in the region of £1.1 million following the intervention.

968. **Allegation 1.15: In breach of SCC Rules 1.02, 1.04, 1.06 and 3.01, he accepted a £100,000 loan from a client without having insisted that the client (GMH) took independent legal advice in advance.**

968.1 The First Respondent denied that he had taken a loan from GMH (Client G4/G5). The evidence before the Tribunal was that the loan had come from F Limited (Client G3) and Client H had supported that. A letter dated 20 November 2008 from Client G3 confirmed that the monies were the First Respondent's private funds.

968.2 Although closely connected, the Tribunal found that Client G4/G5 and Client G3 were different legal entities and although the allegation related to Client G4/G5, the evidence pointed to the monies having come from Client G3, not Client G4/G5).

968.3 The Tribunal found allegation 1.15 not proved and that it failed on the identity of the client as pleaded.

969. **Allegation 1.16: If the sum referred to in allegation 1.15 was not a loan, he misled the Second Respondent (and thereby caused her to mislead the SRA's officers) that it was, in breach of SCC Rules 1.01, 1.02 and 1.06.**

Dishonesty was alleged in relation to 1.16.

969.1 Client G3 had supported the First Respondent's assertion that the £100,000 was a personal loan to him. The question that the Tribunal had to ask itself was whether the Tribunal was satisfied beyond reasonable doubt that the £100,000 was a loan. The Tribunal was unclear whether the £100,000 was a loan or private funds of the First Respondent and it was therefore unclear whether the Second Respondent had been misled.

969.2 The Tribunal found allegation 1.16 not proved.

970. **Allegation 1.17: In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2007/8.**

Allegation 1.18: In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2008/9.

Dishonesty was alleged in relation to 1.17 and 1.18.

970.1 The Tribunal heard that the First Respondent denied allegation 1.17, stating that he had not had access to the accounts for the relevant year 2005/2006. Annual office accounts for 2005/2006 located at the firm in the course of the intervention had shown gross fees in excess of £2 million, whereas in the insurance proposal application of 4 September 2007 the First Respondent had asserted gross fees for the year of £1.4 million. The Tribunal was satisfied that the firm's gross fees for the year to 31 May 2006 had been substantially understated and had not been "on all fours" with the professional indemnity insurance form, which would have resulted in the firm being charged a considerably lower premium as the indemnity insurance premium was assessed on the turnover of the firm.

970.2 The Tribunal noted that a confirmation order signed by the First Respondent on 26 September 2007 had confirmed the £1.4 million figure and that there had been no material changes to the proposal form, even though the First Respondent must have had the relevant accounts by that date.

970.3 The Tribunal found allegation 1.17 proved.

970.4 In relation to allegation 1.18, the Tribunal heard that the form prepared for 2008/2009 and signed by the Third Respondent had disclosed gross fees of £1.3 million. An analysis of VAT returns had shown £1.8 million.

970.5 The Tribunal heard that the First Respondent had said that he had no involvement in the 2008/2009 form having delegated it to Mr Cousins, but in evidence that had been denied by Mr Cousins. In addition, the First Respondent had argued that reliance could not be placed on VAT figures which included a number of overseas clients not liable to VAT. The Applicant's position was that the figures did not include overseas sales. Whichever figures had been correct, the Tribunal noted that the figures were substantially less than the £5.5 million turnover figure asserted by the First Respondent in proceedings before the High Court in the investigation and intervention as an indication of the firm's financial health. Whilst the Tribunal noted that the First Respondent had blamed Mr Cousins, the Tribunal had already found that the First Respondent had been in total financial control of all matters in the firm.

970.6 The Tribunal found allegation 1.18 proved.

970.7 The Tribunal found Rules 1.02, 1.04, 1.06 and Rule 5.01 of the SCC had been breached in relation to both allegations 1.17 and 1.18.

970.8 The Tribunal found that the First Respondent had not arranged proper management and supervision of the firm as a whole and he had made or allowed to be made material misrepresentations in respect of the professional indemnity insurance. The Tribunal found that misleading the insurance company by making material misrepresentations was dishonest on both the objective and subjective limbs of the combined test in Twinsectra. The Tribunal found dishonesty proved in relation to both allegations.

971. **Allegation 1.19: In breach of SPR Rules 1(a), 1(c) and 1(d), he used Philip Brown & Co as a facade in relation to legal proceedings in London for a Mr R [Client R].**

Dishonesty was alleged in relation to 1.19.

971.1 The First Respondent was alleged to have conducted litigation covertly through Philip Brown & Co on the Client R case when there was a potential conflict of interest. The Tribunal had been taken to correspondence which clearly showed that the First Respondent had conduct of Client R's case. Philip Brown of Philip Brown & Co had expressed concern over the arrangement in correspondence with the First Respondent.

971.2 The Tribunal noted that the First Respondent defended his position by arguing that he was not a partner of the firm at the relevant time in 2003. He also said that no allegations had been made against those who were partners at the time.

971.3 The Tribunal found that not having been a partner at the time was immaterial. The Tribunal was satisfied that the First Respondent was the solicitor with conduct of the R matter at the relevant time.

971.4 The Tribunal found that Rules 1(a), 1(c) and 1(d) of the SPR had been breached and it found allegation 1.19 proved.

971.5 The Tribunal found that using another firm of solicitors as a front was dishonest. The Tribunal was satisfied that the First Respondent knew that he could not act but had still acted covertly which had been dishonest. On the objective and subjective tests

the Tribunal found the First Respondent to have been dishonest in relation to allegation 1.19.

972. **Allegation 1.20: In breach of SCC Rules 1.01, 1.02, 1.03, 1.04 and 1.06, he continued to act as a solicitor, notwithstanding representations to the court, the SRA and others that he was on sabbatical.**

Dishonesty was alleged in relation to 1.20.

972.1 The Tribunal noted that the First Respondent had remained on the Roll of Solicitors and entitled to practise at the relevant time. He had not practised at the offices of the firm after 6 November 2008.

972.2 The Tribunal found that the mischief was that the First Respondent had stated that he would not practise for three months whilst on sabbatical. However, he had continued to advise on the Client G matter. He had failed during that time to cooperate with the Applicant (his regulator) and had not attended for interview during the inspection. He told the Applicant, the court and others that he was not practising when the evidence was that he had in fact practised. The Tribunal was satisfied that that had gone well beyond the handover of files.

972.3 The Tribunal found that the First Respondent had remained the sole owner of the firm until 11 December 2008, when Mr Tehrani had allegedly taken over from him. During that time he had practised, despite having made representations that he would not practise for three months.

972.4 The Tribunal found Rules 1.01, 1.02, 1.04 and 1.06 of the SCC to have been breached. Rule 1.03 of the SCC was not found to have been breached. The Tribunal found allegation 1.20 proved.

972.5 The Tribunal also found the First Respondent to have been dishonest in having continued to practise as a solicitor whilst having represented to the court, the Applicant and others that he would not practise for a three month period from 6 November 2008 whilst on sabbatical. By the standards of reasonable and honest people, he knew that his conduct was dishonest by continuing to practise.

973. **Allegation 1.21: In breach of SCC Rules 1.01, 1.02, 1.03, 1.04 and 1.06, he purported to assign his interest in the firm to a friend and former principal in the firm with the intention of frustrating an Intervention, when the true position was that clients' informed consent to transfer of their files and monies had not been obtained and/or the latter was to hold the First Respondent's interest as nominee and to his order.**

Dishonesty was alleged in relation to 1.21.

973.1 The Tribunal noted that the First Respondent's case was that he had transferred the firm to Mr Tehrani according to the Applicant's written guidance. He claimed that clients had been informed by letter.

973.2 The Tribunal was satisfied that the transfer to Mr Tehrani had been with the intention of frustrating the intervention, and so found. The Tribunal had not seen any evidence that the First Respondent had written to clients to inform them of the transfer, nor that there had been any consent to transfer from clients.

973.3 The Tribunal gave determinative weight to the Judgment of Henderson J dated 4 September 2009 whose view was that the purpose of the transfer was no doubt intended to strengthen the First Respondent's position in relation to his objective of preventing any intervention into his practice by the Applicant.

973.4 The Tribunal found Rules 1.01, 1.02, 1.04 and 1.06 of the SCC to have been breached. Rule 1.03 of the SCC was not found to have been breached. The Tribunal found allegation 1.21 proved.

973.5 The Tribunal was satisfied and it found that the First Respondent had acted to avoid the consequences of his conduct which he knew to have been wrong, by purportedly assigning his interest in the firm to Mr Tehrani to evade the intervention and the Tribunal found him to have been dishonest on the objective and subjective tests.

974**. Allegation 1.22: In breach of SCC Rules 1.01, 1.02 and 1.06, he failed to comply with an order of the Jersey Court to pay costs to S, sought (without any basis) to pay the same by instalments and dispatched a series of cheques which when presented were all dishonoured.**

Dishonesty was alleged in relation to 1.22.

974.1 The Tribunal heard that on 6 November 2007 the Jersey court ordered the firm to pay indemnity costs for conducting their defence against Sinels in a "wholly unreasonable manner". The costs were quantified in April 2008 at £23,995.

974.2 The Tribunal heard that the Defendants [the First and Second Respondents and Mr Tehrani] sought to negotiate payment by instalments, rejected by Sinels. Nevertheless, the firm commenced payment by instalments, issuing cheques in 2008 on 13 May, 13 June, 11 July, 20 August, and 26 September. Those cheques remained unpresented until October 2008 when they were presented on three occasions and were all dishonoured. The Tribunal noted that on 30 September 2008 the firm's office account was overdrawn in the sum of £502,389.46.

974.3 The First Respondent's case was that there were sufficient funds in the account when each of the cheques was drawn. The Tribunal commented that that did not support the First Respondent's contention in the Judicial Review proceedings and his second witness statement of 31 October 2008 when he had sought to persuade the court that there should have been no inspection as the firm was healthy and stable financially.

974.4 The Tribunal found that a court order must be satisfied promptly in full and that it was not open to the firm to decide unilaterally to pay the order by instalments.

974.5 The Tribunal found Rules 1.01, 1.02 and 1.06 of the SCC to have been breached and found allegation 1.22 proved.

974.6 The Tribunal found that, whilst the objective limb of the Twinsectra test might have been met with regard to allegation 1.22, it did not find the subjective test met as the First Respondent had had the intention to pay the costs and had offered/sent cheques albeit they had subsequently been dishonoured some five months later in October 2008. The Tribunal did not find dishonesty proved as to allegation 1.22.

975. **Allegation 1.23: In breach of SCC Rules 1.01, 1.02, 1.04 and 1.05 and/or in breach of SPR Rules 1(a), 1(c), 1(d) and 1(f) he has attracted serious adverse judicial comment and has been subject to serious adverse findings in relation to the conduct of litigation, thereby undermining public confidence in the legal system and the solicitors' profession and demonstrating a failure to uphold the standards to be expected of a solicitor in conducting litigation as well as the lack of integrity, in the following respects:**

1.23.1 He directed the AA/A5 litigation, which was described by Coulson J and Mackay J as "an appalling piece of litigation" amounting to "an abuse of the process of the court by the proposed applicants, Dean and Dean";

1.23.2 He presented to his client and sought to defend throughout the AA/A5 litigation a bill of costs which was reduced to £99,449.65 from £444,705 (i.e. to just over 22% of the amount claimed) by the costs judge;

1.23.3 He dishonestly wrote an e-mail dated 20 January 2009 to the Employment Tribunal, the contents of which (as was found by Blackburne J in a Judgment dated 9 February 2009) "deliberately set out to mislead", made serious allegations which were "groundless" and gave a "distorted and inaccurate impression of the position";

1.23.4 He was responsible for Forbes J and Stadlen J being misled in material respects (as was found by Pitchford J in a Judgment dated 6 November 2008) when, respectively, granting without notice (and continuing) an interim injunction against the Law Society stopping its investigation of the firm;

1.23.5 He pursued a challenge to Intervention Notices served on him which (as Henderson J concluded in a Judgment dated 4 September 2009) was "from its inception a hopeless one" and where his "conduct of the proceedings has throughout been unreasonable to a high degree".

Dishonesty was alleged in relation to 1.23.

975.1 The Tribunal attached determinative weight to the numerous Judgments to which it had been referred throughout the course of the hearing. Coulson J and Mackay J in the A5 litigation stated that they had seen "an appalling piece of litigation" and that it had amounted to an abuse of the process of the court by the firm.

975.2 In relation to the Angel Airlines costs litigation, the Costs Judge Master Seager Berry rejected evidence from the First Respondent, saying that it had been deliberately evasive. The Tribunal noted that the First Respondent had formally complained about Master Seager Berry to the Office for Judicial Complaints following this Judgment and the complaint had been dismissed.

975.3 The First Respondent's case was that the firm's bill for £444,000 in the A5 litigation, which was reduced to £99,000 by the Costs Judge, had been issued by Mr Tehrani. The Tribunal was satisfied however and found that the First Respondent had conduct of the matter and that he had authorised the firm's bill.

975.4 By an email of 20 January 2009 the First Respondent wrote to the Employment Tribunal and stated that the Applicant had forced an investigation of the firm in order to take control of his privileged files, to scupper the proceedings before the Employment Tribunal and so prevent him from receiving a fair trial.

975.5 The Tribunal heard that Blackburne J had found in his Judgment dated 9 February 2009 that the First Respondent had deliberately set out to mislead. Pitchford J had found that the ex parte (without notice) injunction granted by Forbes J on 10 October 2008 and continued by Stadlen J on 13 October 2008 were procured by means of misleading the court as to the urgency of the application, misinforming the court that the Applicant had been given notice of the pending application and failing to disclose pending bankruptcy proceedings against the First Respondent.

975.6 The First Respondent said that the Intervention Notice was a sham, planned by the Applicant's Mr Middleton. Henderson J concluded in his Judgment dated 4 September 2009 that the challenge by the First Respondent had been "from its inception a hopeless one" and one where the First Respondent's conduct of the proceedings had "throughout been unreasonable to a high degree".

975.7 The Tribunal noted that in a number of the Judgments the courts had ordered costs against the First Respondent on an indemnity basis. The First Respondent had failed to pay any of the adverse costs orders, namely in the Judicial Review proceedings of 2008, the delivery up proceedings and the failed challenge to the Intervention Notices in 2009.

975.8 The Tribunal found the allegation of attracting serious adverse judicial comment and adverse findings proved.

975.9 The Tribunal found Rules 1.01, 1.02, 1.04 and 1.06 SCC and Rules 1(a), 1(c), 1(d) and 1(f) SPR to have been breached. The Tribunal found allegation 1.23 proved.

975.10 The Tribunal found that as an officer of the court a solicitor must not mislead or misinform the court and it found the First Respondent's conduct to have been dishonest in relation to allegation 1.23 by his having attracted serious adverse judicial comment, which conduct he knew to have been dishonest by the ordinary standards of reasonable and honest people.

976. **Allegation 1.24: In breach of SCC Rules 1.01, 1.02 and 1.06, he put forward materially false evidence in his second witness statement in judicial review proceedings (CO/9641/2008) and/or in a letter dated 31 October 2008 from RadcliffesLeBrasseur to the court on behalf of the firm.**

Dishonesty was alleged in relation to 1.24.

976.1 The Tribunal heard that in his second statement in the Judicial Review proceedings dated 31 October 2008, the First Respondent made a number of assertions about the soundness, both procedurally and financially, of the firm. As far as he was concerned, the various rules had been complied with. The First Respondent had stated that the overdraft limit referred to cash flow. He did not believe that the non-payment of counsels' fees or the Sinels court order demonstrated any lack of financial strength on the part of the firm.

976.2 The evidence presented to the Tribunal by the Applicant was at odds with that. The Applicant stated that the firm was in poor financial health by reference to, inter alia, cheques having been held back, unpaid counsels' fees, the Sinels costs and dishonoured cheques, unpaid judgment debts, the payment of staff salaries from client account, use of G2's bail money and R2's mortgage money. The Tribunal heard that

the First Respondent had also failed to pay any of the adverse costs orders against him/the firm.

976.3 The Applicant relied on the First Respondent's assertion that the turnover of the firm for the last financial year was £5.5 million, and pointed out that was wholly inconsistent with the firm's professional indemnity insurance form for that year, which claimed gross fees of £1.3 million.

976.4 The Tribunal found that the First Respondent had put forward materially false evidence as to the firm's financial status and did not agree with the First Respondent's stance that he had fees owing to the firm and it was financially sound. The Tribunal agreed with the concerns expressed by the Applicant, having heard evidence on all the matters referred to by them and having carefully considered all the written representations of the First Respondent. The Tribunal found cash flow to have been a key indicator of the financial position of the firm, particularly when the overdraft facility was at its maximum or above.

976.5 The Tribunal also had regard to the RadcliffesLeBrasseur letter dated 31 October 2008, written on the instructions of the First Respondent. The Tribunal found that that letter could only have been as good as the instructions given to the solicitors acting for the First Respondent.

976.6 The Tribunal found Rules 1.01, 1.02 and 1.06 of the SCC to have been breached and found allegation 1.24 proved.

976.7 As to dishonesty in relation to allegation 1.24, the Tribunal found that the First Respondent had given materially false evidence in his second witness statement in the Judicial Review proceedings and in a letter dated 31 October 2008 from RadcliffesLeBrasseur to the court and the Tribunal found on the objective and subjective tests that there had been dishonesty on the part of the First Respondent.

977. **Allegation 1.25: Prior to his admission to the Roll of Solicitors:**

1.25.1 He applied for and secured from the Law Society a certificate of exemption from the Common Professional Examination ("CPE") and a certificate of completion of the academic stage of training on the basis of misrepresentations as to his academic credentials;

1.25.2 He applied for and secured from the Law Society a one-year reduction in his training period on the basis of documents which contained misrepresentations;

1.25.3 He applied for and secured from the Law Society admission to the Roll of Solicitors based on the matters set out at allegations 1.25.1 and 1.25.2 and by failing to disclose that he had been convicted of criminal offences in the United States.

Dishonesty was alleged in relation to 1.25.

977.1 The Tribunal heard that this allegation related to the First Respondent's conduct prior to his admission to the Roll of Solicitors: that he obtained an exemption from the CPE, that he applied for and secured a one year reduction in his training period; and that he applied for and secured from the Law Society admission to the Roll, based on

those matters set out, and by failing to disclose that he had been convicted of criminal offences in the US.

977.2 The Tribunal heard that the First Respondent denied having made any representations as to his academic qualifications. Mr Beatty processed his application. The First Respondent submitted that Mr Beatty had supported his case although Mr Beatty had at the time recognised that the American University of Hawaii ("AUH") was unaccredited. The First Respondent stated that degrees were valid at the AUH at the time. The AUH had however been shut down by order of the US courts on 17 May 2006 in effect for peddling degrees illegally without any license. The First Respondent contended that the US Judgment in relation to AUH only related to degrees awarded after July 1999.

977.3 For its part the Applicant contended that the First Respondent had had very poor results as a law student and had been academically disqualified by the WSL and the UWLA.

977.4 The Tribunal had to decide whether it was credible that the First Respondent could have been working full-time for Mr O'Bryan during 1995/1996, yet have signed a declaration that he was not working for more than twenty hours a week and at the same time have been attending the WSL, which coincided with his time at the AUH.

977.5 The Tribunal found that it was not credible that the First Respondent could have undertaken all three activities at the same time, particularly with regard to his poor results at WSL and the UWLA. It was not credible that the First Respondent could have achieved the Law Society certificate of exemption from the CPE based on his academic failure.

977.6 The Tribunal noted that a reduction of one year had been secured by the First Respondent in relation to his training contract and his application for that had been supported by a letter dated 18 November 1998 and the TC8 form, which was an application to count experience towards a training contract. The First Respondent stated that he was employed full-time for two years between August 1995 and August 1997 with Mr O'Bryan. His work encompassed handling the office's English cases and included civil and criminal cases yet Mr O'Bryan's 30 September 2000 declaration asserted that the First Respondent had never been involved in any English legal cases and did no civil work in the mid-1990s.

977.7 The Tribunal found the First Respondent's own assertions to have been contradictory and suggestive of serious misrepresentations. With regard to the conviction for criminal offences in the USA, the First Respondent said that the docket sheet produced was not an accurate document. He said that he had no conviction at the relevant time as he believed that it had been expunged from the record. He also said that he had not pleaded guilty to fifteen charges.

977.8 The Applicant contended that it must have been obvious to the First Respondent that the relevant questions required disclosure of his convictions and the form itself had expressly stated that it covered offences committed anywhere in the world and included spent convictions.

977.9 Justice Baron had given evidence before the Tribunal as an expert witness. She had said that all the charges had involved dishonesty and were matters of moral turpitude.

She commented on the First Respondent's submission that he would not have been prevented from becoming a lawyer in the USA. She stated firmly that there was an absolute obligation to disclose a conviction, and if not disclosed it would be false and misleading.

977.10 Justice Baron told the Tribunal that she obtained the docket direct from the court office. It was authenticated and a declaration sworn. She obtained source material from the presiding judge in the form of microfiche. The docket confirmed that on 21 January 1991 the First Respondent was convicted on fifteen counts relating to telemarketing fraud and was sentenced to thirty-six months probation, ordered to pay compensation of $6,813, given ninety days custody and placed on a work release programme.

977.11 The Tribunal found allegation 1.25 proved and accepted in its entirety the evidence of Justice Baron, who it found to have been an excellent witness and entirely credible.

977.12 The Tribunal found that, without a shadow of a doubt, dishonesty had been proved in relation to all three limbs of allegation 1.25. The Tribunal found that by his conduct, the First Respondent knew that he had been dishonest, and on an objective basis he had been dishonest by the ordinary standards of reasonable and honest people.

Second Respondent

978. Overall the Tribunal had formed the view that the First Respondent had overall control of the firm and its' finances. The First Respondent had found a willing assistant in the Second Respondent who had placed her faith in him without due regard to her own professional obligations as a solicitor. The expectation was that she should have demonstrated her independence.

979. **Allegation 2.1: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and 22(1) and the SCC Rules 1.02, 1.04 1.06, despite being a principal, she failed to ensure that the firm did not transfer (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the firm's office account in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G.**

979.1 The Second Respondent admitted that she failed to ensure that the firm did not transfer the £200,000 client money in the G2 case to the firm's office account.

979.2 The Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. Rule 19 was not found to have been breached. The funds had not been received in full or part payment of the solicitor's bill or other notification of costs.

979.3 In relation to Rule 1.02 of the SCC on integrity, the Second Respondent had involved herself in the G2 matter. Despite being a principal, she failed to ensure that the firm did not transfer client money in the sum of £200,000 when that money was held to the order of the court. However the Second Respondent had not actively involved herself in the original transfer and the Tribunal found that she had not lacked integrity. Rule 1.02 of the SCC was not found to have been breached.

979.4 In relation to Rule 1.04 of the SCC and acting in the best interests of clients, the Tribunal found that the Second Respondent had not taken a professional view of what

had occurred on the client account. As a partner and principal, she should have ensured that she had access to the accounts. The Tribunal found Rule 1.04 of the SCC to have been breached.

979.5 In relation to Rule 1.06 of the SCC and public interest, the rule required that solicitors must not behave in a way which diminished the trust the public placed in them and which the Tribunal found the Second Respondent had done by failing to discharge her duties as a principal. The Tribunal found Rule 1.06 of the SCC to have been breached.

979.6 The Tribunal found allegation 2.1 proved.

980. **Allegation 2.2: In breach of SCC Rules 1.01, 1.02 and 1.06, she gave a false impression to the court and/or another, solicitor (in correspondence) that the firm retained the £200,000 which was to be held to the order of the court, at times when it had been paid away and/or failed at any time to correct the aforesaid false impression given to the court and/or another, solicitor.**

Dishonesty was alleged in relation to 2.2

980.1 The Second Respondent did not accept that at the time she wrote to the court she knew that the £200,000 was no longer there. The Tribunal asked itself whether it was true that the Second Respondent could not have known that the £200,000 was no longer held by the firm in client account.

980.2 The Tribunal found that the Second Respondent had not known and that as a result, she had proceeded to give a false impression to the court by having failed to check the client ledgers. The Second Respondent had then actively failed to correct the false impression given to the court. As a solicitor, when she found out, she should have corrected the false impression promptly.

980.3 In relation to Rule 1.01 of the SCC, the Tribunal found that the Second Respondent should have upheld the rule of law and by having failed to inform the court of the false impression she had not done so. In failing to do so she showed a lack of integrity contrary to Rule 1.02 of the SCC and in relation to Rule 1.06, the Tribunal found that behaviour was very likely to have diminished the trust the public placed in solicitors and in the profession.

980.4 The Tribunal found allegation 2.2 proved.

980.5 The Tribunal noted that the Second Respondent admitted having had access to the ledgers at the relevant time but said in her evidence that she had no time to go through them, given the urgency of the matter.

980.6 The Second Respondent had admitted that she had not communicated to Boardmans when she became aware that the monies were missing and, in retrospect, she accepted that she should have been open with the court and Boardmans and had been in dereliction of her duties.

980.7 The Tribunal found that, as a solicitor qualified in 1992, the expectation had to be that the Second Respondent knew her obligations to the court and other solicitors but that she had chosen to ignore those obligations.

980.8 The Tribunal found the Second Respondent to have been dishonest in relation to allegation 2.2 on the objective and subjective tests; she knew when she realised that she should have contacted the court or taken some positive action at the relevant time but she had not done so. She knew that she had done wrong and by knowingly not having corrected the false impressions, the Tribunal found her to have been dishonest in relation to allegation 2.2.

981. **Allegation 2.3: In breach of SCC Rules 1.01, 1.02 and 1.06, she gave false evidence (in paragraph 113 of her Response dated 29 June 2009 to the Statement of David Middleton dated 14 May 2009) in support of her challenge to the Intervention Notice served on her by claiming that she had overheard conversation between the First Respondent and Mr Boardman.**

Dishonesty was alleged in relation to 2.3.

981.1 The Tribunal heard Mr Boardman's evidence that there had been no conversation between himself and the First Respondent on 24 January 2008. He also denied that he had ever agreed that the firm should continue to hold the G2 monies. He stated that all calls had been logged in his automated time records and that there was no record in his log that any call was made on 24 January 2008.

981.2 The Applicant pointed out that the Second Respondent had belatedly recalled overhearing the alleged conversation. The Tribunal did not accept that the conversation had taken place and attached greater weight to the evidence of Mr Boardman.

981.3 The Tribunal found Rules 1.01, 1.02 and 1.06 of the SCC to have been breached. The Tribunal found that the Second Respondent had given false evidence and it found allegation 2.3 proved.

981.4 The Tribunal found that by the Second Respondent having given false evidence, on the objective and subjective tests, she had been dishonest.

982. **Allegation 2.4: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22 (1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, despite being a principal she failed to ensure that the firm did not misuse client monies held by the firm (on behalf of Mr R) [Client R2] in a designated deposit account by transferring the same to the office account.**

982.1 The Second Respondent admitted allegation 2.4 and that she had failed to ensure that the firm did not misuse client monies held by it on behalf of Client R2, in breach of a court order and an undertaking.

982.2 The Tribunal found Rules 1(a), 1(c), 6, 15, 22(1), and 23 of the SAR to have been breached but it did not find Rule 19 to have been breached as the money had originally been paid into client account in accordance with the rule and no bill of costs had been notified.

982.3 On the conduct matters, the Tribunal found Rules 1.01, 1.04, 1.06 and 10.05 of the SCC to have been breached but it did not find Rule 1.02 of the SCC to have been breached.

982.4 The Tribunal found allegation 2.4 proved

983. **Allegation 2.5: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, despite being a principal she failed to ensure that the firm did not improperly retain client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements.**

983.1 The Second Respondent admitted that she failed to ensure that the firm did not improperly retain client money in the office account by holding back cheques.

983.2 The Tribunal found Rules 1(a), 1(c), 6, 15, and 22(1) of the SAR to have been breached but it did not find Rule 19 of the SAR to have been breached as no solicitor's bill had been notified.

983.3 In relation to conduct, the Tribunal did not find Rule 1.02 on integrity breached as it was satisfied that the Second Respondent was unaware that cheques were being held back. The Tribunal found Rule 1.04 to have been breached because the Second Respondent had not known what was going on in the client account but she should have known as a principal/partner in order to act in the best interests of the clients. The Tribunal found Rule 1.06 to have been breached as the Second Respondent had allowed the First Respondent to run the accounts in the way that he did, which would have damaged the public's confidence in the profession.

983.4 The Tribunal found allegation 2.5 proved.

984. **Allegation 2.6: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01 despite being the principal she failed to ensure that the firm did not transfer monies from client account for "anticipated disbursements" in respect of two clients (D and Q).**

984.1 The Second Respondent admitted that she failed to ensure that the firm did not transfer monies from client account for anticipated disbursements in respect of Clients D and Q.

984.2 The Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached but it did not find Rule 19 of the SAR to have been breached as the money had originally been paid into client account in accordance with the rule. The Tribunal found conduct Rules 1.04 and 1.06 of the SCC to have been breached.

984.3 The Tribunal did not find Rule 1.02 of the SCC as to integrity to have been breached because it was satisfied that the Second Respondent had had no knowledge of the wrongdoing and Rule 3.01 as to conflict of interest was not found to have been breached again because the Second Respondent had had no knowledge of the wrongdoing at the relevant time.

984.4 The Second Respondent gave evidence to the Tribunal that with hindsight she believed the invoices in the Client D and Client Q matters for anticipated disbursements had been a device to get money out of the client account when the office account was under pressure.

984.5 The Tribunal found allegation 2.6 proved.

984.6 The Tribunal did not find dishonesty proved in relation to allegation 2.6 as it found that the Second Respondent had had no knowledge of the anticipated disbursements at the relevant time.

985. **Allegation 2.7: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04 1.06, despite being a principal she failed to ensure that the firm did not pay staff salaries direct from client account in October and November 2008.**

985.1 The Second Respondent admitted the SAR breaches and that as a principal she had failed to ensure that the firm did not pay staff salaries from client account.

985.2 The Tribunal found Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 of the SAR to have been breached; staff salaries had been paid out of the client account without any compliance with the SAR.

985.3 On the conduct matters, the Tribunal found Rules 1.02, 1.04 and 1.06 of the SCC to have been breached. In relation to Rule 1.02 and integrity, the Tribunal was satisfied that the Second Respondent was aware of salaries being paid late and out of the client account. In relation to Rule 1.04 the Tribunal found that as a principal it was incumbent upon the Second Respondent to know what was going on in the firm and in relation to Rule 1.06, the Tribunal found that by having failed to involve herself in the affairs of the firm the confidence of the public had been damaged.

985.4 The Tribunal found allegation 2.7 proved.

986. **Allegation 2.8: In breach of SAR Rule 7, she failed to remedy, promptly or at all, the resulting cash shortages described at allegations 2.1, 2.4, 2.5, 2.6 and 2.7.**

986.1 The Second Respondent denied allegation 2.8 that she had failed to remedy promptly or at all the resulting cash shortages. She gave evidence to the Tribunal that she had remedied the issue of holding back cheques by sending some of them out in respect of professional disbursements. Her evidence was that there had been no cash shortage in relation to the payment of salaries. The Second Respondent said in evidence that she was not aware at the time that sums had been paid out of client account until it was brought to her attention during the investigation.

986.2 Rule 7 required prompt remedy by all principals. The Applicant said that remedy had not been "promptly upon discovery" as required by the rules and the Tribunal had been satisfied of that. As a principal of the firm, the Second Respondent was obliged to comply with the rule and had not done so. The Tribunal heard that the Second Respondent had taken no steps to repay the funds upon discovery. She had stated in evidence that she had not had the funds available to her to do so.

986.3 The Tribunal found allegation 2.8 proved.

987. **Allegation 2.9: As a principal of the firm, pursuant to SAR Rule 6, she was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account).**

987.1 The Second Respondent admitted that there was no process in place for transfer of client's funds except by signature on the client's bill.

987.2 Rule 6 of the SAR required that principals have responsibility for compliance. The Tribunal found that as a principal, the Second Respondent was responsible for the systemic failure of the firm pursuant to Rule 6 of the SAR and the Tribunal found allegation 2.9 proved.

988. **Allegation 2.10: In breach of SCC Rules 1.02 and 1.06, she failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008, of at least £900,000.**

Recklessness was alleged in relation to 2.10.

988.1 The Second Respondent admitted her responsibility as a partner in relation to allegation 2.10 and stated that she had not had the resources to meet counsels' fees if clients had failed to pay. The Second Respondent told the Tribunal that her clients were always asked to make payments on account and that the unpaid fees related to the First Respondent's matters.

988.2 The Tribunal found that the Second Respondent, as a principal of the firm, had failed to pay counsels' fees in a timely fashion and that had resulted in outstanding liabilities of at least £900,000 and the matter of a "Withdrawal of Credit Direction" by the Bar Council having been issued. The Tribunal found conduct Rules 1.02 and 1.06 of the SCC to have been breached by virtue of the Second Respondent's conduct.

988.3 The Tribunal found allegation 2.10 proved.

988.4 The Tribunal was satisfied that the Second Respondent had known that counsels' fees were not being paid, as she had given evidence that solicitors at the firm had taken turns opening the mail and the Tribunal found on the evidence that this would have come to her attention. She had also had the email from Mr Spearman QC who complained about non-payment of his fees.

988.5 The Tribunal found that the Second Respondent had been reckless in relation to allegation 2.10 and that she had acted without due regard to the consequences.

989. **Allegation 2.11: In breach of SCC Rules 1.02, 1.03, 1.04, 1.06 and/or 3.01, she transferred the sum of £100,000 from client account to office account on 7 November 2008 recklessly and/or without having made appropriate enquiries as to the propriety of the transfer.**

Dishonesty was alleged in relation to 2.11.

989.1 The Second Respondent admitted in evidence that she was responsible for the transfer of £100,000 which had been received into the firm's client account on 7 November 2008. She said that she had spoken to the First Respondent that morning but had transferred the funds without further reference to him having believed it to be a loan to the firm and in her evidence she said that she had spoken to Client H before she made the transfer.

989.2 The Second Respondent acknowledged that it would have been critically important for Client H to have known the financial circumstances of the firm, if this had been a

loan to the firm. It was unclear whether Client H had known about the firm's financial circumstances. The Tribunal was satisfied that the Second Respondent had relied solely on what the First Respondent had told her.

989.3 The Tribunal found allegation 2.11 proved.

989.4 The Tribunal found Rule 1.02 of the SCC as to integrity to have been breached as the Second Respondent had knowingly made the transfer with insufficient knowledge as to the funds. In relation to Rule 1.03 as to independence the Tribunal found this rule to have been breached because the Second Respondent had merely done what she had been told to do by the First Respondent. In relation to Rule 1.04 as to best interests of the client, the Tribunal found this rule to have been breached as the £100,000 had been withdrawn from the client account and that could not have been in the best interests of the client and in relation to Rule 1.06 and public confidence, the Tribunal found this rule to have been breached because the Second Respondent had removed funds from client account without authority.

989.5 In relation to Rule 3.01 of the SCC and conflict of interest, the Tribunal found this rule to have been breached because there was a conflict between the firm and the client on the basis that the Second Respondent believed the £100,000 to be a loan to the firm from a client but there was no evidence that the client had been advised to seek independent legal advice.

989.6 The Tribunal was satisfied that the Second Respondent had done whatever the First Respondent had asked her to do and had used no professional independent judgment. She had made insufficient enquiries regarding the £100,000 if indeed she had spoken to Client H at all, of which the Tribunal was not convinced.

989.7 The Tribunal found that the Second Respondent had behaved recklessly in relation to allegation 2.11.

990. **Allegation 2.12: In breach of SCC Rules 1.02 and 1.06, she gave SRA investigators inconsistent and misleading explanations relating to the 7 November 2008 transfer of £100,000 from client to office account, in particular as to (a) whether she spoke to the client (AH) [Client H] on 7 November 2008 prior to the making of the transfer and/or (b) whether she discussed the aforesaid transfer with the First Respondent before sanctioning the same. One or the other account must be false (if indeed either were true).**

Dishonesty was alleged in relation to 2.12.

990.1 The Second Respondent denied allegation 2.12. At no time had she said that she had spoken to the First Respondent after the £100,000 had arrived in the client account and before it had been transferred to the office account. She had stated in evidence that she had spoken to the First Respondent that morning. In both interviews with the Applicant it had been reported that the Second Respondent had acted on the basis of a conversation with the First Respondent.

990.2 The Tribunal took the view that contemporaneous statements were usually more reliable and the Tribunal found that the Second Respondent had discussed the transfer of funds with the First Respondent; the Tribunal did not find the Second Respondent's

evidence credible in that regard namely that she had not spoken to him about transferring the funds.

990.3 The Tribunal found Rules 1.02 and 1.06 of the SCC to have been breached and it found allegation 2.12 proved.

990.4 The Tribunal found that by any standards it was wrong to accept a client loan without undertaking due diligence. It was incredible for the Second Respondent to have submitted that she had spoken to Client H but had not spoken to the First Respondent before having made the transfer. The Tribunal found that the Second Respondent had given the Applicant's investigators inconsistent and misleading explanations and by so doing, she had behaved dishonestly on the objective and subjective tests.

991. **Allegation 2.13: In breach of SCC Rules 1.01, 1.02 and 1.06, she failed to comply with an order of the Jersey Court to pay costs to Sinels, sought (without any basis) to pay the same by instalments and dispatched a series of cheques which when presented were all dishonoured.**

Recklessness was alleged in relation to 2.13.

991.1 The Tribunal noted that in relation to Sinels, by becoming a partner in order to represent the firm in Jersey, the Second Respondent had effectively signed up to the Jersey litigation brought against the firm and the partners. The Second Respondent had asserted in her response that she had become a party to the proceedings as part of her employment by the firm. She had not been a party to the actual dispute between the firm and Sinels and she told the Tribunal in evidence that "It was never expected by Dean & Dean that I would have to pay the costs of the proceedings".

991.2 The Second Respondent had appeared on behalf of the firm as a litigant in person and partner and had therefore become liable for costs when the case was lost. The evidence was that the Second Respondent had written to Sinels seeking agreement to pay the court judgment by instalments and had dispatched a series of cheques in spite of Sinels having rejected the instalments proposal. All the cheques had subsequently been dishonoured.

991.3 The Tribunal found Rules 1.01, 1.02 and 1.06 of the SCC to have been breached and allegation 2.13 proved.

991.4 By her actions the Tribunal found that the Second Respondent had been reckless in allowing herself to be led by the First Respondent regarding the Sinels' costs matter and, as a result, had been reckless in her own conduct.

992. **Allegation 2.14: In breach of Rules 1.01, 1.02 and 1.06 of the SCC, she acquiesced in the First Respondent putting forward materially false evidence in his second witness statement in judicial review proceedings (CO/9641/2008) and/or in a letter dated 31 October 2008 to the court from RadcliffesLeBrasseur on behalf of the firm.**

Dishonesty was alleged in relation to 2.14.

992.1 The Second Respondent's evidence to the Tribunal was that she had not taken part in giving instructions to RadcliffesLeBrasseur as set out in the letter of 31 October 2008;

neither had she seen the signed witness statement of the First Respondent. However, she admitted that she had seen his draft witness statement.

992.2 The Tribunal found that by not becoming involved in the detail of the instructions to Radcliffes and the First Respondent's witness statement, the Second Respondent had abdicated her responsibilities as a solicitor and had allowed the First Respondent to provide the witness statement and sanctioned the letter. In doing so, she had acquiesced to both documents which had contained materially false evidence.

992.3 The Tribunal found Rules 1.01, 1.02, and 1.06 of the SCC to have been breached and it found allegation 2.14 proved.

992.4 The Tribunal did not find dishonesty proved in relation to allegation 2.14 but it did find recklessness on the part of the Second Respondent in the alternative. The Second Respondent had been reckless in her own conduct as a solicitor when she failed to pay proper attention to the content of documents placed before her for her instructions. The Tribunal had not been sure that she knew or fully appreciated the culmination of false statements being placed before the Court in the judicial review proceedings. She appeared to believe the First Respondent and did not stop to think about the inconsistencies.

Third Respondent

993. The Third Respondent told the Tribunal that he had been recommended to the firm by a friend. He joined as a Consultant and became a partner in November 2006 until he left in November 2008. He had been told that all the profits of the firm were those of the First Respondent and he was paid as a Consultant £4,000 per month for two days work a week. His name appeared on the firm's letterhead and therefore held him out as a partner.

994. In evidence the Third Respondent confirmed that he had said he would take no part in the running of the firm at all as he had no skills in that regard and that had been agreed with the First Respondent, although he had held a consultancy agreement throughout.

995. The Tribunal heard from the Third Respondent that the First Respondent ran the firm:

> "It was his business, he put the money in and took profits out, no-one else had any authority or made any decisions. When the post came in it was opened and given to Dr Mireskandari, so he knew what was going on."

996. The Tribunal noted the comments but had to take into account the fact that the Third Respondent was also a principal in the firm with which came all the obligations of such a position in relation to the Solicitors' Accounts Rules and Solicitors' Code of Conduct. Those Rules applied equally to the Third Respondent as they did to the First and Second Respondents.

997. The Third Respondent had accepted breaches of the SAR as set out in allegations 3.1 to 3.6 and 3.8 and that under Rule 6 of the SAR he was strictly liable for those breaches. He proceeded to say that, although not a partner in the firm, he had been held out as one from 1 November 2006 until he left on 14 November 2008. Therefore, he had been a partner under the SAR and the Tribunal had regard to the

interpretation of that as set out in Rule 2(2)(qa) of the SAR which stated ""partner" means a person who is or is held out as a partner in an unincorporated practice".

998. The Tribunal noted that the Third Respondent was the partner designated to deal with complaints and money laundering on behalf of the firm.

999. **Allegation 3.1: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and 22(1) and the SCC Rules 1.02, 1.04 1.06, despite being a principal, he failed to ensure that the firm did not transfer (by transfers dated 26 October 2007 and 2, 15 and 23 November 2007) client money to the firm's office account in the sum of £200,000 when that money was to be held to the order of the court as a condition of bail granted to Mrs G.**

999.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. It did not find Rule 19 of the SAR to have been breached. The funds had not been received in full or part payment of the solicitor's bill or other notification of costs.

999.2 In relation to conduct, the Tribunal did not find Rule 1.02 of the SCC as to integrity to have been breached but it did find Rules 1.04 and 1.06 of the SCC to have been breached. In relation to Rule 1.04 the Tribunal found that he had not acted in the best interests of clients because he had held himself out as a principal and had failed to ensure that the firm did not transfer the £200,000 from client to the firm's office account and in relation to Rule 1.06, he had lent his name to the practice to give the firm credibility and by his conduct in allowing the transfer to have been made, this would have diminished the public's confidence in solicitors and the profession.

999.3 The Tribunal found allegation 3.1 proved.

1000. **Allegation 3.2: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and/or 23 and SCC Rules 1.01, 1.02, 1.04, 1.06 and 10.05 and in breach of a court order and an undertaking to the Royal Bank of Canada, despite being a principal he failed to ensure that the firm did not misuse client monies held by the firm (on behalf of Mr R) in a designated deposit account by transferring the same to the office account.**

1000.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 1(a), 1(c), 6, 15, 22(1) and 23 of the SAR to have been breached. The Tribunal did not find Rule 19 of the SAR to have been breached. The funds had not been received in full or part payment of the solicitor's bill or other notification of costs.

1000.2 As to the conduct of the Third Respondent in relation to the R case, the Tribunal found Rules 1.01, 1.04, 1.06 and 10.05 to have been breached by the Third Respondent who, despite being a principal of the firm, had failed to ensure that that the firm did not misuse client monies in breach of a court order and an undertaking to a bank. Rule 1.02 as to integrity was not found to have been breached as the Tribunal was not satisfied that the Third Respondent had known of the misuse of client monies and therefore he had not lacked integrity by his conduct.

1000.3 The Tribunal found allegation 3.2 proved.

1001. **Allegation 3.3: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04 and 1.06, despite being a principal he failed to ensure that the firm did not improperly retain client money in office account (by holding back cheques drawn on the office account) having transferred the same from client account to office account purportedly in respect of professional disbursements.**

1001.1 The Third Respondent admitted the SAR breaches. The Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. It did not find Rule 19 to have been breached as no solicitor's bill had been notified.

1001.2 As to conduct, the Tribunal did not find Rule 1.02 of the SCC to have been breached as to integrity but it did find Rules 1.04 and 1.06 of the SCC to have been breached in that the Third Respondent had not acted in clients' best interests and his conduct had been such that it would have diminished the public's confidence in solicitors and the profession.

1001.3 The Tribunal found allegation 3.3 proved.

1002. **Allegation 3.4: In breach of SAR Rules 1(a), 1(c), 6, 15, 19 and/or 22(1) and SCC Rules 1.02, 1.04, 1.06 and/or 3.01 despite being a principal he failed to ensure that the firm did not transfer monies from client account for "anticipated disbursements" in respect of two clients (D and Q).**

1002.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. It did not find Rule 19 of the SAR to have been breached as the money had originally been paid into client account in accordance with the rule.

1002.2 As to conduct, the Tribunal did not find Rule 1.02 of the SCC to have been breached as to integrity but it did find Rules 1.04 and 1.06 to have been breached. The Tribunal also did not find Rule 3.01 of the SCC to have been breached as the Third Respondent had no knowledge of the matters of D and Q and no conduct of them.

1002.3 The Tribunal found allegation 3.4 proved.

1003. **Allegation 3.5: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 and/or SCC Rules 1.02, 1.04, 1.06, despite being a principal he failed to ensure that the firm did not pay staff salaries direct from client account in October and November 2008.**

1003.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 1(a), 1(c), 6, 15, 19, 22(1) and 23 of the SAR to have been breached.

1003.2 In relation to conduct, the Tribunal did not find Rule 1.02 of the SCC on integrity to have been breached because the Third Respondent had no knowledge. Rules 1.04 and 1.06 of the SCC were found to have been breached.

1003.3 The Tribunal found allegation 3.5 proved.

1004. **Allegation 3.6: In breach of SAR Rules 1(a), 1(c), 6, 15, 19, and/or 22(1) and SCC Rules 1.01, 1.02, 1.03, 1.04, 1.06, despite being a principal he failed to ensure that**

the firm did not remove from client account the sum of £60,947.54 purportedly in respect of negotiations relating to disputed Counsel's fees but without any legitimate basis for so doing.

1004.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 1(a), 1(c), 6, 15 and 22(1) of the SAR to have been breached. Rule 19 was not found to have been breached.

1004.2 The SCC Rules found to have been breached were Rules 1.01, 1.04 and 1.06, because the Third Respondent had acquiesced in the running of the firm and, as a principal, he had failed to ensure that the firm did not remove the monies from the client account in relation to the alleged negotiations concerning counsel's disputed fees. The Tribunal did not find Rules 1.02 and 1.03 to have been breached as the Third Respondent had lacked knowledge and had thereby not lacked integrity.

1004.3 The Tribunal found allegation 3.6 proved.

1005. **Allegation 3.7: In breach of SAR Rule 7, he failed to remedy, properly or at all, the resulting cash shortages described at allegations 3.1-3.6 inclusive.**

1005.1 The Tribunal heard that the Third Respondent would have been obliged to remedy the breaches upon discovery but his case was that he had not become aware of them until after he had left the firm.

1005.2 The Tribunal found that the breaches had occurred during the period in which the Third Respondent was a principal and he was therefore responsible for the breaches, notwithstanding that some of them might have been discovered after he had ceased to be a partner. Otherwise, if taken to its logical conclusion, a solicitor suspecting wrongdoing in a firm would only have to resign as a principal before discovery in order to avoid liability.

1005.3 The Tribunal found allegation 3.7 proved.

1006. **Allegation 3.8: As a principal of the firm, pursuant to SAR Rule 6, he was responsible for the systemic failure of the firm to comply with SAR Rule 23 (Method of and Authority for Withdrawals from Client Account).**

1006.1 The Third Respondent admitted the SAR breaches and the Tribunal found Rules 6 and 23 of the SAR to have been breached in that the Third Respondent was responsible, as a principal, for the systemic failure of the firm to comply with the SAR and in relation to Rule 23 of the SAR for which there had been no procedure in place until after the inspection.

1006.2 The Tribunal found allegation 3.8 proved.

1007. **Allegation 3.9: In breach of SCC Rules 1.02 and 1.06, he failed to pay Counsels' fees in a timely fashion resulting in outstanding liabilities to Counsel as at December 2008 of at least £900,000.**

1007.1 The Tribunal found that Rule 1.02 of the SCC as to integrity had not been breached and Rule 1.06 had been breached by the Third Respondent as he had allowed himself to be in a firm, held out to the public and the regulator as a partner of that firm, where

numerous counsels' fees had not been paid in a timely fashion. The public was entitled to believe that the Third Respondent was properly a part of the firm and that things were being done properly at the firm.

1007.2 The Tribunal found allegation 3.9 proved.

1008. **Allegation 3.10: In breach of SCC Rules 1.02, 1.04, 1.06 and 5.01, he made and/or allowed to be made material misrepresentations in the firm's application for professional indemnity insurance for the year 2008/9.**

Recklessness was alleged in relation to 3.10.

1008.1 The Third Respondent admitted signing the insurance form for 2008/2009 without having carried out any due diligence.

1008.2 Mr Atkins had contested this allegation with a submission that the Third Respondent had not been a partner. The Tribunal rejected that submission and found that the Third Respondent had been held out to the public and to the regulator as a partner. He had specific responsibilities under Rule 5.01 of the SCC to make arrangements for the effective management of the firm as a whole and in particular provide for compliance by the firm with money laundering regulations, professional indemnity cover and complaints handling. The Third Respondent had appeared in the records of the Law Society/the Applicant as a partner and had signed the professional indemnity insurance form as a partner.

1008.3 In relation to the conduct rules the Tribunal had not found Rule 1.02 of the SCC as to integrity to have been breached because the Third Respondent had not set out to act improperly, although the Tribunal considered that he might have been passive. The Tribunal found Rules 1.04 and 1.06 of the SCC to have been breached. Clients would be affected if something went wrong in a practice and there was no insurance. In relation to Rule 5.01 of the SCC, the Tribunal found that rule to have been breached as to supervision and management and that as a recognized body or manager of a recognized body, the Third Respondent had obligations to arrange effective management of the firm as a whole and that included compliance by the firm and individuals with key regulatory requirements such as compulsory professional indemnity cover. The Tribunal was satisfied that, by the Third Respondent's conduct in making or having allowed to be made material misrepresentations in the firm's professional indemnity application for 2008/2009, the insurance would have been void and the Third Respondent would have failed in his obligations under the rules.

1008.4 The Tribunal found allegation 3.10 proved.

1008.5 In relation to recklessness on the part of the Third Respondent, the Tribunal found him to have been reckless as to allegation 3.10 in having failed to make any reasonable or proper enquiry about the information contained in the insurance application form.

Previous Disciplinary Matters

1009. None recorded against any of the Respondents.

Mitigation

1010. The First Respondent had not submitted any mitigation to the Tribunal.

The Second Respondent

1011. The Second Respondent told the Tribunal that she had been admitted as a solicitor in 1992 and that there had been no previous disciplinary findings against her and, as far as she was aware, there had been no complaints made to the Law Society regarding her conduct. The Second Respondent said that she had never previously been involved in answering or dealing with any investigations.

1012. The Second Respondent said that, although she had been a solicitor since 1992, she had never previously been a partner until 2007 and she had no previous experience prior to that of running a firm or of being involved in accounts and having to deal with bank accounts and the practicalities of such matters. She reminded the Tribunal that her appointment as a partner had happened rather quickly and she had not had a period of time to work out how things were going to work and what her role might be.

1013. The Second Respondent said that it had been found that, as she had been a solicitor for a long period of time, she ought to have known how to deal with the G2 matter with the court, but she said that she had never found herself in such a position before. She realised with hindsight how she should have gone about things differently at the time but she had no experience of having to deal with such a matter before with the courts. The matter had also been in connection with criminal proceedings and she had no experience of criminal proceedings at all.

1014. The Second Respondent referred to the evidence heard by the Tribunal regarding the First Respondent and how he had run the firm and also that the Tribunal had seen that he was quite a forceful and domineering personality. She had very much been subservient to him, and it would have been difficult for her to have had any influence over him. As a fact she had had no influence over him.

1015. The Second Respondent said that it had been found that she had not directly had any involvement with the inappropriate transfers of funds from client accounts. When she became aware of various matters after the investigation had begun, she took what steps she could to rectify them to a certain extent from the funds available from the practice. The Second Respondent said that she had not had any funds to have been able to rectify the breaches.

1016. Even after the intervention she had also tried to assist Mr Tehrani in the collection of outstanding fees owed to the firm in an attempt to collect in monies that would have been available to the Law Society/the Applicant to deal with any shortages on the client accounts. She said that ultimately that had not been successful but that she had attempted as far as she could to do so.

1017. The Second Respondent referred the Tribunal again to the G2 matter and said that she had been in a rather difficult position because she had not ever fully been aware of the facts of what had happened until after the investigation and because she certainly had not been aware that the funds had been replaced by way of a loan.

1018. Having been made a partner, she had not received any benefit but rather, in the case of the firm, all she had experienced were the burdens of being a partner. She had been made bankrupt as a result of the liabilities of the firm, which made it impossible for her to deal with any shortages on the client account.

1019. In relation to the finding of recklessness against her regarding the application made by the First Respondent and/or the representations in the Judicial Review proceedings, the Second Respondent referred the Tribunal to her evidence that she had no intention to mislead the court. She had never been given access to the bank account or the full financial information of the firm, so she had not been in a position to make any decisions herself as to the accuracy of all the information that the First Respondent had provided to the court.

1020. In relation to the transfer of the £100,000, the particular client had never made any complaint to the Applicant that they had not properly been advised or made any other complaints in connection with the matter. Although Client H might not have been aware of the full financial picture of the firm at the time, he had subsequently become aware of the matters and he had given a witness statement in the disciplinary proceedings. The Second Respondent said that, even with the benefit of that information, he had not pursued a complaint as far as she was aware.

The Third Respondent

1021. Mr Atkins told the Tribunal that the Third Respondent had agreed to go on the firm's notepaper and be held out as a partner on the understanding, which had been express and specific, that he would not be involved in the management of the firm and specifically in the financial management of the firm. What had become clear was that, in agreeing to that, the Third Respondent had very seriously misunderstood the implications of what he was doing and specifically he had misunderstood the nature and extent of the obligations to which he would become automatically subject under Rule 6 of the SAR and under the SCC.

1022. Mr Atkins asked the Tribunal to bear in mind three points in relation to that; firstly, that the Third Respondent would not be the first and only solicitor to have failed to appreciate that. Mr Atkins submitted that there were a number of solicitors who were held out as partners who understood what that meant at common law, namely that they had committed themselves to obligations insofar as they purported to contract on behalf of the firm. They might not understand that they had also assumed managerial responsibilities. Mr Atkins said that it was plain that the Third Respondent had not appreciated that in this case.

1023. Secondly, Mr Atkins said that even if the Third Respondent had appreciated those responsibilities, and what had put him on notice that there might be a problem, it had been no part of his job to deal with client accounts or any of the financial affairs of the firm. Mr Atkins said that the Tribunal had heard that he had shared a room with Mr Richardson whose job it had been to prepare financial information. As the Third Respondent had said in his evidence, at no time had Mr Richardson given him any reason to think that there was or might be a problem.

1024. On top of that, Mr Atkins said that the Third Respondent had a string of rosy assurances from the First Respondent who, at the time, he had no reason not to trust and no other reason to doubt the correctness of what he was saying.

1025. Mr Atkins said that even if the Third Respondent had appreciated his responsibilities and had been put on notice that there was a problem, what in reality could he have done about it? This led to the third point, namely, given the tight control that the First Respondent had on the firm, it was inconceivable that he would have allowed the Third Respondent to have interfered with what he was doing.

1026. Mr Atkins submitted that the only practical course open to the Third Respondent (had he been aware of the problems and his responsibilities) was to resign immediately, which was exactly what he did. The moment he became aware of the nature and scale of the problems, he immediately resigned. In the end, he had done all that he could have done, even if he had appreciated the problems.

1027. Mr Atkins said in relation to the Rule 7 breach, the Third Respondent's understanding of his position on advice from his solicitor had always been that because he did not discover the breaches until after he had left the firm he was not subject to the obligations to make restitution as an innocent principal under sub-rule (2). Although that had not been the Tribunal's understanding or finding, Mr Atkins submitted that it was, with all due respect, not an unreasonable one. He said that sub-rule (2) was ambiguous as to whether the obligation on innocent principals to make restitution was on principals at the time of discovery or at the time of breach. Mr Malek had impressed upon the Tribunal and the Tribunal had agreed that it had to be principals at the time of breach. Since the overall purpose of the rule was to maintain the integrity of the client accounts, rather than simply to punish innocent principals, one could argue with some force that the obligation was on principals at the time of discovery, not at the time of breach. He said that the reason he had raised the ambiguity of the rule was to show that the rule was not entirely clear and that the Third Respondent's understanding of it was a perfectly reasonable one.

1028. Mr Atkins told the Tribunal that it was for that reason that the Third Respondent had not given evidence that he had not been in a position financially to comply with the rule. It was not, as Mr Malek suggested, that he had been in a position to comply with it but had chosen not to. Rather it was because he did not think the rule applied to him at all and, for the avoidance of any doubt, the Third Respondent had told Mr Atkins that he did not have either the capital or the income resources to make the kind of restitution that would have been required in this case.

1029. In relation to the insurance form, Mr Atkins referred to the Tribunal's findings that the Third Respondent had acted recklessly on that occasion. Mr Atkins submitted that if he had acted recklessly on that occasion, it had been in a very mild or loose sense. Mr Atkins submitted that an allegation that a representation had been made recklessly was, as far as the law was concerned, an allegation that representation had been made without any positive belief in its truth, in other words, not caring whether it be true or false. Mr Atkins said that was the allegation which had been made in the Rule 5 Statement. The Third Respondent had met that allegation by saying that he had signed the form having sought and having been given an express assurance that its contents were correct.

1030. Mr Atkins said that there had then been a further allegation made, which was not in the Rule 5 Statement, that the Third Respondent should have audited the figures, namely that he should have undertaken due diligence on them. Mr Atkins said that the Tribunal had found the allegation proved but he submitted that given the very limited role the Third Respondent had in the firm and the circumstances in which he

had generally signed firm documents on behalf of the First Respondent, how realistic was it to have expected the Third Respondent to have understood that he was under an obligation to verify the figures which he had been expressly assured were correct.

1031. Mr Atkins told the Tribunal that the Third Respondent was at the end of a long and fairly distinguished legal career, chiefly in the Crown Prosecution Service and latterly as Chief Crown Prosecutor of Essex over a seven year period from 1999 to 2006. His involvement in the firm and in the disciplinary proceedings was inevitably a blot on that career, which was an inevitable pity. Mr Atkins asked the Tribunal to seek to ensure that the size and the darkness of that blot were commensurate with the nature and extent of the wrongdoing that had been found against the Third Respondent.

1032. Mr Atkins reminded the Tribunal that there had never been any allegation of dishonesty against the Third Respondent. He had been found to have to have been reckless on one occasion in a very mild sense. The Tribunal had not found that the Third Respondent had acted without integrity and he submitted that the gist of the Tribunal's findings had been that the Third Respondent had been naive, possibly grossly so, in his understanding of his responsibilities which arose automatically in being held out as a partner.

1033. Mr Atkins submitted, in closing, that the Third Respondent was in no sense a danger to the public, he was fully retired and had no intention of working for or as a solicitor ever again, so there could be no possibility of any recurrence of the breaches which the Tribunal had found against him.

Sanction

First Respondent

1034. The Tribunal had found proved twenty-three out of twenty-five allegations, and dishonesty had been found proved in twenty-one of those twenty-three allegations.

1035. The First Respondent's conduct over a considerable period of time had shown a complete and blatant disregard for his professional obligations, his regulatory body and numerous clients who had suffered as a result of his actions.

1036. The Tribunal had a duty to protect the public and the reputation of the solicitors' profession, including the maintenance of the public's confidence in that profession. It was essential that the sanction imposed by the Tribunal met that duty whilst at the same time being reasonable and proportionate.

1037. The First Respondent, if allowed to continue to practise, posed a very significant risk to the public. The Tribunal could identify no means by which he could rehabilitate himself. His conduct had caused financial damage to former clients and counsel and no redress had been made. That was a matter of grave concern to the Tribunal.

1038. In balancing the requirement to impose a reasonable and proportionate sanction with the Tribunal's duty to protect the public and the profession's reputation, the Tribunal decided that there could be no other sanction in all the circumstances of the case and ordered that the First Respondent be struck off the Roll of Solicitors.

The Second Respondent

1039. The Tribunal had found proved all fourteen allegations and dishonesty had been found proved in three of those allegations and recklessness proved in four of those allegations.

1040. As the Tribunal had remarked in its Findings, the First Respondent had found a willing assistant in the Second Respondent who had placed her faith in him without having due regard to her own professional obligations as a solicitor. The expectation was that she should have demonstrated her independence which had been singularly lacking. There was no evidence that the Second Respondent had ever tried to influence the First Respondent or attempted to prevent the extremely serious situation which arose at the firm from developing. This was a matter of grave concern to the Tribunal.

1041. The Second Respondent appeared to have had no understanding of her obligations as a principal and a partner and to have abdicated any responsibility, having solely relied upon the First Respondent and the assurances he gave her as to the firm's financial and regulatory health. The Tribunal found that the Second Respondent could not rely on her lack of knowledge in relation to being a partner; that was not any sort of defence and the rules should have been at the forefront of her mind at all times.

1042. The Tribunal had also undertaken a balancing exercise with regard to sanction of the Second Respondent and in all the circumstances of the case decided that it was necessary to protect the public and the profession's reputation by striking the Second Respondent off the Roll of Solicitors.

The Third Respondent

1043. The Tribunal had found proved all ten allegations and recklessness had been found proved in relation to allegation 3.10.

1044. The Tribunal had taken into account the fact that the Third Respondent had been a principal and partner in the firm which had come with all the obligations of such a position in relation to the SAR 1998 and the SCC 2007. The Tribunal found that those Rules applied equally to the Third Respondent as they had to the First and Second Respondents.

1045. The Tribunal agreed with the Third Respondent's counsel Mr Atkins that the Third Respondent's involvement with the firm had been a blot on an otherwise distinguished career, and whilst it had found that there had been no lack of integrity on his part, he had allowed himself to be used by the First Respondent to afford an air of credibility to the firm, whether due to naivety or simple passivity on his part which was no defence. The Tribunal had also found him to have been reckless in relation to allegation 3.10, as he appeared to have been heedless of the danger or consequences of his actions.

1046. The Tribunal again had to have regard to protection of the public and the reputation of the profession whilst imposing a reasonable and proportionate sanction on the Third Respondent. Having carried out that balancing exercise and in the particular circumstances of the case, it decided to suspend the Third Respondent from practising as a solicitor for a period of twelve months.

Costs

1047. The Tribunal firstly addressed the matter of costs of the two adjournment applications dated 23 and 27 May 2012. In relation to both, the Tribunal noted that the First Respondent had not filed and served his response to the Applicant's respective schedules of costs.

1048. The Tribunal summarily assessed the costs of the 23 May 2012 application as drawn in the sum of £13,234.20 inclusive of VAT and in relation to the 27 May 2012 application it summarily assessed the costs as drawn in the sum of £25,330.80 inclusive of VAT.

1049. In relation to the costs of the previous hearing dated 25 October 2011 and the further adjournment hearing on 13 June 2012, the Tribunal asked for it to be recorded that those costs had also been summarily assessed by it as drawn in the respective sums requested.

1050. Mr Malek told the Tribunal that the Schedule of Costs for the proceedings as a whole dated 20 June 2012 had been sent to the First Respondent and provided directly to the Second and Third Respondents.

1051. Mr Malek told the Tribunal that agreement had been reached between the Applicant and the Second and Third Respondents as to their respective costs; the Second Respondent had agreed costs in the sum of £84,060 inclusive of VAT and disbursements as sought by the Applicant and that she would provide the Applicant with a Statement of Means within fourteen days and the Third Respondent had agreed costs in the sum of £21,600 inclusive of VAT and disbursements, to be paid within twenty-one days of 21 June 2012.

1052. Mr Malek told the Tribunal that in relation to the First Respondent, the Applicant sought payment of its costs in full and on an indemnity basis and requested an interim payment of £500,000 by 4pm on 5 July 2012, for the following reasons:

(a) Findings of the utmost seriousness had been made against the First Respondent who had absented himself from the remainder of the proceedings and had been found to have been dishonest. As Pitchford J and Henderson J (inter alia) had ordered, the costs should be on an indemnity basis since the pattern in these proceedings was no different to previous High Court proceedings involving the First Respondent;

(b) There should be no deduction or set-off in relation to payment of the costs, as previously ordered by Pitchford J in the Judicial Review proceedings. The First Respondent had commenced proceedings against the Applicant and he should not be allowed to argue that because of that, he should not pay. That needed to be protected against;

(c) The First Respondent should be made jointly and severally liable for all of the costs save for those received from the Second and Third Respondents which the Applicant would obviously not seek to recover from the First Respondent;

(d) Mr Malek requested that the Tribunal order an interim payment in the region of £500,000 bearing in mind the significant amount of the costs. An interim

payment should be set at the level of the minimum recoverable on assessment, if costs were sent for detailed assessment;

(e) In relation to the First Respondent's ability to pay, whilst his true assets were not known, a Freezing Order had been obtained by the Applicant against the First Respondent's assets in the Chancery Division. Mr Malek added that in her evidence, the Second Respondent had stated that the First Respondent had paid her via Mr Baxendale-Walker. In the course of the proceedings seventeen different counsel had represented the First Respondent. Mr Malek submitted that they would not have done so unless they had been placed in funds and it followed therefore that the First Respondent had means to pay.

1053. In response to a question from the Tribunal, Mr Malek said that he had not considered asking the Tribunal to assess the costs summarily having regard to the sum involved and that the First Respondent was not present. He said that he would be content for the Tribunal to assess the costs summarily but with caution. He acknowledged as the Tribunal had pointed out that detailed assessment was costly and that the Tribunal might therefore prefer to assess the costs summarily having regard to a possible discount, but he submitted that any such discount should not be substantial.

1054. Mr Malek also referred the Tribunal to the First Respondent's adjournment applications on 28 and 29 May 2012. During the course of those applications, Mr Beaumont on behalf of the First Respondent made reference to the First Respondent's means and ability to fund, and Mr Malek requested permission to rely on that extract only, allowing for the fact that part of the hearing took place in private. Mr Malek submitted that the Tribunal could release that extract only since it related to means and not to the First Respondent's medical health.

Second Respondent

1055. The Second Respondent informed the Tribunal that she was made bankrupt in September 2009 but had been discharged automatically after one year, at the end of September 2010.

1056. She had been working on an ad hoc basis for the First Respondent and Mr Baxendale-Walker, as she had stated in her evidence. Her only income and expenses were received from the First Respondent and Mr Baxendale-Walker. She could not estimate what her income was since it fluctuated, but for the last six months tax return she had completed, her earnings for the half year were £11,000 gross.

1057. The Second Respondent said that she had no capital and she lived in rented accommodation alone.

1058. In response to a question from the Tribunal, the Second Respondent said that she had claimed state benefit in the past but she had been unable to claim housing benefit as she had owned a property which had subsequently fallen into the bankruptcy.

Third Respondent

1059. Mr Atkins told the Tribunal that the Third Respondent received a pension of £3,600 per month and received additional income from his position as a Judge sitting four days per month in the sum of £2,000.

1060. The Third Respondent did not have any capital of significant value. The family home was held on trust for someone else and he paid no rent. The Third Respondent's only outgoings were his living expenses.

1061. Mr Atkins confirmed that the Third Respondent was married and his wife was also retired and had no income of her own. There were no dependent children.

Tribunal's Decision on Costs

1062. The Tribunal decided to assess the costs of the substantive proceedings summarily.

1063. The Tribunal ordered the First Respondent to pay costs in the sum of £1,400,000 inclusive of VAT and disbursements without set off or deduction and that he be jointly and severally liable for the Applicant's costs save to the extent of any sums received from the Second and Third Respondents.

1064. The Tribunal ordered the Second Respondent to pay costs in the agreed sum of £84,060 inclusive of VAT and disbursements and that she provide a Statement of Means to the Applicant within fourteen days of 21 June 2012.

1065. The Tribunal ordered the Third Respondent to pay costs in the agreed sum of £21,600 inclusive of VAT and disbursements within twenty-one days of 21 June 2012.

1066. In relation to the extract from the transcript of Day 2 of the adjournment application hearings dated 29 May 2012, the Tribunal directed that, whilst that hearing took place in private, the extract at page 34, lines ten to twenty could be released and relied upon by the Applicant as to costs.

1067. The Tribunal also directed that:

1067.1 In relation to the recordings of the hearings, these must not be released;

1067.2 In relation to the transcripts, the Tribunal noted that these were not the property of the Tribunal and understood that they were the property of Russell-Cooke Solicitors. In the circumstances, the transcripts of the public hearings could be released (not the private hearing transcripts) on the basis that the names of clients were anonymised.

Statement of Full Order

1068. The Tribunal Ordered that the First Respondent, Shahrokh Mireskandari, 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 £1,400,000.00 inclusive of VAT and disbursements without set off or deduction of the Applicant's costs of and occasioned by the application to include the costs of the forensic investigations. The Respondent was jointly and severally liable in respect of all of the Applicant's said costs save to the extent of any sums received from the Second and Third Respondents.

1069. The Tribunal Ordered that the Second Respondent, Caroline Sara Turbin, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £84,060.00

inclusive of VAT and disbursements, the Respondent to provide the Applicant with a Statement of Means within 14 days of 21st June 2012.

1070. The Tribunal Ordered that the Third Respondent, solicitor, be suspended from practice as a solicitor for the period of twelve months to commence on the 21st day of June 2012 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £21,600.00 inclusive of VAT and disbursements to be paid within 21 days of 21st June 2012.

DATED this 13th day of September 2012
On behalf of the Tribunal

Ms J Devonish
Chairman