The First Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 25 April 2012 in respect of findings. The appeal was heard by His Honour Judge Bidder QC (Sitting as a Deputy Judge of the High Court) on 26 October 2016. The appeal was dismissed with costs payable by the First Respondent to the Applicant. Emele v Solicitors Regulation Authority [2016] EWHC 2836 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10441-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHUKWUMA EMELE First Respondent

and

[SECOND RESPONDENT – NAME REDACTED] Second Respondent

and

[THIRD RESPONDENT – NAME REDACTED] Third Respondent

Before:

Mr. E. Richards (in the chair)
Mr. C. Murray
Mrs S. Gordon

Date of Hearing: 8 November 2010, 6 January 2011, 9 May 2011, 14 October 2011 and 27 February – 1 March 2012

Appearances

Jonathan Goodwin, Solicitor Advocate, of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester CH1 6LT for the Applicant.

The First Respondent, Mr Chukwuma Emele, appeared in person and represented himself on 8 November 2010, 6 January 2011, 9 May 2011 and 27 February – 1 March 2012 inclusive.

The Second Respondent, appeared and represented himself on all of the hearing dates.

The Third Respondent, appeared and represented himself on 8 November 2010 and 6 January 2011.

JUDGMENT

Allegations

1. The allegations against the three Respondents were that:-

1.1 Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the 1998 Rules), they failed to ensure compliance with the Rules;

1.2 Contrary to Rule 7 of the 1998 Rules, they failed to rectify breaches to the Rules.

1.3 Contrary to Rule 15 of the 1998 Rules, they failed to pay client money into client bank account;

1.4 They failed to keep accounts and records properly written up, contrary to Rule 32 of the 1998 Rules.

1.5 They failed to carry out the required reconciliations contrary to Rule 32(7) of the 1998 Rules;

1.6 They failed to comply with the Rules and requirements relating to the Regulation of Registered Foreign Lawyers, contrary to Rules 1.06, and 12 of "SCC";

1.7 They failed to ensure that the firm was properly supervised and/or managed contrary to Rule 5 and/or 12 of the "SCC";

1.8 The firm's letterhead failed to comply with the requirements of Rule 7.07 of the "SCC", in that it failed to include a list of the partners;

1.9 Contrary to Rule 2 of the "SCC" the firms client care letter failed to provide clear information regarding costs and/or complaints handling;

1.10 They failed to have regard to, and/or comply with The Money Laundering Regulations 2007;

1.11 Contrary to Rule 1.06 and/or 20.05 of "SCC" they failed to implement the previous special measures identified in "APR1" dated 1st September 2008.

2. The additional allegations against Mr Emele, the First Respondent were that:-

2.1 He misappropriated clients funds. For the avoidance of doubt this is an allegation of dishonesty;

2.2 He failed to produce all records and other documentation of the firm to the representative appointed by the Solicitors Regulation Authority ("SRA") contrary to Rule 34 of the 1998 Rules, and/or Rule 20.05 of the Solicitors Code of Conduct 2007 ("SCC");

2.3 He made representations on an application form to the "ARP" which were misleading and/or inaccurate;

3. Further allegation:

3.1 With the permission of the Tribunal given on 6 January 2011 a further allegation against each of the First Respondent Chukwuma Emele, and Third Respondent, pursuant to s43(1) of the Solicitors Act 1974 (as amended) was that he, being a person who is or was involved in a legal practice but is not a solicitor, has in the opinion of the Society (SRA) occasioned or been made party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society (SRA) it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in sub section 1(A) of Section 43 Solicitors Act 1974 (as amended).

3.2 The Order sought in relation to this allegation was an order directing that pursuant to s.43(2) of the Solicitors Act 1974 (as amended) in relation to the First and Third Respondents, Chukwuma Emele and [NAME REDACTED]:

(a) (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor;

(ii) no employee of a solicitor shall employ or remunerate in connection with a solicitors practice;

(iii) no recognised body shall employ or remunerate;

(iv) no manager or employee of a recognised body shall employ or remunerate in connection with the business of the body Chulwuma Emele and [THIRD RESPONDENT - NAME REDACTED] except in accordance with Law Society permission;

(b) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Chukwuma Emele and [THIRD RESPONDENT - NAME REDACTED] to be a manager of the body;

(c) no recognised body or manager or employee of such a body shall, except in accordance with Law Society permission, permit Chukwuma Emele and [THIRD RESPONDENT - NAME REDACTED] to have an interest in the body.

The allegations of fact giving rise to the application were those set out at 1.1 to 1.11 and 2.1 to 2.3 inclusive above.

The allegations set out at 1.1 – 2.3 inclusive are set out as they appear in the Rule 5 Statement.

Documents

4. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

Applicant:

- Application dated 5 February 2010;
- Rule 5 Statement dated 5 February 2010 with exhibit "JRG1";
- Witness statement of Hollie Taylor 5 November 2010;
- Letter from Andrew Bullock, Legal Department of SRA to Tribunal 1 December 2010;

- Witness statement of Alexandra Edwards 5 January 2011;
- Witness statement of SM Wade in Southend County Court matter number 1081/2010;
- Copy SRA resolution to intervene in Credo*)* Law Office made on 16 July 2009;
- Copy letter SRA to Mr Emele 2 April 2009;
- Copy formal decision by Adjudicator re Mr MB dated 24 February 2010;
- Supplemental decision – service – re Mr MB dated 24 February 2010;
- Extract from the Solicitors Act 1974 (as amended) - Section 47;
- Extract from Court and Legal Services Act 1990 (Schedule 14, Section 15);
- Registered Foreign Lawyers Order 2009 (SI 2009 No. 1589);
- Extract from SAR – Rule 16;
- Report in Brabazon-Drenning v The United Kingdom Central Council for Nursing Midwifery and Health Visiting (CO/490/2000) ("the Brabazon-Drenning case");
- Report of Teinaz v The London Borough of Wandsworth [2002] EWCA Civ 1040 ("the Teinaz case");
- Report in R (on the application of Bonhoeffer) the General Medical Council [2011] EWHC 1585 (Admin) ("the Bonhoeffer case");
- Email Applicant to Tribunal 26 November 2010;
- Letter Applicant to Tribunal 6 December 2010 with copy letters to the three Respondents (all dated 6 December 2010);
- Copy email Applicant to Mr Emele (copied to other Respondents and Tribunal) 22 December 2010;
- Email Applicant to Mr Emele 22 December 2010 (timed at 16:31, in response to Mr Emele's email of the same date);
- Email Applicant to Mr Emele 23 December 2010, (with attached email of Andrew Bullock to Applicant 23 December 2010 and attachments);
- Letter Applicant to Tribunal 23 December 2010;
- Email Applicant to Tribunal dated 5 January 2011 enclosing witness statement of Alexandra Edwards;
- Letter Applicant to Tribunal 7 April 2011;
- Copy letters Applicant to Respondents dated 7 April 2011 with copy of the Registered Foreign Lawyers Order 2009;
- Email Applicant to Tribunal 18 May 2011;
- Email Applicant to Tribunal 17 February 2012;
- Email Applicant to Tribunal (copied to Respondents) 21 February 2012 with copy letter from Dr Cox dated 17 February 2012.

First Respondent, Mr Emele:

- Document "Need for the establishment of prima facie case" 5 April 2010;

- Document "Overriding Objective Part 1 - Trial Directions" 18 October 2010;
- Document requesting specific disclosure, undated, referred to at hearing on 8 November 2010;
- Mr Emele's witness statement with exhibits, undated but filed in December 2010, with copy signed on 27 February 2012 ("the witness statement");
- Mr Emele's witness statement in response to the letter from the Applicant dated 6 December 2010 ("the second witness statement") dated 20 December 2010;
- Mr Emele's skeleton argument dated 31 December 2010;
- Application for striking out the statement of case, undated but received by the Tribunal on or before 4 January 2011;
- Document "Disclose under "Disclosure and inspection of documents – CPR 31"" 14 April 2011;
- Copy printout email 3 July 2009 from Mr Emele to SRA;
- Treatment letter from the Royal London Hospital re Mr Emele, undated, referred to at the hearing on 14 October 2011;
- Fitness to Work Certificate re Mr Emele 11 October 2011;
- Bundle of course notes, unattributed and undated, concerning professional disciplinary proceedings;
- Copy Tribunal Judgment in matter 10685/2010;
- Document, eight pages, including SRA Board and Report 15 January 2010;
- Extract from SRA's skeleton argument in Richards v The Law Society;
- Mr Emele's email to Tribunal 31 December 2010.

Second Respondent,:

- witness statement with exhibits dated 16 December 2010;
- skeleton argument 4 January 2011;
- Payslips for [SECOND RESPONDENT – NAME REDACTED], January – March 2009 from Premier Work Support (copies referred to but not retained);
- Cheques, dishonoured, for £1,000 dated 1 June 2008 and for £200 dated 19 May 2008, from Mr Emele's personal account (copies referred to but not retained);
- Documents re Hitachi Loan application September 2008 (copies referred to but not retained).

Third Respondent:

- letter to Applicant 5 April 2010;
- witness statement 20 December 2010 (unsigned);
- skeleton argument 31 December 2010 (unsigned);
- Email Third Respondent to Tribunal 15 February 2012.

Preliminary Matter (1) – chronology of proceedings

5. The application in this matter and the Rule 5 Statement in support were made on 5 February 2010 and related to events in the period 2008/2009. The Tribunal's prelisting day was on 9 April 2010 and the substantive hearing was listed to take place on 8 November 2010. The hearing commenced on that date.

6. As recorded in the Memorandum of Adjournment and Directions relating to that hearing, which is dated 16 November 2010, the Tribunal dealt with a number of preliminary issues and gave directions. The Tribunal's rulings on certain issues are recorded below.

7. The substantive hearing was listed to resume on 6 January 2011. The Tribunal considered issues relating to compliance with the directions it had made on 8 November 2010 and made appropriate rulings (recorded below). The Applicant opened the case and called in evidence Ms JC, an SRA officer. The Tribunal was unable to conclude the case, and indeed Mr Emele had not concluded his cross examination of Ms JC. [SECOND RESPONDENT – NAME REDACTED] and [THIRD RESPONDENT - NAME REDACTED] were given the opportunity to cross examine Ms JC, which they did and indicated that they had concluded their cross examination. Ms JC was about to begin a period of maternity leave. The matter was relisted for 16 February 2011, when it was hoped that Ms JC's evidence could be concluded. However, one of the Tribunal members became unavailable on 16 February and the hearing was not able to proceed. The hearing was scheduled to resume on 9 May 2011.

8. On 9 May 2011 Mr Emele and [SECOND RESPONDENT – NAME REDACTED] attended but [THIRD RESPONDENT - NAME REDACTED] was not present. He had contacted the Tribunal to explain that he was unable to attend due to ill health. The SRA's witness, Ms JC, was unable to attend on 9 May 2011. As set out further below, no other evidence was heard that day. The matter was adjourned.

9. The hearing was listed to resume with five days allocated from 14 October 2011. On that date neither Mr Emele nor [THIRD RESPONDENT - NAME REDACTED] were present. Mr Emele had made an application in writing to adjourn due to ill health. Having considered the position and the evidence of ill health provided, the Tribunal granted the application to adjourn the hearing.

10. The matter was then listed to resume on 27 February 2012 with five days allocated. As set out further below on 27 February 2012 the Applicant applied to adjourn the hearing as Ms JC was unable to attend to give evidence for medical reasons. As set out in more detail below, the Tribunal did not grant that application and the matter proceeded with no reliance being placed by the Applicant on Ms JC's evidence.

11. The SRA's second witness, Mr Sean Grehan, a Forensic Investigation Officer ("FIO") gave evidence and was cross examined by Mr Emele and [SECOND RESPONDENT – NAME REDACTED], beginning on 27 February and concluding on 28 February. Mr Emele gave oral evidence on 28 and 29 February, and [SECOND RESPONDENT – NAME REDACTED] gave oral evidence on 29 February. Submissions were made and the Tribunal determined the case in the course of 1 March 2012.

12. The Tribunal acknowledged that the delays which had occurred in the hearing of the case were unfortunate. The preliminary applications and issues raised, in particular by Mr Emele, and the length of time for which he intended to cross examine Ms JC contributed to the fact the case could not be concluded on or before 6 January 2011. Ms JC's extended period of maternity leave for medical reasons, together with the inevitable difficulty of listing a long hearing at which all members of this division of the Tribunal could be present, had meant that the substantive hearing had had to be delayed until October 2011. On that occasion, unfortunately, Mr Emele had been unable to attend for medical reasons, which the Tribunal had accepted.

13. The various delays, whilst regrettable, were not the fault of the Tribunal but simply arose from the circumstances of this particular case. The Tribunal was satisfied at each stage of the hearing that a fair hearing was possible, and indeed, was achieved.

Preliminary Matter (2) – hearing 8 November 2010 – applications and decisions

14. The Memorandum of Adjournment and Directions dated 16 November 2010 and which relates to the hearing on 8 November 2010 states that "The Tribunal's rulings on the preliminary issues will be outlined in the findings produced after the final hearing". The applications and preliminary issues considered by the Tribunal concerned: witnesses; disclosure of documents; the status of Mr Emele and [THIRD RESPONDENT - NAME REDACTED]; case management. Each of those matters will be recorded below.

Preliminary Matter (3) – hearing 8 November 2010 – witnesses

15. Mr Emele told the Tribunal that he did not understand the procedures of the Tribunal and had not been forewarned about the witnesses who would be called for the SRA. Mr Goodwin, for the SRA, told the Tribunal that it was his intention to call two SRA officers, Ms JC and Mr Sean Grehan, whose reports were exhibited to the Rule 5 Statement. Mr Emele told the Tribunal that he did not know what questions he wanted to ask them. On behalf of the SRA it was submitted that Mr Emele had had ample notice of the issues in the case and had had the reports both in the Rule 5 bundle and before the proceedings began.

16. The Tribunal ruled that the Respondents would not be prejudiced if the witnesses were called to give live evidence. If they were not called, their reports could be accepted in evidence without the Respondents having the opportunity to challenge the authors of those reports. The Tribunal told the Respondents that in calling the witnesses they would not be asked to add anything to what they had said in their reports but rather it would give the Respondents the opportunity to cross examine the SRA's witnesses if they so desired.

17. The Tribunal chair explained to Mr Emele that the Tribunal would follow the usual rules of procedure. The Applicant would present his case and the Respondents would have the opportunity to cross examine witnesses. Subsequently, the Respondents could chose to give evidence themselves and/or make submissions.

Preliminary Matter (4) – hearing 8 November 2010 – disclosure application

18. In a two page document submitted in advance of the hearing Mr Emele made an

application for disclosure of five categories of documents. That written application was supplemented by his submissions to the Tribunal.

19. Mr Emele told the Tribunal that he wanted certain documents to be disclosed by the SRA. The Tribunal considered whether the documents requested would be of assistance in determining any issues in the case.

20. The Tribunal noted that the request for disclosure had been made in writing shortly before the hearing, despite the Rule 5 Statement being served in or about February 2010. The references below are to the requests as framed in Mr Emele's request document.

21. The first class of disclosure sought by Mr Emele was for:

> "the files called 'Credo Law Office Solicitors' which show that I was never remunerated nor employed as a clerk to any solicitor."

The Tribunal determined that this request for disclosure was vague and general. It would not be appropriate to order disclosure of this vague category of documents.

22. The second request was for:

> "the letters dated 9 June 2009 by [SECOND RESPONDENT – NAME REDACTED]solicitor to the SRA indicating that I was neither his clerk nor to any solicitor in the firm or remunerated by him or the firm".

The Tribunal noted that two letters from [SECOND RESPONDENT – NAME REDACTED], the Second Respondent, dated 9 June 2009 were in the exhibit to the Rule 5 Statement at pages 245 and pages 279 - 283. Disclosure had therefore already been given.

23. The third request was for:

> "the letter dated 23 February 2009 from one Mike Calvert Head of Forensic Investigations addressed to me indicating my position not as a "clerk of any solicitor" in the firm."

The Tribunal noted that a letter from Mr Calvert to Mr Emele dated 23 February 2009 was in the exhibit to the Rule 5 Statement at page 81. It had therefore already been disclosed.

24. The fourth request was stated to be:

> "the file 'Credo Law Office Solicitors Accounts Records' carted away by the intervention agent of the SRA that showed that I was never remunerated by Credo Law Office Solicitors or by any solicitor rather Credo Law Office Solicitors borrowed money from me particularly the professional indemnity insurance premium of over £8,000. The documents/receipts of monies owed to me by Credo Law Office are contained in the said file."

The Tribunal considered that insofar as such documents were relevant Mr Emele

could deal directly with the SRA to identify and obtain such documents. It was not appropriate to make an order.

25. The fifth category of documents sought was expressed to be:

> "the documents and files of Credo Law Office Solicitors as at 31st March 2009 with SRA (inspite of the purported resignation of Henry – the sole solicitor partner on 27 March 2010) that were used by SRA as the basis for the passporting Credo Law Office Solicitors to a "Recognised Body status"".

The Tribunal was not persuaded that such documents were relevant to any of the allegations made and the issues that the Tribunal would have to determine. It may be that one or more of the documents Mr Emele sought could relate to mitigation, rather than any defence which he might be able to advance. However, the Tribunal was not satisfied that it should order the disclosure sought by Mr Emele and the Tribunal was satisfied that it could deal fairly with the case without the documents which Mr Emele had chosen to request shortly before the hearing.

Preliminary Matter (5) - hearing 8 November 2010 – Registered Foreign Lawyer status

26. The Tribunal heard argument from the Applicant, Mr Emele and [THIRD RESPONDENT - NAME REDACTED] as to whether the Tribunal had jurisdiction to deal with the allegations against those Respondents. Both Mr Emele and [THIRD RESPONDENT - NAME REDACTED] had been Registered Foreign Lawyers ("RFLs") during the relevant time until a date in December 2008. Mr Emele and [THIRD RESPONDENT - NAME REDACTED] submitted that the Tribunal did not have jurisdiction to hear cases against a former RFL.

27. On behalf of the SRA Mr Goodwin drew the attention of the Tribunal to Section 15 of the Courts and Legal Services Act 1990 ("CLSA") which gave jurisdiction to the Tribunal to deal with RFLs. Under Section 47 (2)(g) of the Solicitors Act 1974 (as amended) the Tribunal has jurisdiction to deal with former solicitors and make an order prohibiting restoration to the Roll without the permission of the Tribunal. It did not appear there was an equivalent provision for former RFLs. Accordingly, consideration would have to be given to whether a Section 43 application was needed. Mr Emele in particular was concerned that a further allegation might be brought against him if the proceedings were amended to include an application under Section 43 of the Solicitors Act 1974 (as amended).

28. The Tribunal considered the arguments raised by the parties and concluded that it did have jurisdiction to hear the cases against Mr Emele and [THIRD RESPONDENT - NAME REDACTED]. If there were any issues concerning their status at various points, those issues could be considered as part of the trial process. Further, the Tribunal gave case management directions (set out below) to clarify the submissions and arguments of the parties concerning the status of Mr Emele and [THIRD RESPONDENT - NAME REDACTED] and the Tribunal's jurisdiction.

Preliminary Matter (6) – hearing date 8 November 2010 – case management

29. As recorded in a Memorandum of Adjournment and Directions following the hearing on 8 November 2010 the Tribunal made the following directions:-

(1) By 22nd November 2010, the Applicant shall confirm the status of the First and Third Respondents, Mr Emele and [THIRD RESPONDENT - NAME REDACTED] [THIRD RESPONDENT - NAME REDACTED], in terms of their being Registered Foreign Lawyers or Foreign Lawyers, both before and after 15 December 2008.

(2) By 6 December 2010, the Applicant shall if so advised amend the Rule 5 Statement in relation to matters arising out of (the above paragraph) only.

(3) By 20 December 2010, the Respondents shall submit witness statements confirming whether they admit or deny the allegations following any changes to those allegations which may be proposed by the Applicant in a revised Rule 5 Statement.

(4) By 31st December 2010, all parties shall submit skeleton arguments regarding the issues they intend to raise at the adjourned hearing on 6th January 2011.

The Tribunal further directed, for the avoidance of doubt, that any document required to be served by any party to the proceedings as a result of those Directions should be served on the Tribunal and on all other parties.

Preliminary Matter (7) – hearing 6 January 2011 – issues and documents

30. At the hearing on 6 January 2011 the Tribunal considered a number of preliminary matters including whether the parties had complied with the directions given on 8 November 2010, the status of Mr Emele and [THIRD RESPONDENT - NAME REDACTED] and the Tribunal's jurisdiction to deal with allegations against them, witness evidence and a proposed amendment to the Rule 5 Statement. Details in relation to those matters are set out below. The documents provided to the Tribunal between the hearing on 8 November 2010 and the hearing on 6 January 2011 included:-

- Email from Jonathan Goodwin 26 November 2010;
- Letter from Andrew Bullock of SRA 1 December 2010;
- Copy letters from Mr Goodwin to the Respondents 6 December 2010;
- Two witness statements from Mr Emele (one dated 20 December 2010, the other undated.)
- Third Respondent's witness statement apparently dated 20 December 2010;
- [SECOND RESPONDENT – NAME REDACTED]'s witness statement 16 December 2010 with exhibits;
- Copy letter from Mr Goodwin to the Respondents 22 December 2010;
- Copy email from Mr Emele 22 December 2010;
- Email from Mr Goodwin in response dated 22 December 2010;
- Email from Mr Goodwin to Tribunal and Respondents 23 December 2010;

- Further email from Mr Goodwin to the Respondents dated 23 December 2010 with copy letters;
- Skeleton argument of Mr Emele dated 31 December 2010;
- Skeleton argument of Third Respondent dated 31 December 2010;
- Mr Emele's application for case to be struck out (undated)
- Skeleton argument of Second Respondent 4 January 2011;
- Email from Mr Goodwin dated 5 January 2011 with witness statement of Alexandra Edwards 5 January 2011;

Preliminary Matter (8) – hearing 6 January 2011 – compliance with directions of 8 November 2010– status of Mr Emele and Third Respondent

31. The skeleton argument of Mr Emele and [THIRD RESPONDENT - NAME REDACTED] submitted on 31 December 2010 submitted that the Applicant had failed to comply with the directions given by the Tribunal at the hearing on 8 November 2010. The complaints made included late information from the Applicant concerning the status of Mr Emele and Third Respondent; that the information provided in December 2010 referred to termination of Mr Emele's and Third Respondent's RFL status on 18 December 2010, rather than the date of 15 December 2010 which had hitherto been mentioned; that the SRA's statements of Mr Emele's and Third Respondent's status were inconsistent and their evidence could not be relied on and that the SRA's hands were "heavily soiled and tainted" and that they should be held solely responsible for the state of affairs at Credo in that on 31 March 2009 the firm had been passported to "Recognised Body Status" when there was no solicitor partner in the firm on that date.

32. Further, in Mr Emele's and Third Respondent's witness statements in response to the Applicant's letter of 6 December 2010 it was contended that the Applicant had refused or omitted to comply with the Tribunal directions, in particular with regard to confirmation of Mr Emele's and Third Respondent's status as RFLs/Foreign Lawyers. It was further submitted in the witness statements of 20 December 2010 that the failure to comply with the directions of the Tribunal was "clearly a contempt". It was also submitted that the Applicant had failed to provide full evidence of the assertions made as to Mr Emele's and Third Respondent's status.

33. On behalf of the Applicant, Mr Goodwin told the Tribunal and Respondents that he had requested an extension of time for compliance with the first direction from 19 November to 26 November 2010. The Tribunal Chair had granted that request for an extension of time. On 26 November 2010 Mr Goodwin wrote to the Tribunal to explain that the SRA, through Mr Bullock, would deal with the issue by 1 December 2010. He had explained the reasons for the delay and had apologised for the delay in complying with the direction. Mr Goodwin's email to the Tribunal had been sent to the Respondents. On 1 December Mr Bullock wrote to the Tribunal to indicate that Mr Emele and Third Respondent were regarded as RFLs until their status was terminated by the SRA on 18 December 2008. Mr Bullock's letter stated that the termination was effected as part of the Operations Department's bulk termination process, and this had taken place as the application for registration was accompanied by a cheque which was dishonoured.

34. Mr Goodwin told the Tribunal that on further enquiry the correct date was shown to be 15 December 2008, as originally stated in the Rule 5 Statement. The witness statement of Alexandra Edwards confirmed this, based on the SRA records. It was submitted that the correct position was clearly that Mr Emele and [THIRD RESPONDENT - NAME REDACTED] had had RFL status in the relevant period up to and including 15 December 2008. There would be no impact on the case – either the prosecution or defence – if the date had been 18 December 2008 as had been suggested in Mr Bullock's letter of 1 December 2010.

35. The Tribunal ruled that there did not appear to be any material difference between the dates of 15 and 18 December 2008. There did not appear to be any prejudice to any of the Respondents, or to their defences, caused by a temporary misstatement of the date on which their RFL status had been terminated. The Tribunal was satisfied that the requirement on the Applicant to confirm the status of Mr Emele and [THIRD RESPONDENT - NAME REDACTED] had been substantially complied with. Whilst it was correct that this had not been done by 22 November 2010, the Applicant had obtained an extension of time for compliance with the direction, had explained why there would be a further short delay and had, ultimately, produced a witness statement which confirmed the position, namely that Mr Emele and [THIRD RESPONDENT - NAME REDACTED] had ceased to be RFLs on 15 December 2008.

Preliminary Matter (9) – compliance with directions of 8 November 2010 – skeleton argument

36. The Tribunal considered whether the Applicant and Respondents had complied with the direction to submit skeleton arguments regarding the issues they intended to raise at the 6 January 2011 hearing. Mr Goodwin told the Tribunal that he had not submitted a skeleton argument in the usual format but his letters to the Respondents and Tribunal of 6 December 2010 and his letter to the Tribunal of 23 December 2010 (copied to the Respondents) had set out the Applicant's position. In particular it was submitted that the email of 6 December 2010, together with the Rule 5 Statement, would be sufficient to identify the issues that the SRA intended to raise at the substantive hearing. Mr Emele argued that the Applicant had not complied with the directions in the way the Tribunal had expressed them.

37. The Tribunal had received skeleton arguments from all three Respondents. Mr Goodwin submitted that the skeleton arguments and statement they had submitted raised a number of peripheral issues but did not deal with the issues and allegations in the Rule 5 Statement.

38. The Tribunal noted that there had been no skeleton argument prepared by the Applicant but found that the position of the SRA was clear in the Rule 5 Statement and Mr Goodwin's letters of 6 and 23 December 2010. Accordingly, the SRA's case had been set out sufficiently clearly, no prejudice had been caused to the Respondents and the Applicant had substantially complied with the direction with regard to filing and service of skeleton arguments.

39. The Tribunal had noted that the Respondents had filed skeleton arguments. It noted Mr Goodwin's submission that those documents dealt with peripheral issues rather

than dealing substantively with the allegations, but determined that the direction for filing of skeleton arguments by the Respondents had been substantially complied with.

Preliminary Matter (10) – hearing 6 January 2011 – jurisdiction

40. The Tribunal considered its jurisdiction to deal with Mr Emele and [THIRD RESPONDENT - NAME REDACTED] in the light of the skeleton arguments, witness statements and Mr Goodwin's email of 6 December 2010. The latter document set out the Applicant's main submissions.

41. Mr Emele and [THIRD RESPONDENT - NAME REDACTED] sought to persuade the Tribunal that as they were former RFLs the Tribunal could not hear a case against them and/or that as their status and the date of termination of their registration as RFLs had been unclear the Tribunal should not consider the allegations against them. Further, or in the alternative, it was argued that neither had been a clerk of [SECOND RESPONDENT – NAME REDACTED] (i.e. had not been employed or remunerated by a solicitor) and therefore no application could be made against them under Section 43 of the Solicitors Act 1974 (as amended).

42. Having considered the documents submitted and heard the parties the Tribunal accepted the Applicant's submissions on this point. For the period up to and including 15 December 2008, when Mr Emele and [THIRD RESPONDENT - NAME REDACTED] were RFLs the SRA could rely on Section 15 of CLSA and in particular sub section (4) which reads:

> "On the hearing of any application or complaint made to the Tribunal with respect to a Foreign Lawyer, the Tribunal shall have power to make such order as it may think fit..."

Although Mr Emele and [THIRD RESPONDENT - NAME REDACTED] were no longer RFLs the Tribunal considered that, subject to the findings it may make with regard to factual matters, it could order that Mr Emele and/or [THIRD RESPONDENT - NAME REDACTED] should not be readmitted to the Register without the Tribunal's permission. The Tribunal noted that the allegations applicable in full or in part to conduct which occurred at the time Mr Emele and [THIRD RESPONDENT - NAME REDACTED] were RFLs were allegations 1.1, 1.2, 1.5, 1.8, 1.9, 1.10 and 1.11. In relation to Mr Emele alone allegation 2.3 was also applicable.

43. For the period after 15 December 2008 Mr Emele and [THIRD RESPONDENT - NAME REDACTED] were not RFLs. The Tribunal accepted that it had jurisdiction to consider conduct both prior to and subsequent to the termination of Mr Emele's and [THIRD RESPONDENT - NAME REDACTED] registrations as RFLs in reliance upon Section 15(4) of CLSA which refers to the hearing of any application or complaint with respect to a "Foreign Lawyer".

44. The Tribunal further determined that it had jurisdiction to consider conduct occurring after 15 December 2008 by virtue of Section 43 of the Solicitors Act 1974 (as amended) and as amended by the Legal Services Act 2007 which refers to:

"...a person who is or was involved in a legal practice but is not a solicitor..."

The Tribunal noted the definition of a person involved in a legal practice under Section 43(1)A, which appeared to include persons with the apparent roles of Mr Emele and/or [THIRD RESPONDENT - NAME REDACTED]. The Tribunal accepted that under the Legal Services Act 2007 which amended the Solicitors Act 1974 (by insertion of sections 34A and 34B) those who are employees of solicitors are directly subject to the Solicitors Code of Conduct and the Solicitors Accounts Rules. In the case of clerks or those involved in legal practice who were not employees of solicitors, the Tribunal needed to consider conduct in relation to the legal practice more generally.

45. The Tribunal noted that the following allegations applied in full or in part to the period after 15 December 2008: allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 and in relation to Mr Emele alone allegations 2.1 and 2.2.

46. The issue of what orders, if any, should be made would be a matter for the Tribunal to determine in the light of any findings it might make with regard to the factual allegations.

Preliminary Matter (11) – hearing 6 January 2011 – witness evidence

47. The Tribunal noted that witness statements had been received from all three Respondents.

48. The Tribunal noted that it had been made clear on 8 November 2010 that it was of benefit to the Respondents to have the SRA's witnesses attend Court to give evidence and be cross examined so that their evidence could be tested. The Tribunal noted that a number of weeks had now elapsed since Mr Emele had submitted that he had not been able to prepare his cross examination, and that the time which had elapsed would have allowed him sufficient time to do so.

49. Mr Goodwin opened the Applicant's case and called Ms JC, a SRA officer, to give evidence. Mr Emele's cross examination took place between approximately 12 noon and 1pm, continued after lunch at 1.50pm until approximately 3.10pm. Mr Emele had indicated to the Tribunal that he had approximately 13 issues on which he wished to cross examine Ms JC. The Tribunal noted that by the time of a break in the hearing at approximately 3.10pm, Mr Emele had dealt with one of the 13 issues he had identified.

50. On resuming the hearing at approximately 3.30pm, the Tribunal informed the parties that it was clear that the case would not be finished in the course of 6 January. The Tribunal was mindful of the fact that Ms JC was heavily pregnant. However, it appeared that she would be able to return to complete her evidence on 16 February 2011. In order to ensure that all of the Respondents were dealt with fairly, the Tribunal decided to allow [SECOND RESPONDENT – NAME REDACTED] and [THIRD RESPONDENT - NAME REDACTED] to cross examine Ms JC, with the intention that Mr Emele would be able to complete his cross examination of her on the next occasion. [SECOND RESPONDENT – NAME REDACTED] and [THIRD RESPONDENT - NAME REDACTED] agreed with this course of action, conducted a cross examination and by approximately 3.55pm confirmed that they had both completed their cross examination.

51. For the reasons noted above (preliminary matter 1) the hearing was not able to recommence on 16 February 2011 and was adjourned to 9 May 2011 and the four days thereafter.

Preliminary Matter (12) - hearing 6 January 2011 - amendment to originating application

52. In the light of its rulings on jurisdiction set out above the Tribunal considered the Applicant's application to amend the originating application dated 5 February 2010 to include a reference to an Order under Section 43(2) of the Solicitors Act 1974 (as amended).

53. The issues relating to jurisdiction had been rehearsed fully by the parties. The Tribunal noted that the proposed amendment, under which the Applicant would seek an Order under Section 43, was based on the same facts which were known to the Respondents and which had been set out in the Rule 5 Statement and supporting documents. The Tribunal determined that it would be appropriate to allow the amendment. Any issues as to the status of the Respondents and any Orders which ought to be made (if the Tribunal made any findings of fact against any Respondents) could be raised as submissions in the course of the substantive case. Accordingly, the Tribunal permitted the originating application to be amended to include reference to seeking a Section 43 Order.

Preliminary Matter (13) – hearing 6 January 2011 – indication of appeal

54. Following the Tribunal's ruling on the issue of jurisdiction, Mr Emele told the Tribunal that he wished to appeal against that ruling. Mr Emele stated that this was a fundamental principle and he would be prejudiced if the case proceeded where the Tribunal did not have jurisdiction to deal with it. The Tribunal noted Mr Emele's observations but took the view that it would be appropriate to begin to hear evidence. Mr Emele would have to take any appeal or application to the Administrative Court.

Preliminary Matter (14) – hearing 9 May 2011 – adjournment and re-listing

55. Mr Emele and [SECOND RESPONDENT – NAME REDACTED] attended. [THIRD RESPONDENT - NAME REDACTED] was not present. On 5 May 2011 [THIRD RESPONDENT - NAME REDACTED] sent an email to the Tribunal to say that he was unable to attend due to ill health. He had visited Nigeria and had contracted malaria. Mr Emele told the Tribunal that he had been in contact with Third Respondent's wife from whom he understood that [THIRD RESPONDENT - NAME REDACTED] had fallen ill whilst abroad and was in intensive care.

56. Mr Goodwin told the Tribunal that Ms JC was unable to attend the hearing. She had had her baby but was still on maternity leave. Ms JC did not feel that she was able to participate in the proceedings at this time, given that she was on maternity leave, whether by way of video link or otherwise. Mr Goodwin told the Tribunal that he had considered the possibility of Ms JC's manager giving evidence on her behalf but Mr Emele did not consider that that was appropriate.

57. Mr Goodwin suggested that the Tribunal could proceed with the case and hear the evidence of Mr Sean Grehan, the FIO. The Tribunal could then adjourn until a date when Ms JC would be able to attend, which was likely to be in or after October 2011. Mr Goodwin accepted that [THIRD RESPONDENT - NAME REDACTED] would not be able to hear Mr Grehan's evidence in chief, or the cross examination of the other Respondents. However, it was submitted that this could be cured by the SRA bearing the cost of transcribing Mr Grehan's evidence. The transcript could be sent to [THIRD RESPONDENT - NAME REDACTED] to enable him to prepare any cross examination he may wish to carry out of Mr Grehan, and Mr Grehan could return to Court in order to be cross examined by [THIRD RESPONDENT - NAME REDACTED].

58. Mr Emele submitted that he had been to the Tribunal now on a number of different dates. It had been intended that the Tribunal would resume when Ms JC was available and he had anticipated that this was the purpose of today's hearing. Mr Emele said that the evidence of Mr Grehan could have a bearing on Ms JC's evidence; it may be that he would want to put answers elicited from Ms JC to Mr Grehan in his cross examination of him. In Mr Emele's view it was important that the Tribunal should maintain the order of witnesses that had been indicated previously. Mr Emele told the Tribunal that he would have been willing to cross examine Ms JC by video link today.

59. Mr Emele told the Tribunal that he had during the previous week lodged an appeal at the Administrative Court in relation to the Tribunal's previous ruling on jurisdiction.

60. [SECOND RESPONDENT – NAME REDACTED] stated that he had no objections to the case being adjourned. It would be difficult for him to attend the Tribunal during the current week because of other commitments and an adjournment may therefore be more suitable for him. [SECOND RESPONDENT – NAME REDACTED] confirmed that he had completed his cross examination of Ms JC and that his position was well known, having been put in writing to the Tribunal.

61. The Tribunal gave careful consideration to the representations made by the parties. Although reluctant to adjourn the Tribunal had to consider a number of factors. The Tribunal accepted the validity of Mr Emele's argument that he wanted to conclude his cross examination of Ms JC before Mr Grehan gave evidence. Further, [SECOND RESPONDENT – NAME REDACTED] agreed that the case could be adjourned. [THIRD RESPONDENT - NAME REDACTED] was not present and able to take part. Further, the Applicant had accepted that the case would not be finished until such time as Ms JC was able to come back and complete her evidence. The Tribunal concluded that the case should be adjourned, with a suitable time estimate, so that the whole case could be concluded on the next occasion.

62. Having consulted with the parties and the listing officer the Tribunal adjourned the case to be heard over a period of five days starting on Friday 14 October and proceeding from 17-20 October 2011 inclusive. The Tribunal indicated that if, after consulting with the SRA as to Ms JC's availability, any difficulties would be created the SRA could seek alternative dates provided such a request was made within 14 days.

Preliminary Matter (15) – hearing 14 October 2011

63. On this occasion the Tribunal heard and determined an application by Mr Emele to adjourn the proceedings on the grounds that he was unable to attend due to ill health. Full details of the application, the factors considered and the Tribunal's determination were set out in a Memorandum of Adjournment dated 27 October 2011.

64. Having determined that the matter should be adjourned the Tribunal directed the matter should be re-listed on the first available date with a time estimate of five days, that all parties should file dates to avoid by 4pm on 18 October 2011 and that the parties should serve and file a draft timetable at least ten days before the re-listed hearing, such timetable to take into account the anticipated time required for giving evidence and cross examining each witness. The Tribunal received emails on this issue in advance of 27 February: these are not listed above as the anticipated timetable was ineffective as Ms JC was not able to attend.

Preliminary Matter (16) – hearing 27 February 2012 – application to adjourn

65. On 17 February 2012 the Applicant informed the Tribunal that Ms JC, the SRA's first witness, was ill and unable to attend the hearing scheduled to re-commence on 27 February. In that email Mr Goodwin informed the Tribunal that he had requested medical evidence and that such evidence would be provided to the Tribunal on receipt. Mr Goodwin had indicated that in the absence of Ms JC he would wish to call Mr Grehan to give evidence and he was awaiting instructions as to whether to apply to adjourn the proceedings to a date when Ms JC could attend or, alternatively, to invite the Tribunal to rely upon her written reports and to give such weight to that evidence as was deemed appropriate in the absence of Mr Emele being afforded the opportunity of concluding his cross examination.

66. On 21 February 2012 Mr Goodwin forwarded to the Tribunal and to the Respondents a copy letter written by Dr L Cox dated 17 February 2012 which stated that Ms JC would be unable to attend the Tribunal for medical reasons. Mr Goodwin indicated that he was instructed to make an application to adjourn the hearing fixed for 27 February. The Tribunal had indicated to the parties that that application would be heard on 27 February.

67. The Tribunal noted that Ms JC remained on oath. It further noted that the letter from Dr Cox did not set out the nature of the medical problem, save for the expression "post operative recovery", nor did it give a prognosis or an estimate of when Ms JC would be fit to attend. Mr Goodwin informed the Tribunal that his understanding was that the surgery related to an appendix problem and, as was clear from the note, was unrelated to child birth. Mr Goodwin had no information about how long Ms JC would be absent from work. It was submitted that if the matter were adjourned it would be unlikely to be re-listed with a five day time estimate for several months, by which time he was optimistic Ms JC would be fit to attend.

68. Mr Goodwin noted that the possibility of interposing Mr Grehan as a witness had been raised in May 2011 but there had been objection to that. In any event, unless the Tribunal ruled that it would proceed without further evidence from Ms JC, the SRA would not be able to close its case on this occasion. It was anticipated that Mr Emele's position would be that he had had no opportunity to conclude his cross examination of Ms JC.

69. The Tribunal's attention was drawn to the Bonhoeffer case (reference above) which deals with the right to cross examine a witness to ensure a fair trial.

70. The circumstances were not of Mr Goodwin's making, but he offered his apology. It was clear that there had been a lapse of time since the beginning of this hearing, contributed to by Ms JC's unavoidable unavailability and later Mr Emele's illness. However, although there had already been delay, Mr Goodwin applied to adjourn the hearing to a date Ms JC could attend. If that application were not granted, consideration would have to be given as to how to proceed. The allegations dealt with in whole or in part by Ms JC in her two ARP reports were those set out at allegations 1.8, 1.9, 1.10, 1.11 and 2.3. The most serious of the allegations, the allegation of dishonesty which was made against Mr Emele, was based on Mr Grehan's report.

71. Mr Emele submitted that he did not oppose the application to adjourn. He had seen the emailed medical report and although this did not set out a specific condition, he had no objection to that report from which it could be seen that Ms JC was unable to attend.

72. Mr Emele submitted that his defence was based largely on Ms JC's report and the circumstances in which that report had been written, for which purpose he needed to cross-examine her. His argument was that Ms JC had been an agent provocateur. If he were able to prove that her evidence should be excluded on that basis, then Mr Grehan's report could not stand as it was based on Ms JC's report. Mr Emele would try to show through cross examination that the SRA had acted in bad faith and had sought to entrap him. Mr Emele stated that Ms JC had changed the basis of her enquiry from an "inspection" to "investigation" without proper notice and that she had deceived Mr Emele into following her advice: she had then used what Mr Emele had done based on her advice to bring the allegations. In particular Mr Emele alleged that Ms JC had shown Mr Emele templates for accounts records and the like and when these had been used by the firm had accused the firm of not providing enough information in their records. Mr Emele further submitted that Mr Grehan's investigation was based on information in Ms JC's report, and through cross examination he could show the extent to which Mr Grehan's report had been misconceived. Mr Emele described Ms JC as being "on a mission" and that she had focused her investigation on him rather than the solicitors in the firm. Mr Emele went on to allege that Ms JC had advised him on the best way to deal with the £2,500 which was the subject of allegation 2.1.

73. Mr Emele told the Tribunal that he had been under the impression that he was attending the hearing for the purposes of obtaining an adjournment.

74. [SECOND RESPONDENT – NAME REDACTED] submitted that he was disappointed to have had to attend again, given that the case had been hit by a series of adjournments which had not been caused by him. He had attended on every occasion and was ready to proceed.

75. If the Tribunal were to allow it, and the matter were adjourned, [SECOND RESPONDENT – NAME REDACTED] would ask the Tribunal's permission to put two or three further questions to Ms JC. He had no objection to the application for an adjournment.

76. The Tribunal noted that some serious allegations had been made against Ms JC by Mr Emele. On behalf of the SRA, Mr Goodwin observed that Ms JC was on oath and in the course of giving evidence. He was limited in the submissions he could make on what Mr Emele said as that could be a matter of evidence which could be put to Ms JC. Mr Goodwin could not, in these circumstances, comment on any factual inaccuracies.

77. Mr Goodwin indicated that he would have no objection to [SECOND RESPONDENT – NAME REDACTED]'s request to carry out further cross examination of Ms JC in the event the evidence reached that stage.

78. The Tribunal sought to clarify the current status and positions of Mr Emele and [SECOND RESPONDENT – NAME REDACTED], as the Tribunal would be obliged to consider the public interest in dealing with the case and determining how expeditiously it should be concluded.

79. Mr Emele told the Tribunal that he is a barrister, working as a legal adviser for a company and is regulated by the Bar Council.

80. [SECOND RESPONDENT – NAME REDACTED] told the Tribunal that he is a solicitor, currently with conditions on his practising certificate. He is employed.

81. The Tribunal considered carefully the representations made by the parties and all of the circumstances of this case. The Tribunal noted that the SRA's first witness, Ms JC, was not available to attend for medical reasons and the Tribunal had some sympathy with the difficulty which this posed to all of the parties.

82. The Tribunal noted that [THIRD RESPONDENT - NAME REDACTED] was not present and no explanation for his absence had been given. It was not known if [THIRD RESPONDENT - NAME REDACTED] was ill and/or abroad. The Tribunal noted that details of the re-listed hearing dates had been sent to all of the parties in good time. It also noted that an email had been received from [THIRD RESPONDENT - NAME REDACTED] dated 14 February 2012. Although this email did not refer specifically to the hearing dates the Tribunal considered that the email constituted an application to dismiss the proceedings against [THIRD RESPONDENT - NAME REDACTED] for consideration at the substantive hearing. Accordingly, the Tribunal was satisfied that [THIRD RESPONDENT - NAME REDACTED] had been served with the necessary notice of hearing and as he had given no reasons for his absence the Tribunal was satisfied the case should proceed. In his absence, [THIRD RESPONDENT - NAME REDACTED] application to dismiss the proceedings could not be heard. In any event, the Tribunal considered that such an application was probably inappropriate at this stage, and that it should determine the case on the evidence presented.

83. The Tribunal refused the application to adjourn. The main factors considered in reaching this decision were:

    (a) Very little information had been given concerning Ms JC's medical condition in the letter from the doctor. There was no prognosis and no indication of when she would be able to attend. The note did not provide as much

information as would normally be expected by the Tribunal in the light of its practice note on adjournments.

(b) These proceedings had a long and unhappy history. The prosecution began over two years ago and the first day of the hearing of the case was in November 2010. The Tribunal was therefore anxious to see the matter proceed to a conclusion as swiftly as possible.

(c) The Tribunal was aware of the harm that could be caused by further delay in the proceedings. Whilst the Tribunal was satisfied that a fair trial remained possible at this stage, the case had become "stale" and needed to be moved along quickly. The Tribunal was conscious of the difficulties encountered by the Respondents where proceedings remained unresolved. In addition to the particular issues in this case the Tribunal was aware of the maxim "Justice delayed is justice denied". The events in issue in these proceedings had occurred in 2008/2009 and the allegations ought to be heard as promptly as possible.

(d) The Tribunal also noted that the most significant of the allegations, including the allegation of dishonesty made against Mr Emele, were dealt with in the report of Mr Grehan who was available and present at the Tribunal to give evidence.

(e) The Tribunal noted the case of Bonhoeffer. The circumstances in that case were that the only evidence against a Respondent doctor had been contained in one witness statement, and the maker of that statement had not been called to give evidence. The Respondent doctor had been denied the opportunity to test the principal evidence against him. In this case there was other evidence which the SRA could produce, without reliance on Ms JC's evidence.

84. The Tribunal determined that the case should proceed, with Mr Grehan to give evidence.

Preliminary Matter (17) – hearing 27 February 2012 – Mr Emele's application

85. The Tribunal's decision not to grant the Applicant's request to adjourn the hearing was announced at approximately 11.20am.

86. Mr Emele objected to the ruling made by the Tribunal and stated that his right to a fair hearing was being undermined as Ms JC had been giving evidence and he would be unable to continue his cross examination. Mr Emele stated that he considered the Tribunal was assisting the SRA to undermine his strategy (in relation to his defence). Mr Emele had prepared his case on the basis of his cross examination of Ms JC. He had had the impression that the case would be adjourned if Ms JC were not present. He told the Tribunal he had built all of his strategy on Ms JC's evidence, and on the basis of that cross examination would consider his cross examination of Mr Grehan. Mr Emele stated that he had been "ambushed". The Tribunal had indicated that it would allow a break of approximately 20 minutes before starting to hear Mr Grehan's evidence and that he could not be expected to prepare to cross examine Mr Grehan in

that time. Mr Emele indicated that he could be prepared by Wednesday (29 February), as he would have to switch his strategy.

87. The Tribunal Chair stated that, as previously indicated to the parties, the attendance today was initially to consider an application for adjournment. Mr Emele had told the Tribunal that he was a very experienced barrister. Mr Emele should have appreciated that the Applicant's application to adjourn could well be refused.

88. The Tribunal confirmed that no ruling had yet been made as to how Ms JC's evidence would be treated and they would hear representations on that in due course. However, the Tribunal's decision was that it should now hear evidence from Mr Grehan.

89. Mr Emele indicated that he would need to go through Mr Grehan's evidence and that if he did not have the opportunity to do this his right to a fair hearing would be jeopardised.

90. The Tribunal stated that Mr Emele should have been prepared, since refusal of the application to adjourn was one of the two possible outcomes. Further, Mr Emele had told the Tribunal he was very experienced. Mr Grehan's report was only eight pages long and both it and the exhibits to the report had been sent to the parties a considerable time ago. Nevertheless, the Tribunal would allow the parties until 2pm to carry out any necessary preparation and would then resume.

Preliminary Matter (18) – hearing 27 February 2012 – application to withdraw evidence

91. Following an indication to the Clerk that there were certain matters the Tribunal would be asked to consider, the Tribunal sat again at approximately 12.23pm.

92. Mr Goodwin thanked the Tribunal for resuming before 2pm. In the light of the Tribunal's decision, which the SRA accepted, Mr Goodwin had taken instructions on certain matters. In doing so issues concerning Mr Emele's arguments about the fairness of the hearing had been considered.

93. It was clear that Ms JC would not be able to attend the Tribunal at any point during the week allocated to this hearing, which meant Mr Emele would have no opportunity to finish his cross examination of her. The Tribunal was therefore invited not to rely on Ms JC's evidence, which consisted of two ARP reports and her oral evidence. That would be a fair position to adopt and the Tribunal was told Mr Emele had accepted that it was fair in the circumstances. The effect of the withdrawal of Ms JC's evidence was that no evidence would be offered by the SRA in relation to allegations 1.8, 1.9, 1.10, 1.11 and 2.3. The other allegations were dealt with in Mr Grehan's report dated 10 July 2009.

94. Mr Goodwin stated that if the Tribunal acceded to the invitation not to rely on Ms JC's evidence, and Mr Emele wished to apply to adjourn the hearing until the morning of Tuesday 28 February, the SRA would have no objection. It was correct to say that Mr Emele should have prepared, but five days had been allowed for this hearing and it may be that it would be appropriate to allow him a little longer than to 2pm to prepare.

95. Mr Emele indicated that he did not oppose the withdrawal of Ms JC's evidence. However, he referred to Ms JC's evidence as being "discredited" and stated that if there were any points of contradiction between what Ms JC had said and Mr Grehan's evidence, he would point out those contradictions. Mr Emele indicated that if the hearing were adjourned until 28 February he would be ready to go straight to the main issues in cross examination which would save time. In response to the Tribunal's question about how long cross examination would take Mr Emele indicated that it would be no more than three hours, if Mr Grehan answered the questions properly. Mr Emele wanted to make sure that his questions would be direct and simple.

96. [SECOND RESPONDENT – NAME REDACTED] indicated that he agreed with the proposed withdrawal of Ms JC's evidence and that he favoured Mr Emele's suggestion that the hearing should resume on the morning of 28 February. In response to the Tribunal's question about how long he anticipated cross examining Mr Grehan, [SECOND RESPONDENT – NAME REDACTED] indicated that one hour should be enough.

97. Mr Emele confirmed to the Tribunal that he agreed that the proposed withdrawal of Ms JC's evidence would be fair and reasonable and that it was in the interests of justice; further, it would bring the hearing to an end on this occasion.

98. Mr Emele indicated that he would want to draw to the Tribunal's attention all relevant matters and case law regarding the Tribunal's jurisdiction. Both Mr Emele and [SECOND RESPONDENT – NAME REDACTED] indicated that they intended to give evidence.

99. The Tribunal considered the application to withdraw Ms JC's reports and oral evidence and the submissions made with regard to the timetable for the hearing.

100. The Tribunal granted the SRA's application to withdraw Ms JC's reports and oral evidence. The Tribunal noted that both Mr Emele and [SECOND RESPONDENT – NAME REDACTED] accepted that this was a fair and appropriate way to deal with the matter. The Tribunal noted that as a result of the withdrawal of Ms JC's evidence, no evidence was offered in relation to five allegations.

101. The Tribunal considered the invitation to adjourn the proceedings until the morning of 28 February to allow the Respondents time to prepare their cross examination of Mr Grehan. It appeared to the Tribunal that there had been only two probable outcomes of the Applicant's application to adjourn: either it would be granted, which had not happened; or it would be refused in which case Mr Grehan would be called to give evidence. In either event it was clear that Ms JC would not be present.

102. There was nothing to indicate that [THIRD RESPONDENT - NAME REDACTED] would be present on the following day or any other day during the week so there was no reason to delay on his account. Therefore, the hearing should resume at 2pm at which point Mr Grehan would be called to give evidence.

103. Thereafter, Mr Grehan was called to give evidence at approximately 2.06pm and his cross examination by Mr Emele began at approximately 2.09pm. The hearing continued until approximately 4.24pm at which point Mr Emele was part of the way through his cross examination of Mr Grehan.

Preliminary Matter (19) – hearing 28 February 2012 – disclosure request

104. On resumption of the hearing at approximately 10.07am on 28 February the Tribunal noted that Mr Emele who had crossed examined Mr Grehan for over two hours, had estimated his cross examination would take about three hours and it would therefore allow him until noon to complete his cross examination.

105. Before resuming his cross examination, Mr Emele told the Tribunal that he wanted to have access to certain documents in order to deal with issues in the case. Mr Emele indicated that the documents he sought concerned the "passporting" of Credo Law Office Solicitors to "Recognised Body Status" on 31 March 2009. In response to questions from the Tribunal Mr Emele indicated that the SRA had acted contrary to their own regulations and had authorised the firm so it could not now go back to say that what the firm did was wrong.

106. The Tribunal stated that it had made a decision on Mr Emele's disclosure application in November 2010, at which point he had been present and had heard the decision. The Chair's notes of that hearing confirmed the decision made (see preliminary matter 4 above). It was correct that that decision had not been specifically recorded in a document in November 2011, but a ruling had been made. Mr Emele denied this and said that the Tribunal had indicated it would make a ruling on his application at the appropriate time.

107. Mr Goodwin confirmed that his notes of the hearing in November 2010 showed that Mr Emele's application for disclosure had been rejected by the Tribunal. The issue concerning the "passporting" documentation appeared to be that, in Mr Emele's view, the SRA had "passported" the firm and it therefore facilitated or aided and abetted any breaches of the rules which had occurred. If Mr Emele was right about that, but if the rule breaches were proved, the issue could be relevant to mitigation but the primary issue for the Tribunal was whether or not any or all of the Respondents had breached any rules.

108. Mr Emele told the Tribunal that he was exercising his Article 6 right to a fair trial. There was a duty on the SRA, as a public body, to provide disclosure. He stated that everything which had happened in his office had been authorised and/or encouraged by Ms JC, the SRA agent. He contended that passporting was therefore a vital issue and he needed copy documents in order to present his case. Mr Emele stated that he wanted a copy of the Tribunal's ruling in November 2010.

109. It was noted that Mr Emele had been sent a copy of the Memorandum in relation to the 8 November 2010 hearing shortly after that Memorandum had been signed. Oral reasons had been given at the hearing, which Mr Emele had heard. A further copy of the Memorandum was passed to Mr Emele.

110. The Tribunal determined that it had already heard and considered Mr Emele's application for disclosure in November 2010. That application had not been revived at any of the subsequent hearings. In any event, the Tribunal was not satisfied that any documents concerning "passporting" would be relevant to whether any individual had or had not been in breach of any of the Rules as alleged in the Rule 5 Statement.

111. Thereafter, Mr Emele resumed his cross examination of Mr Grehan until approximately 11.40 am, after which the Second Respondent cross examined Mr Grehan until approximately 12.09 pm and the witness was released at approximately 12.12 pm.

112. Mr Goodwin confirmed that in the absence of Ms JC's evidence, the SRA's case was concluded. The Tribunal indicated that it would break and resume at 1.30pm and would need to rise by 4pm. Mr Emele would give evidence when the case resumed.

113. Mr Emele repeated his request for a copy of documents concerning the recognition of Credo Law Office on 31 March 2009. The Tribunal confirmed that this matter had already been ruled on. However, Mr Goodwin indicated that he would make some enquiries about whether there were any relevant documents which could be disclosed.

Preliminary Matter (20) – hearing 28 February 2012 – Mr Emele's evidence

114. On recommencing the hearing at approximately 1.38pm Mr Goodwin told the Tribunal that he had made enquiries of the SRA who had confirmed that the firm was "passported" on 31 March 2009. A copy of a letter to that effect dated 2 April 2009 had been obtained. The letter was handed up to the Tribunal, which noted that there was no dispute concerning whether or not Credo Law Office had been "passported" on 31 March 2009.

115. Mr Emele confirmed that he intended to give evidence. The Tribunal clarified with Mr Emele the documents on which he wished to rely and which he confirmed on oath were true. The documents confirmed on oath were the witness statement, which had been signed at the Tribunal on 27 February 2012, having been filed in December 2010, comprising 67 paragraphs together with its exhibits; the second witness statement dated 20 December 2010 and the application to strike out the statement of case, which was undated but received by the Tribunal on or before 4 January 2011. Mr Emele further indicated that he intended to rely on the other documents he had filed and served in relation to this case, which documents included the document "Need for the establishment of prima facie case" dated 5 April 2010; the document "Overriding Objective Part I - Trial Directions" dated 18 October 2010; the document "Overriding Objective Part I - Trial Directions" containing an application for specific disclosure which was undated but used at the hearing on 8 November 2010; the skeleton argument dated 31 December 2010 and the document "Disclose under "Disclosure and Inspection of Documents - CPR 31"" dated 14 April 2011. Mr Emele confirmed on oath that those documents were relied on as his evidence in chief.

116. [SECOND RESPONDENT – NAME REDACTED] made some submissions concerning application of equitable principles to the Tribunal's proceedings but was informed by the Tribunal that such matters could be raised as submissions on the law in due course but that this was [SECOND RESPONDENT – NAME REDACTED]'s opportunity to cross examine Mr Emele. At the conclusion of [SECOND RESPONDENT – NAME REDACTED]'s examination, Mr Goodwin began cross examining Mr Emele. The hearing concluded for the day at approximately 4.04pm. Mr Emele asked for the start of the hearing on 29 February to be put back to 11am as he needed to see his GP in connection with some medication. The Tribunal acceded to that request.

Preliminary Matter (21) – hearing 29 February 2012 – progress with hearing

117. Mr Emele, having requested the Tribunal should start at 11am, contacted the Tribunal shortly after that time to indicate that he would arrive by about 11.45 am, which he did. The hearing resumed at approximately 11.55 am, at which point Mr Emele apologised to the Tribunal for the delay. Thereafter the hearing continued until approximately 1.30pm, with Mr Emele being cross examined. The Tribunal indicated that it would resume at 2pm but it was not possible to resume until approximately 2.12 pm as Mr Emele was not available until that time. [SECOND RESPONDENT – NAME REDACTED] was sworn and gave evidence and was cross examined by Mr Emele and the Applicant until approximately 4.13pm. The Tribunal indicated that it would take a short break then hear the submissions of the parties, recommencing at about 4.20pm.

118. During the break Mr Emele indicated to the Clerk and the Applicant that he was feeling unwell.

119. The Tribunal resumed at approximately 4.32pm. Mr Goodwin told the Tribunal that Mr Emele had indicated he had a problem with high blood pressure and may not be able to make submissions. Mr Goodwin would not oppose any request to delay hearing submissions until the morning of 1 March. Mr Emele indicated that his blood pressure had become too high as a result of which he felt dizzy and needed to lie down and take his medication.

120. The Tribunal noted this had been a short hearing day but it was not able to continue and would resume at 9.30am on 1 March. In response to a question from the Tribunal Mr Emele indicated that his submissions would take no more than 1½ hours and [SECOND RESPONDENT – NAME REDACTED] indicated that one hour would be sufficient.

121. Thereafter, Tribunal staff attended to Mr Emele to ensure that he was able to travel home, which he confirmed.

Preliminary Matter (22) - hearing 29 February 201 - warning against self incrimination

122. At the beginning of the hearing on 29 February the Tribunal Chair stated that it appeared an issue on which Mr Emele would be cross examined during the morning concerned the way a sum of £2,500 was handled. From reading the papers the Tribunal considered that that payment could appear to be related to an illegal activity, that is arranging a marriage for immigration purposes. Mr Emele was told that he had a right to remain silent and was under no obligation to answer any questions where there was a risk Mr Emele may tend to incriminate himself. It was the Tribunal's duty to warn Mr Emele that he had a right not to incriminate himself. The Tribunal could not advise him, but was stating the warning.

123. Mr Emele told the Tribunal that he understood the warning but there were issues that he wanted to bring up and he would try to answer questions to help the Tribunal.

124. The Tribunal told Mr Emele clearly that the potential criminal activity referred to was in connection with a potentially fraudulent visa application arising from arranging a marriage.

Preliminary Matter (23) – hearing 29 February 2012 – [SECOND RESPONDENT – NAME REDACTED]**'s application**

125. [SECOND RESPONDENT – NAME REDACTED]was sworn and began evidence in chief at approximately 2.12pm. He confirmed that his witness statement dated 16 December 2010 was true. The Tribunal noted that it also had available [SECOND RESPONDENT – NAME REDACTED]'s skeleton argument dated 4 January 2011.

126. At the beginning of [SECOND RESPONDENT – NAME REDACTED]'s evidence he stated that until the evening of 28 February he had not seen Mr Emele's longer witness statement i.e. the one filed in December 2010 and signed at the Tribunal on 27 February 2012. It was for that reason he had not raised certain issues in his cross examination of Mr Emele. The Tribunal Chair stated that, at the beginning of Mr Emele's evidence, he had clarified with Mr Emele the statements and documents on which he relied, including the fact that there were two witness statements. [SECOND RESPONDENT – NAME REDACTED] had been present at that point. Mr Goodwin stated that he recalled the Clerk had discussed the documents with the parties, probably on the afternoon of the first day of this resumed hearing, to check that they each had the relevant documents. Also, whilst Mr Goodwin could not challenge [SECOND RESPONDENT – NAME REDACTED]'s statement that he had not previously seen Mr Emele's main witness statement he had been surprised that [SECOND RESPONDENT – NAME REDACTED] had not challenged certain matters. Mr Goodwin stated that Mr Emele had previously informed the parties that he copied all of his emails/documents to all of the parties.

127. The Chair noted that [SECOND RESPONDENT – NAME REDACTED] had agreed that he had the documents which had been referred to by Mr Emele, and that those statements (e.g. their descriptions had been detailed in [SECOND RESPONDENT – NAME REDACTED]'s presence.

128. [SECOND RESPONDENT – NAME REDACTED] said that he had some documents which would go to disprove some of the things Mr Emele had said. [SECOND RESPONDENT – NAME REDACTED] told the Tribunal that he had brought those documents, but multiple copies were not available, and copies were not available for retention on the Tribunal's file. The Tribunal considered in turn each of the documents/categories of documents [SECOND RESPONDENT – NAME REDACTED] sought to introduce and made rulings as to whether those documents would be admitted in evidence.

129. The first category was a series of payslips for [SECOND RESPONDENT – NAME REDACTED] from Premier Work Support in the period January to March 2009. These documents were tendered to show that [SECOND RESPONDENT – NAME REDACTED] had been working other than at Credo in that period. The Tribunal noted that it was [SECOND RESPONDENT – NAME REDACTED]'s contention that he had been "excluded" from Credo by Mr Emele in that period, whereas Mr Emele's contention was that [SECOND RESPONDENT – NAME REDACTED] had "abdicated his responsibility". In either event there did not seem to be a dispute in

that both Respondents agreed that [SECOND RESPONDENT – NAME REDACTED] had not been present at Credo very much, if at all, in the early months of 2009, albeit they gave different reasons for that absence. Accordingly, the documents could be admitted, but were of limited probative value.

130. [SECOND RESPONDENT – NAME REDACTED] sought permission to introduce two bank letters and dishonoured cheques. The first of these was a cheque dated 1 June 2008 for £1,000 paid from Mr Emele's personal account to [SECOND RESPONDENT – NAME REDACTED] and dishonoured; the second was a cheque for £200 dated 19 May 2008 drawn on Mr Emele's personal account and paid to [SECOND RESPONDENT – NAME REDACTED] but dishonoured. [SECOND RESPONDENT – NAME REDACTED] sought to introduce these documents as they could tend to disprove Mr Emele's assertion that he ([SECOND RESPONDENT – NAME REDACTED]) had only attended Credo's office to get money from the firm.

131. The Tribunal considered that these documents were not fundamental to the case of either party but could be admitted.

132. The third category of documents concerned a credit application made to Hitachi Capital in or about September 2008. [SECOND RESPONDENT – NAME REDACTED]'s contention was that these documents showed that someone tried to get a loan in his name in relation to Credo Law Office at a time when he, [SECOND RESPONDENT – NAME REDACTED], was working in Bristol. Again, the Tribunal considered that these documents were not fundamental to proving or disproving any allegations but could be admitted.

133. In making its decisions the Tribunal took into account the representations of Mr Emele. Mr Emele stated that he did not like being "ambushed" and that he should have an adequate chance to respond to the issues raised.

134. Having heard those representations the Tribunal ruled that it appeared largely agreed that Mr Emele was not regularly at Credo's office, although there was disagreement about the reasons for that. Those issues could be dealt with in cross examination. The Tribunal was satisfied that the documents could be introduced.

135. In the course of the Mr Emele's cross examination of [SECOND RESPONDENT – NAME REDACTED] the Tribunal queried whether a line of cross examination was relevant to Mr Emele's defence and, indeed, whether it was consistent with matters which appeared in Mr Emele's own evidence. Mr Emele contended that he should be free to ask questions: he was aware of his defence and the questions he asked were consistent with it. The Tribunal warned Mr Emele that it would stop him if the questions asked were irrelevant and that he would be allowed until 3.30pm to ask questions. Mr Emele contended that he was being disadvantaged in cross examination. He was testing the veracity of [SECOND RESPONDENT – NAME REDACTED]'s statement.

Preliminary Matter (24) - hearing 1 March 2012 - Tribunal jurisdiction to determine dishonesty allegations

136. In addition to submissions in relation to the allegations and evidence, Mr Emele invited the Tribunal to dismiss the allegation of dishonesty made against him on the grounds that it did not have jurisdiction to determine that issue.

137. Mr Emele's contention appeared to the Tribunal to be that the allegation of dishonesty amounted to a crime and should be dealt with as a criminal matter, by the police and criminal courts rather than by this Tribunal. Mr Emele submitted that as such the Police and Criminal Evidence Act provisions should apply to the investigation and evidence and the disclosure requirements under that Act should apply. Mr Emele complained that he had not had the opportunity to cross examine Mr K, the client who had paid the sum of £2,500, and he had had no opportunity to test his evidence.

138. The Tribunal determined that it had jurisdiction to hear allegations of dishonesty in relation to breaches of the professional conduct and accounts rules. This Tribunal was not involved in any investigation of or determination in relation to criminal matters. In relation to the alleged dishonesty it was concerned purely with the manner in which the sum of £2,500 had been received and handled. It was an issue to do with whether the sum had been dealt with properly in the firm's accounts. The self incrimination warning had been given as there was a possibility that certain issues may have had a tendency to incriminate Mr Emele, but investigation of crime was not the Tribunal's function.

139. Mr Emele's time for submissions commenced at about 9.40am, the Tribunal sought to try and keep Mr Emele focused on the issues it had to determine. At about 10am Mr Emele complained that the Tribunal was interrupting his submissions, which he was stated he was capable of making without interference. The Tribunal therefore stated that it would allow Mr Emele until 11am, uninterrupted, to make his submissions. This would be a proportionate use of the court's time. At approximately 11.07am Mr Emele referred to certain authorities and documents which he wished to submit. He had not made copies for the Tribunal. The Tribunal noted that Mr Emele had passed the time the Tribunal had indicated would be permitted, and that he appeared to have used most of that time to read from the skeleton argument he had submitted in December 2010. The Tribunal would read and consider any authorities which Mr Emele could provide before its deliberations began.

140. The Tribunal rose at approximately 11.12am and resumed at 11.27am to hear [SECOND RESPONDENT – NAME REDACTED]'s submissions. The Tribunal then rose at 11.54am, at which point copies of the documents provided by Mr Emele in support of his submissions were passed to the Tribunal members.

Preliminary Matter (25) - [THIRD RESPONDENT - NAME REDACTED]**'s submissions**

141. The Tribunal was aware that [THIRD RESPONDENT - NAME REDACTED] was not present. [THIRD RESPONDENT - NAME REDACTED]'s letter of 5 April 2010, witness statement of 20 December 2010, skeleton argument of 31 December 2010 and email of 15 February 2012 were before the Tribunal, which determined that it would consider those documents. The Tribunal was struck by the similarity between Mr Emele's and [THIRD RESPONDENT - NAME REDACTED]'s witness statements of 20 December 2010 and the skeleton arguments, noting that in both content and layout they were similar. The Tribunal could not be sure that those two

documents were [THIRD RESPONDENT - NAME REDACTED]'s documents and accorded them less weight than the other two documents.

Preliminary Matter (26) – appeal process

142. At the conclusion of the hearing Mr Emele indicated that he intended to appeal and/or seek judicial review of the Tribunal's decisions. Mr Emele was informed that the time for appealing to the Divisional Court ran from when the written reasons were sent. Mr Emele indicated that he intended to seek judicial review, but did not specify of what decision.

Preliminary Matter (27) – burden and standard of proof

143. The burden of proving any and all allegations rested on the Applicant. In accordance with the Tribunal's usual practice, the standard to which allegations had to be proved was the highest standard, that is the criminal standard such that allegations had to be proved beyond reasonable doubt.

Preliminary Matter (28) – test applied to dishonesty allegations

144. As stated at the outset of the hearing, and in accordance with the approved practice of the Tribunal, the test to be applied to an allegation of dishonesty in the Tribunal was that expressed by Lord Hutton at paragraph 27 of Twinsectra Ltd v Yardley and Others [2002] 2 All ER 377 which is as follows:-

> "...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

Factual Background

145. The First Respondent, Mr Chukwuma Emele, was born in 1961 and was a Registered Foreign Lawyer ("RFL") whose registration terminated on 15 December 2008.

146. The Second Respondent, , was born in 1974. He was admitted as a solicitor in 2007 and his name remained on the Roll of Solicitors.

147. The Third Respondent, was born in 1965 and was a RFL whose registration terminated on 15 December 2008.

148. At the time of the hearing in February/March 2012, Mr Emele was a barrister regulated by the Bar Council having been called to the Bar in England and Wales in March 2010.

149. In March 2008 Mr Emele and [SECOND RESPONDENT – NAME REDACTED] commenced practice under the style of "Credo Law Office" ("Credo") in premises at Suite 1, 63 Broadway, Stratford, London E15 4BQ. In or about January 2009 Credo's offices were moved to Queensway House, Suite 102, 275-285 High Street, Stratford, London E15 2TF.

150. The records of the SRA indicated that [SECOND RESPONDENT – NAME REDACTED] notified the SRA of his resignation as a partner in the firm on 12 March 2009, although Mr Emele suggested to an SRA officer that the resignation occurred on 27 March 2009.

151. [THIRD RESPONDENT - NAME REDACTED]was described by Mr Emele as a partner in Credo at the relevant times, which contention was disputed by [THIRD RESPONDENT - NAME REDACTED].

152. Upon due notice inspection of Credo's books of accounts and other documents of the firm were carried out as follows:-

(a) Assigned Risks Pool Report ("ARP1") dated 1 September 2008 following a visit by the SRA Officer Ms JC on 7, 8 and 9 July 2008.

(b) Assigned Risks Pool Report ("ARP2") dated 27 March 2009 prepared following a visit by the SRA Officer Ms JC on 4 and 5 March 2009.

(c) A Forensic Investigation Report ("FIR") dated 10 July 2009 prepared by Mr Grehan following an inspection which commenced on 2 July 2009.

153. On 16 July 2009 an adjudication panel of the SRA resolved to intervene into Credo and any other practice(s) or former practice(s) of Mr Emele.

154. In the course of the hearing of the proceedings, for reasons set out under preliminary matter 18 above, ARP1 and ARP2 were withdrawn and no reliance was placed upon them by the SRA. The matters outlined below and on which the allegations were based, relate to matters arising in the FIR.

155. The matters contained in the FIR were disputed by the Respondents (as set out more fully in relation to each allegation) but that report raised the concerns upon which the Adjudication Panel's decision of 16 July 2009 was based.

156. At the time of the forensic investigation inspection, which commenced on 2 July 2009, it appeared to the SRA that Mr Emele was purporting to operate a solicitors' practice when he was not entitled to do so because of his uncertificated status and the fact that there was no solicitor partner in the practice.

157. The FIR reported that the books of account of Credo were not in compliance with the Solicitors Accounts Rules 1998 ("SAR") in that:-

(i) No client account reconciliations were produced;

(ii) Whilst a list of clients was produced, no list of clients' liabilities was produced;

(iii) The cashbook intermixed both office and client monies;

(iv) The cashbook contained entries for the period 1 March 2008 to 31 May 2009 only;

(v) Numerous cash payments that had been received by the firm from clients and entered on the cashbook had not been paid into any client bank account. The First Respondent informed the FIO that it was his habit not to bank the cash received from his clients in either client or office bank account, but to utilise the cash for office expenses;

(vi) The FIO identified from the cashbook 16 cash receipts from 23 January to 29 May 2009, totalling £6,840, that had not been paid into any client bank account;

(vii) Numerous receipts on the firm's client bank statements did not appear on the cashbook provided by Mr Emele.

158. The FIO did not consider it practicable to calculate the firm's liabilities to clients as at 31 May 2009. However, based on the information provided by the firm and available to the FIO it was ascertained that a minimum cash shortage of £2,500 existed as at 31 May 2009. Mr Emele confirmed that he had not rectified that minimum shortage.

159. The cause of the minimum shortage, as recorded in the FIR, was utilisation by Mr Emele of £2,500 received in cash from a client on account of costs, expenses and disbursements on a matter that did not proceed and in the absence of any bill having been delivered to the client. The FIR exemplified the matter of Mr K, in respect of whom the £2,500 referred to had been received. The information provided to the FIO by Mr Emele in respect of this matter was that the firm received the sum of £2,500 from Mr K on account of costs. The money was received in cash and was not paid into client bank account but was used by him for office expenses save for the sum of £500. In respect of this transaction it was alleged that Mr Emele had misappropriated client funds and used the same for his own benefit and/or the benefit of the firm. It was further alleged that in utilising client monies paid to the firm on account of costs Mr Emele took a conscious decision to act improperly and utilised those funds for office expenses and that such conduct amounted to dishonesty, or in the alternative, recklessness.

Witnesses

160. The following gave oral evidence:

- Mr Sean Grehan, FIO, for the SRA.
- The First Respondent, Mr Chukwuma Emele
- The Second Respondent

161. The SRA had also tendered in evidence Ms JC, whose live evidence was heard on 6 January 2011. As Ms JC was unable to attend on or after 27 February 2012, and the Tribunal refused to grant the Applicant's application to adjourn the proceedings, and as Mr Emele was unable to complete his cross examination of Ms JC, her oral evidence was withdrawn, together with ARP1 and ARP2, which reports had been compiled by her.

Findings of Fact and Law

162. **Allegation 1.1: Contrary to Rule 6 of the Solicitors Accounts Rules 1998 (hereinafter referred to as the 1998 Rules), they failed to ensure compliance with the Rules.**

162.1 This allegation was denied in its entirety by Mr Emele. [SECOND RESPONDENT – NAME REDACTED] did not deny that a breach of Rule 6 of the SAR had occurred but denied he was liable for any such breach. [THIRD RESPONDENT - NAME REDACTED]denied the allegation on the basis that he had not been a partner in Credo at the relevant time (or at all).

162.2 The SRA's case was based upon information in the FIR of 10 July 2009 and the oral evidence of the maker of the Report, Mr Grehan.

162.3 The Tribunal accepted that the Report provided a "snapshot" of the accounts and other matters relating to Credo as at the time of the inspection. That inspection occurred at a time when [SECOND RESPONDENT – NAME REDACTED] was no longer a partner in the firm, having resigned in March 2009 and the status of both Mr Emele and [THIRD RESPONDENT - NAME REDACTED] as RFLs had been terminated. The Tribunal was satisfied, so that it was sure, that at least some of the specific SAR breaches alleged (dealt with in more detail below) occurred before Mr Emele's and [THIRD RESPONDENT - NAME REDACTED]'s status was terminated. The Tribunal was also satisfied so that it was sure that some or all of the specific breaches referred to below occurred whilst [SECOND RESPONDENT – NAME REDACTED] was a partner in the firm i.e. in the period prior to March 2009. The Tribunal noted that the allegation relating to the sum of £2,500 paid by Mr K arose from events in January 2009, a period when the [SECOND RESPONDENT – NAME REDACTED] was a partner in the firm and Mr Emele was uncertificated/unregistered.

162.4 The Tribunal considered carefully Mr Grehan's written Report. It also considered his oral evidence. The Tribunal considered that, in all respects, Mr Grehan was measured straightforward, consistent and credible in the way his evidence was given.

162.5 Mr Grehan's Report and oral evidence were sufficient to satisfy the Tribunal that in the course of the forensic investigation Mr Emele had failed to produce any, or any adequate, client account reconciliations, that he failed to produce a list of client liabilities (although he produced a list of clients the firm had taken on since its creation), that the cashbook presented as such by Mr Emele intermixed office and client money and contained no entries after 31 May 2009. The Tribunal was satisfied that since the inception of the firm numerous cash payments had been received by Credo from clients and entered on the cashbook but had not been paid into any client bank account. Further, Mr Grehan had identified from the cashbook 16 cash receipts in the period from 23 January to 29 May 2009 totalling £6,840 which had not been paid into any client bank account. Numerous receipts on the firm's client bank account statements did not appear on the cashbook provided by Mr Emele with the result that the cashbook could not be relied upon. The Tribunal accepted that at the time of the inspection Mr Grehan had not been able to calculate fully the firm's liabilities to clients as at 31 May 2009 but that there was a minimum cash shortage as of that date of £2,500 which had not been rectified at the time of the inspection. The issues concerning the payment of £2,500 by Mr K will be set out more fully in

relation to allegation 2.1. The Tribunal was satisfied that in respect of that payment there had been a failure to comply with the SAR.

162.6 Information concerning the defences and evidence offered by Mr Emele and [SECOND RESPONDENT – NAME REDACTED] to this allegation will be set out more fully in relation to the specific allegations at 1.2 to 1.5 inclusive. However, in general terms Mr Emele's defence to this first allegation was that he had complied with the SAR and in particular had followed the guidelines and templates provided by the SRA officer, Ms JC. Mr Emele maintained that the firm had kept proper books of account on the double entry principle, that they were legible, up to date and contained narratives which provided adequate information about each transaction. It was his contention that there had been compliance with the requirements of the SAR. For the reasons set out in relation to the specific allegations, the Tribunal did not accept that evidence or contention and concluded that the principals of Credo and/or those involved in its management had failed to ensure compliance with the SAR.

162.7 Mr Emele had sought to argue that he was not the responsible person as he was not and had never been a solicitor. He alleged that the responsible party was [SECOND RESPONDENT – NAME REDACTED]. [SECOND RESPONDENT – NAME REDACTED]'s evidence was that Credo had been operated by Mr Emele as a "sole trader" business. He gave evidence that Mr Emele had insisted that he would manage the firm alone and that [SECOND RESPONDENT – NAME REDACTED] was not responsible for managing the firm. [SECOND RESPONDENT – NAME REDACTED] therefore sought to persuade the Tribunal that he should not be liable as Mr Emele was solely responsible for the operation of the firm's accounting and management systems. The Tribunal was, however, satisfied that [SECOND RESPONDENT – NAME REDACTED] had been a partner in Credo up to 12 March 2009 and for the period he was a partner he was liable for any breaches of the SAR which had occurred. Whether he was personally culpable for such breaches was a matter the Tribunal would consider in determining sanction. However, the Tribunal was satisfied that the allegation had been proved to the highest standard against [SECOND RESPONDENT – NAME REDACTED].

162.8 The Tribunal had accepted [SECOND RESPONDENT – NAME REDACTED]'s evidence that the controller of Credo was Mr Emele. Mr Emele had sought in his evidence and argument to hide behind the fact that his status as a RFL had been terminated in December 2008. He had further given evidence and submitted that he had never been a "clerk" in that he had not been employed or remunerated by a solicitor.

162.9 What was very clear to the Tribunal was that Mr Emele had been a partner in Credo, had held himself out as being a partner in the firm and/or had been "involved in a legal practice" as an owner, principal, manager and/or chief executive of the practice. In correspondence from the firm in early 2009 Mr Emele was described as the "managing partner". It was unfortunate that the SRA had not recognised swiftly that when Mr Emele's RFL status was terminated that left an uncertain position with regard to the firm in that either [SECOND RESPONDENT – NAME REDACTED] was the sole principal (but did not have permission to operate as a sole principal) or that the status of the partnership was in some doubt. Further, it was unfortunate that in the process of the bulk recognition of firms which had occurred with effect from 31 March 2009 the potential opportunity to stop Credo from operating at that point had

not been noticed or used. [SECOND RESPONDENT – NAME REDACTED]'s resignation had taken effect before the end of March 2009 so at the point at which Credo was "passported" to Recognised Body Status there was no one in the firm qualified to be a partner in a solicitors' practice, nor were the requirements of a "multi-national" partnership met.

162.10 Mr Emele had argued vigorously in the course of the proceedings that any defaults which had occurred were caused by, facilitated by or aided and abetted by the SRA and that the SRA should not be allowed to rely on its own malpractice or maladministration in order to make allegations against Mr Emele (and others).

162.11 The allegations of malpractice levelled at the SRA were wide ranging and in some respects outrageous. For example, Mr Emele had alleged that Ms JC had advised him on how to comply with the SAR and provided templates to follow, which he had used and which the SRA had subsequently said were incorrect and inadequate. The Tribunal had no hesitation in rejecting that contention, which was completely unsupported by any documents or credible evidence. Mr Emele had been unable to refer the Tribunal to any document or guidance from the SRA which he had relied on and which had been used against him subsequently. In the course of the forensic investigation, he had produced to Mr Grehan only one document which he described as a reconciliation statement. The document so produced was not compliant with the SAR.

162.12 Mr Emele had sought to argue that Ms JC had acted as an "agent provocateur". Given that her evidence had been withdrawn, in order to ensure fairness to the Respondents as she was not available to conclude her evidence, the Tribunal could not consider this issue in any detail. However, Mr Emele's contention in the course of the final days of the hearing that the withdrawal of Ms JC's evidence by the SRA had been "deliberate" and "clever" in order to prejudice him was clearly wrong.

162.13 Mr Emele had further alleged that the SRA officers, including Mr Grehan (who had been cross examined in full) had hacked his telephone and/or bugged his office. Mr Emele submitted that such operations were by their nature clandestine, so he was unable to produce any evidence of such an occurrence. Mr Grehan had clearly and firmly denied any such wrong doing, and the Tribunal accepted that evidence with no hesitation. In any event, the Tribunal was not presented with any evidence by the SRA which could or might have been obtained by clandestine means: the books of account produced by Mr Emele, and his reported discussions with Mr Grehan spoke for themselves and were sufficient to prove the allegations.

162.14 As to the SRA's alleged maladministration in "passporting" Credo to Recognised Body Status, the Tribunal found that whilst this was unfortunate it did not and could not absolve the principals of Credo from their responsibilities for compliance with the rules of professional conduct and/or the SAR. The Tribunal did not find that the SRA had "aided and abetted" any defaults by any of the Respondents. Insofar as the "passporting" was relied on by Mr Emele this could not be a factor in any of the defaults which may have occurred before 31 March 2009. The Tribunal noted in particular that the alleged breaches in relation to dealing with Mr K's £2,500 had occurred in January 2009.

162.15 The Tribunal was satisfied, so that it was sure, that this allegation had been proved against Mr Emele in the light of its findings of specific breaches of the SAR set out under allegations 1.2 to 1.5 inclusive.

162.16 The allegation was denied by [THIRD RESPONDENT - NAME REDACTED] who, in his defence document dated 5 April 2010, stated that he had not been a partner in Credo. The document described as a witness statement and which was unsigned but dated 20 December 2010 was in substantially the same terms and format as that of Mr Emele of the same date, save that at paragraph 5 [THIRD RESPONDENT - NAME REDACTED] stated that,

> "...I did not in any way manner [sic] do anything or have any interest in the affairs of Credo...".

[THIRD RESPONDENT - NAME REDACTED]'s unsigned skeleton argument dated 31 December 2010 was in substantially the same terms and format as that submitted by Mr Emele and advanced the same arguments as those used by Mr Emele. That document appeared to contain an admission that [THIRD RESPONDENT - NAME REDACTED] had been a partner in Credo, but also stated that [THIRD RESPONDENT - NAME REDACTED] had not met [SECOND RESPONDENT – NAME REDACTED] until the first day of this hearing, (8 November 2010). The Tribunal could not be sure that the document was truly that of [THIRD RESPONDENT - NAME REDACTED], given its similarity in content and format to that produced by Mr Emele.

162.17 The Tribunal found that there was no clear evidence from SRA records that [THIRD RESPONDENT - NAME REDACTED] had been registered with the SRA as a partner in the firm. Indeed, the only evidence that [THIRD RESPONDENT - NAME REDACTED] had been a partner in Credo had been provided by Mr Emele, for example, in what he told the FIO on 2 July 2009, as recorded in the FIR of 10 July 2009. The SRA's evidence of what Mr Emele had told Ms JC had been withdrawn. For the reasons set out further below, the Tribunal considered Mr Emele's evidence to be wholly unreliable in relation to other matters, so could not rely on Mr Emele's assertions about [THIRD RESPONDENT - NAME REDACTED]'s status with the firm. There was no evidence of any personal default on the part of [THIRD RESPONDENT - NAME REDACTED] and the Tribunal could not be satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had been a principal in Credo at the material times or at all. Accordingly, he could not be held liable for any breaches of the SAR. Therefore, the Tribunal was not satisfied this allegation had been proved against [THIRD RESPONDENT - NAME REDACTED].

163. **Allegation 1.2: Contrary to Rule 7 of the 1998 Rules, they failed to rectify breaches to the Rules.**

163.1 This allegation was denied by Mr Emele in its entirety. [SECOND RESPONDENT – NAME REDACTED] did not deny that a breach of Rule 7 had occurred but denied that he was liable for any such default. [THIRD RESPONDENT - NAME REDACTED] denied the allegation on the basis that he was not a partner in Credo.

163.2 For the reasons set out more fully under allegation 1.1 above, the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had

been a partner/principal of Credo and accordingly this allegation had not been proved against him.

163.3 The SRA's evidence in support of this allegation was contained in the FIR and oral evidence of Mr Grehan. The SRA's evidence was that on 3 July 2009 Mr Emele confirmed to Mr Grehan that he had not rectified the minimum shortage of £2,500, which had existed from 27 January 2009, and did not provide any evidence to Mr Grehan by the time the report was written that the shortage had been rectified. The Tribunal accepted that Mr Grehan's evidence on this point was credible, straightforward and measured. The Tribunal noted that Mr Emele had cross examined Mr Grehan concerning this issue. It had been put to Mr Grehan that Credo had been "passported" and that the responsible person in the firm could not be Mr Emele as he was no longer a RFL: rather the person responsible for Credo Law should be a solicitor. Mr Grehan's evidence was that Mr Emele was the sole principal of the practice to all intents and purposes, whether that situation should have arisen or not. Further, Mr Emele had received the £2,500 in issue.

163.4 The Tribunal was satisfied that breaches of the SAR had occurred which had not been rectified promptly in breach of Rule 7 of the SAR. Mr Emele as a partner in Credo and subsequently as the de facto sole principal, or manager of the firm, was responsible for any breaches which had occurred. The Tribunal was satisfied so that it was sure that this allegation had been proved against Mr Emele.

163.5 So far as [SECOND RESPONDENT – NAME REDACTED] was concerned, it was clear that he had been a partner in Credo until 12 March 2009. He was therefore liable for breaches which had occurred up to that point. As noted above the £2,500 shortage on client account had occurred in late January 2009 and had not been rectified by the time [SECOND RESPONDENT – NAME REDACTED] ceased to be a principal in the firm. Accordingly, this allegation had been proved against him.

164. **Allegation 1.3: Contrary to Rule 15 of the 1998 Rules, they failed to pay client money into client bank account.**

164.1 This allegation was denied by all three Respondents, for the same reasons allegations 1.1 and 1.2 were denied.

164.2 For the reasons set out more fully under allegation 1.1 above, the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had been a partner/principal of Credo and accordingly this allegation had not been proved against him.

164.3 The evidence relied upon by the SRA in support of this allegation was set out in Mr Grehan's report of 10 July 2009 and in his oral evidence. The report recorded that inspection of Credo's cashbook showed 16 cash receipts from 23 January to 29 May 2009 totalling £6,840 that had not been paid into any client bank account. Further the FIR recorded that Mr Emele had told Mr Grehan that it was his habit not to bank cash received from his clients in either client or office bank account but to utilise the cash for office expenses.

164.4 Having heard Mr Grehan in evidence, and his cross examination by Mr Emele in particular, the Tribunal was satisfied that Mr Grehan's evidence on these points was wholly reliable.

164.5 Of particular concern was the cash receipt of £2,500 from Mr K on 27 January 2009. Mr Emele's dealings with that sum are the subject also of allegation 2.1. For the purposes of this allegation, the key evidence which the Tribunal accepted, as given by Mr Grehan, was that Mr K was introduced by the firm by Mr TA. Mr TA was understood to have been working at Credo from time to time as an unadmitted person, possibly for the purposes of obtaining legal experience within the jurisdiction. Mr TA was not remunerated by the firm. Credo was instructed by Mr K to give advice in relation to his intended marriage to a person currently settled in the UK, with the matter being described as being in relation to immigration advice. A client care letter was issued on 23 January 2009 addressed to the client "c/o Mr TA" at an address in London E15. The letter stated that during a meeting Mr K informed Mr Emele that Mr TA would represent his interests whilst Mr K was staying or working in Scotland.

164.6 The Tribunal was shown two receipts, each for the sum of £2,500, both of which were dated 27 January 2009. The Tribunal was satisfied that only one payment of £2,500 was made, and the receipts did not relate to separate sums of money. One receipt, apparently signed by Mr TA, acknowledged receipt of an amount of £2,500 from Mr K "on behalf of Credo Law Office, Stratford as part payment of legal fees". The more pertinent document however, was a form of receipt signed by Mr Emele stating "I acknowledge the receipt of £2,500 from (Mr K)." The sum was stated to be £2,500 and elsewhere on the receipt it was written "legal fee payment on a/c".

164.7 Mr Emele had not produced a client ledger account for the matter, so precisely how the sum of £2,500 had been dealt with was unclear. However, it was clear that it had not been paid into any client bank account. Further, it was not disputed by Mr Emele that £500 of the £2,500 had been given to Mr TA as a "referral fee".

164.8 In his main witness statement, at paragraph 14, Mr Emele had stated that Credo had complied with the requirements of Rule 15 of the SAR on safekeeping of client money as the firm "operated an office safe for the purposes of safekeeping of client money". Further, Mr Emele had relied on part of Rule 16 of the SAR in that the first part of Rule 16 of the SAR states "Client money may be: (a) held by the solicitor outside of client account by, for example, retaining it in a solicitor's safe in the form of cash...". In the course of the hearing it was pointed out to Mr Emele that Rule 16 goes on to state that this can be the case "only if the client instructs the solicitor to that effect for the client's own convenience, and only if the instructions are given in writing, or are given by other means and confirmed by the solicitor to the client in writing". None of those requirements of Rule 16 had been met, accordingly the sum of £2,500 should have been paid into the client bank account.

164.9 During the course of the hearing Mr Emele sought to persuade the Tribunal in his evidence that all of the £2,500 had been paid for the purposes of "disbursements". The Tribunal accepted that in some circumstances when money is paid to a solicitors' firm for the purpose of the payment of disbursements by the firm, on behalf of the client, that money need not in all cases pass through the client bank account. However, the Tribunal was not satisfied that all of the £2,500 had been paid in disbursements. In the first place, no such disbursements had been identified other

than the £500 paid to Mr TA. In the course of his oral evidence Mr Emele had stated that the extra £2000 had been given to Mr TA to be passed to Mr K's potential bride. The Tribunal noted that this contention had not been raised in any of the many documents Mr Emele had previously submitted in the case and that it was not backed by any documentary evidence. The Tribunal further noted that Mr Emele had told Mr Grehan at the time of the investigation in July 2009 that the funds had been used by him for "office expenses, except for £500 which was paid to Mr TA". The Tribunal further took into account the client care letter in relation to Mr K which dealt with a number of matters including charge out rates and the like and which stated, "at this initial outset, we shall require you to provide us with £2,500 to be held on account for fees, disbursements and expenses". Both of the receipts which had been generated in relation to the £2,500 referred to "legal fees". The Tribunal placed particular weight on the receipt signed by Mr Emele which appeared to describe the purpose of the payment as "legal fee payment on account".

164.10 Mr Emele further sought to persuade the Tribunal that he was entitled to treat the £2,500 as office money on the basis that he had agreed a fixed fee with Mr K. The Tribunal found it impossible to accept that contention. The client care letter clearly set out Mr Emele's charging rate, gave an estimate that the work to be done would require approximately 12 hours to bring the matter to conclusion and did not contain any reference to the fee being "agreed".

164.11 In all of the circumstances described, the Tribunal was satisfied that the £2,500 received from Mr K on 27 January 2009 was client money which was paid to Credo on account of fees, costs and disbursements. As client money it should have been paid into a client bank account either on the day of receipt or the following business day. Mr Emele had not ensured that this was done. Mr Emele had not been entitled to hold the money in a safe. His suggestion that all of the money had been used for disbursements was not credible, and was completely unsubstantiated. Accordingly the Tribunal was satisfied so that it was sure that the allegation had been proved against him.

164.12 [SECOND RESPONDENT – NAME REDACTED] was a partner in the firm in the period up to 12 March 2009. He was therefore a partner in the firm at the time of Mr K's payment to the firm and on the basis of strict liability was responsible for the breach of Rule 15 of the SAR which had occurred. The allegation had been proved against [SECOND RESPONDENT – NAME REDACTED].

165. **Allegation 1.4: They failed to keep accounts and records properly written up, contrary to Rule 32 of the 1998 Rules.**

165.1 This allegation was denied by all three Respondents, in the way set out more fully under allegation 1.1. above.

165.2 For the reasons set out more fully under allegation 1.1 above the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had been a partner/principal of Credo and accordingly this allegation had not been proved against him.

165.3 The evidence relied on by the SRA in support of this allegation was as set out in the report of Mr Grehan dated 10 July 2009, and his oral evidence in relation to that report.

165.4 The Tribunal considered the report and the documents appended to it.

165.5 Mr Emele gave evidence that the books of account of Credo were in proper order: they were maintained on the double entry principle, were legible, up to date and contained narratives with the entries which identified and/or provided adequate information about each transaction. In his main witness statement Mr Emele stated that entries were made in chronological order and the current balance was shown on the client ledger account or was readily ascertainable. In short, his evidence was that the books of account were compliant with Rule 32 of the SAR.

165.6 The Tribunal considered carefully the documents which had been produced. It noted that in his evidence Mr Emele told the Tribunal that he had not received any training on the SAR, but he had read the SAR and had tried to interpret it. The document put forward by Mr Emele as the firm's cashbook clearly intermixed client and office monies. It was not possible from that, or any of the other accounts records produced by Mr Emele to ascertain liabilities to clients in a simple way. Mr Emele had tried to suggest that Mr Grehan did not understand accounts. This was clearly nonsense given Mr Grehan's qualifications and experience of work with the SRA. Mr Emele had not been able to produce adequate and up to date books of accounts as at the date of the inspection, nor in the following days before the report was written. The Tribunal was satisfied that the failure to keep the books of account properly written up included a failure to produce client account reconciliations, failure to produce a list of client liabilities, the intermixing of office and client monies in the cashbook, the fact that the accounts books had not been written up at all for over a month, the dealings with client's cash referred to as above and that receipts on the firm's client account bank statements did not appear on the cashbook.

165.7 The Tribunal was satisfied so that it was sure that this allegation had been proved against Mr Emele.

165.8 So far as [SECOND RESPONDENT – NAME REDACTED] was concerned, he had been a partner in the firm up to 12 March 2009. Accordingly, he was liable for all of the defaults which had occurred prior to 12 March 2009, which included the long term failure throughout the operation of the firm to produce reconciliations, to maintain a proper cashbook, to maintain proper client ledgers and the failure to account properly for client cash. Given that all partners are liable for any breaches of the SAR that may occur, the Tribunal was satisfied so that it was sure that this allegation had been proved against [SECOND RESPONDENT – NAME REDACTED].

166. **Allegation 1.5: They failed to carry out the required reconciliations contrary to Rule 32(7) of the 1998 Rules.**

166.1 This allegation was denied by the Respondents, for the reasons set out more fully under allegation 1.1 above.

166.2 For the reasons set out more fully under allegation 1.1 above, the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had

been a partner/principal of Credo and accordingly this allegation had not been proved against him.

166.3 The SRA relied in evidence on the report of Mr Grehan and his oral evidence. The Tribunal found Mr Grehan's evidence on this allegation, as in relation to the other allegations, to be credible, measured, consistent and straightforward.

166.4 In his main witness statement Mr Emele set out his contention that proper books of accounts had been maintained (as set out more fully under allegation 1.4 above). He did not address the fact that he had failed to produce client account reconciliations as required under Rule 32(7) of the SAR. Mr Emele's evidence was to the effect that by listing his clients and the fees he had complied with the requirements. None of the documents referred to by Mr Emele in the course of his evidence, and in his cross-examination of Mr Grehan as being the reconciliations comprised a proper reconciliation. Either Mr Emele did not understand what was required or he had disregarded the requirements. In any event, he had failed to produce any document which showed clearly what monies were held for clients, what the liabilities to those clients were, and how those accorded with the client bank account statements.

166.5 The Tribunal was satisfied so that it was sure, that this allegation had been proved against Mr Emele.

166.6 [SECOND RESPONDENT – NAME REDACTED], as a partner in Credo, in the period up to 12 March 2009 was liable for all of the breaches which had occurred up until that point, including the failure to produce reconciliations as required by Rule 32(7) of the SAR. Accordingly, this allegation had been proved against [SECOND RESPONDENT – NAME REDACTED].

167. **Allegation 1.6: They failed to comply with the Rules and requirements relating to the Regulation of Registered Foreign Lawyers, contrary to Rules 1.06, and 12 of "SCC"**

167.1 This allegation was denied by the Respondents.

167.2 For the reasons set out more fully under allegation 1.1 above, the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had been a partner/principal of Credo and accordingly this allegation had not been proved against him.

167.3 In support of this allegation the SRA relied on Mr Grehan's report and the oral evidence he gave under cross examination. The Tribunal was satisfied that when Credo began in March 2008 Mr Emele and [SECOND RESPONDENT – NAME REDACTED] were in partnership. At that time Mr Emele was a RFL and as such could not operate a solicitors practice without at least one solicitor partner. Although Mr Emele had asserted that [THIRD RESPONDENT - NAME REDACTED], also a RFL at the time the firm began, had been a partner in the firm the Tribunal was not satisfied it could rely on this assertion.

167.4 The Tribunal was further satisfied that [SECOND RESPONDENT – NAME REDACTED] notified the SRA of his resignation as a partner of the firm on 12 March 2009. This meant that from 13 March 2009 until the firm was intervened into

in August 2009 the firm was operating without a solicitor partner. Further, as Mr Emele's registration as a RFL had terminated on 15 December 2008 (as the cheque to pay the registration fee was not honoured) the firm had failed to ensure that the partners in the firm from that point were solicitors or RFL's

167.5 Much was made by Mr Emele in his submissions and evidence of the fact that the SRA had "passported" Credo to Recognised Body Status with effect from 31 March 2009. This was clearly an administrative error on the part of the SRA, and the opportunity to stop the firm from operating at that point had been missed. However, any default on the part of the SRA did not excuse any fault on the part of Mr Emele and/or [SECOND RESPONDENT – NAME REDACTED] in failing to ensure they had complied with the rules and requirements relating to the regulation of RFLs.

167.6 The Tribunal further noted that Mr Emele complained that [SECOND RESPONDENT – NAME REDACTED] had not notified him promptly of his resignation. Further, Mr Emele told the Tribunal he had applied for temporary emergency recognition of the firm as soon as he could after becoming aware of that resignation. [SECOND RESPONDENT – NAME REDACTED]'s evidence was that he had told Mr Emele that he had resigned, and the Tribunal accepted that evidence. Even on Mr Emele's evidence, he was aware of [SECOND RESPONDENT – NAME REDACTED]'s resignation by about 27 March 2009. Accordingly, any application to the SRA for registration of a new partner or any other temporary emergency recognition should have been made by about the end of April 2009, even on Mr Emele's case. By a letter dated 27 May 2009 to the SRA Mr Emele had stated, "We can confirm we will rectify the situation with the admission of Mrs FO (a solicitor with a current practising certificate) as partner". By letter to Mrs FO dated 2 June 2009, a copy of which was sent by the SRA to Mr Emele under cover of a letter of 5 June 2009, Mrs FO's application had been returned by the SRA. It had not been signed by a solicitor partner. Although Mr Emele had stated in evidence that Mrs FO's application to be registered as a partner had been accepted and it was six weeks later that the SRA had changed its mind and rejected the application, this was clearly incorrect. Little more than a week had passed between the application being submitted on 29 May and Mr Emele being informed that it could not be accepted (on 5 June 2009).

167.7 Mr Emele had operated Credo as if he were in sole charge of that business when he had no status to do so. [SECOND RESPONDENT – NAME REDACTED]'s evidence had been that he had had no effective power and that the business was operated by Mr Emele as a sole trader. The Tribunal accepted that evidence, which indeed was consistent with the First Respondent's own witness statements, documents and evidence. Mr Emele had therefore continued to practise as if he were a RFL, and to operate Credo when he should not have done so; [SECOND RESPONDENT – NAME REDACTED] had allowed this situation to occur. Accordingly, the Tribunal was satisfied so that it was sure that this allegation had been proved against Mr Emele and [SECOND RESPONDENT – NAME REDACTED].

168. **Allegation 1.7: They failed to ensure that the firm was properly supervised and/or managed contrary to Rule 5 and/or 12 of the "SCC"**

168.1 This allegation was denied by the Respondents.

168.2 For the reasons set out more fully under allegation 1.1 above, the Tribunal was not satisfied so that it was sure that [THIRD RESPONDENT - NAME REDACTED] had been a partner/principal of Credo and accordingly this allegation had not been proved against him.

168.3 The evidence in support of this allegation was set out in the FIR and in Mr Grehan's oral evidence.

168.4 At the time the firm was created, in March 2008, [SECOND RESPONDENT – NAME REDACTED] had been admitted as a solicitor for approximately four months. Mr Emele and [SECOND RESPONDENT – NAME REDACTED] had met each other on one occasion, at or about the time [SECOND RESPONDENT – NAME REDACTED] had been admitted as a solicitor. [SECOND RESPONDENT – NAME REDACTED] was not qualified to manage or supervise a solicitor's practice, as he had been admitted for less than three years and in any event had not undertaken the necessary management training. Mr [SECOND RESPONDENT – NAME REDACTED] had relied on Mr Emele to supervise and/or manage the firm. His attendance at the firm's offices had been sporadic: indeed, he was working in Bristol for a three month period in 2008. Mr Emele was not qualified to supervise and/or manage a firm without a solicitor partner. On termination of his registration as a RFL on 15 December 2008, there was no-one in the firm who had any standing to supervise or manage the firm. Mr Emele and [SECOND RESPONDENT – NAME REDACTED] had allowed this state of affairs to come about.

168.5 [SECOND RESPONDENT – NAME REDACTED]'s evidence had been that he had believed Mr Emele was a solicitor, and that he did not know he was a RFL until about December 2008. Nevertheless, [SECOND RESPONDENT – NAME REDACTED] did not resign or take any steps to notify the SRA of the position until March 2009.

168.6 Mr Emele had made it clear in his various witness statements and documents that he had been managing the firm. However, in oral evidence he had sought to distance himself from that position and suggest that [SECOND RESPONDENT – NAME REDACTED] was the responsible party. He had also at one point sought to implicate Mrs FO, who had never been a recognised principal of the firm.

168.7 Both Mr Emele and [SECOND RESPONDENT – NAME REDACTED] had failed to ensure the firm was properly supervised and/or managed and accordingly this allegation had been proved to the highest standard.

169. **Allegation 1.8: The firm's letterhead failed to comply with the requirements of Rule 7.07 of the "SCC", in that it failed to include a list of the partners.**

Allegation 1.9: Contrary to Rule 2 of the "SCC" the firms client care letter failed to provide clear information regarding costs and/or complaints handling.

Allegation 1.10: They failed to have regard to and/or comply with The Money Laundering Regulations 2007.

Allegation 1.11: Contrary to Rule 1.06 and/or 20.05 of "SCC" they failed to implement the previous special measures identified in "APR1" dated 1 September 2008.

Allegation 2.3: He made representations on an application form to the "ARP" which were misleading and/or inaccurate.

169.1 In the light of the withdrawal of ARP1 and ARP2, and the oral evidence of Ms JC, for the reasons set out under preliminary matter 18 above, no evidence was relied on by the SRA in support of this allegation. Accordingly, these allegations were not proved against any of the Respondents.

170. **Allegation 2.1: He misappropriated clients funds. For the avoidance of doubt this is an allegation of dishonesty**

170.1 This allegation was made against Mr Emele only, and was denied by him.

170.2 The factual background to this allegation was as set out under allegation 1.3 above, specifically in relation to the £2,500 paid to Credo by Mr K.

170.3 The evidence in relation to the transaction on behalf of the SRA was contained in the report by Mr Grehan and in his oral evidence. The Tribunal also heard the oral evidence of Mr Emele and read his witness statements and other documents submitted in the course of the proceedings.

170.4 The Tribunal noted Mr Emele's submission that the Tribunal did not have jurisdiction to deal with allegations of dishonesty, in particular that what was alleged in this case was tantamount to a criminal offence and should be dealt with in accordance with criminal procedures and by the criminal courts. The Tribunal rejected that submission. Its role was not to investigate or comment on any possible criminal matters. Rather, it was considering an allegation of misappropriation in the context of a legal practice and alleged breaches of the SAR and whether any such action was dishonest within the test approved by the courts in Tribunal proceedings.

170.5 The Tribunal had given Mr Emele the required warning against self-incrimination as it appeared to the Tribunal the £2,500 had been paid by Mr K in relation to procuring a potentially illegal arranged marriage. In the event, no marriage had taken place. The Tribunal made it clear to Mr Emele that it was not investigating the legality or otherwise of the matter on which Mr K had given instructions, nor was it considering any criminal matter such as theft of Mr K's money. The Tribunal was, however, concerned to determine the allegation that the £2,500 had been misappropriated.

170.6 As noted above in relation to allegation 1.3, the Tribunal was satisfied that the £2,500 paid by Mr K was client money and should have been treated as such unless and until Mr Emele had been authorised to transfer any or all of that money to office account, eg on delivery of a bill of costs to the client. Mr Emele had not shown the Tribunal what had happened to the £2,500, nor had it been possible to ascertain this from the books of account.

170.7 The Tribunal noted that in the FIR Mr Grehan reported that Mr Emele had confirmed that he received the £2,500 from Mr K for "fees, expenses and disbursements". Mr Emele had further stated to Mr Grehan that the funds were used by him for office expenses, except for £500 which was paid to Mr TA. The Tribunal further noted that Mr Grehan had recorded being told by Mr Emele that he gave advice to Mr K but that

the matter did not proceed and Mr K began attending his offices on a regular basis, becoming aggressive. On 28 April 2009 Credo wrote to Mr K, care of Mr TA. The letter stated:

> "Given the circumstances of the discussions and meeting with you, Mr Emele decided to reduce the total invoice to only £1,000 payable.
>
> However, given the fact that you require the return of your documents as you wish to destruct [sic] this firm on your legal matter, we will deduct the sum of £1,000 from money paid on account of costs and refund the sum of £1,500 to you as full and final settlement of the matter.
>
> We will therefore be forwarding to you via [TA] your appointed representative, a cheque of £1,500 and breakdown of the bill of costs on before 5 May 2009. Please ignore the personal cheques of Mr C Emele which was issued in error and request you return those cheques directly to Mr C Emele." [Wording taken directly from the letter]

170.8 The FIR recorded that on 2 July 2009 Mr Emele told Mr Grehan that he did five hours' work on this matter but that he had not maintained any record of his attendances. He confirmed that he had offered to repay £1,500 of the £2,500 received from Mr K.

170.9 The Tribunal accepted that Mr Grehan's report accurately recorded what he had been told by Mr Emele. On this and in all other respects the Tribunal found Mr Grehan's evidence to be measured, straightforward, credible and consistent even in the face of Mr Emele's persistent cross-examination.

170.10 The Tribunal was satisfied that as at the time of the SRA investigation Mr Emele's position was that he had used the £2,500 paid by Mr K partly in payment to Mr TA (£500), and had used the remainder for office expenses.

170.11 The Tribunal noted that Mr K had made a complaint to the Legal Complaints Service ("LCS") which was received by them on 6 May 2009 and was dated 4 May 2009. The complaint stated:

> "Mr Churks Emele/TA charged me £5,000 to do arranged marriage for me but failed. I requested the refund of my deposit of £2,500 which he (Emele) guaranteed to refunds in case since the marriage did not materialised. I travelled from Glasgow to London on five occasions and on the third visit he gave me two weeks post dated cheque which I presented upon maturity but was dishonoured for lack of fund in the account of the drawer (Emele Mr) went to see him a week later for cash payment but was unable to pay and the friend apologised on his behalf. He told me to come a week later because he has made arrangement for a loan with his bankers which will be ready when I come on the said date. Unfortunately he could not pay me when promised so I kept asking for payment at his office and he invited the police to come and drive me away, but I told them the whole issue which they claim was illegal".

170.12 At that point the First Respondent had denied that he/Credo had been involved in arranging a marriage for Mr K. However, in oral evidence it became clear that

Mr Emele accepted that the instructions he received were to assist in arranging a marriage, as Mr K did not have time to socialise. Mr Emele had acknowledged that Mr K's work permit or visa was due to expire in August 2009 and that it would help in Mr K's application to the Home Office if he were married by that time, to a British woman or someone with a right to stay in the UK. Mr Emele maintained that there was nothing wrong or illegal in seeking to arrange such a marriage.

170.13 In relation to the allegation, the Tribunal noted that Mr Emele gave a number of differing and evasive accounts of what the money was used for.

170.14 In the first place, Mr Emele had been evasive when he was asked if he had received £2,500 in client money from Mr K on 27 January 2009. Mr Emele said in oral evidence that he did not, but he was aware of it. However, he had signed the receipt. It was clear that the money was client money, paid to Credo and that Credo was operated by Mr Emele. Mr Emele had then sought to argue that the £2,500 was all for "disbursements" and that it had been used as such. It was clear that £500 had been paid to Mr TA. In the course of his oral evidence Mr Emele told the Tribunal that he had given the other £2,000 to Mr TA as well, as Mr TA "wanted to use it as a link" and that the money was for the lady whom it was proposed would marry Mr K. There was, however, no evidence to support the contention that all of the £2,500 was disbursed on behalf of the client in relation to disbursements authorised or necessary for the client's purposes. There was no support at all for this contention in the books of account produced by Mr Emele.

170.15 Mr Emele had further sought to argue that the payment of £2,500 was a "fixed fee" and therefore became office money, which he was entitled to use as he wished, as soon as it was paid. The Tribunal found this assertion to be wholly inconsistent with the terms of the client care letter which Mr Emele had written. That letter gave an estimate of the time which would be spent, quoted an hourly rate, made no mention of a fee being "fixed" and was in any event inconsistent with some of Mr Emele's other evidence. For example, he told the Tribunal that he had carried out five hours of work on this matter. If that were the case, and all of the £2,500 had been disbursed, that would suggest that Mr Emele would not be entitled to be paid anything for his own costs.

170.16 Mr Emele's client care letter to Mr K had stated:

> "At this initial outset, we shall require you to provide us with £2,500 to be held on account for fees, disbursements and expenses".

Further, in a letter to Mr K on 28 April 2009 Mr Emele had referred to:

> "your request for a complete refund of the money paid on account of costs to the firm".

That letter, quoted above in part, clearly showed beyond any doubt that the £2,500 was intended to be on account of costs and disbursements: it was not simply for disbursements, nor was it a fixed fee.

170.17 It was clear to the Tribunal that the £2,500 had not been held on account of fees, costs and disbursements as it was not available when Mr K asked for it to be returned.

Mr Emele had not suggested in his correspondence with Mr K that he could not make any refund as all of the sums had been disbursed in accordance with the client's instructions.

170.18 Mr Emele's various defences to the allegation were inconsistent. Mr Emele's client care letter to Mr K, the receipt he had signed and the letter to Mr K/TA concerning a potential refund were inconsistent with his assertion that the money was office money which he was entitled to use as he chose.

170.19 The Tribunal found Mr Emele's evidence in relation to this matter to be incredible, and that he was a wholly unreliable witness. His defence had shifted as it became clear to him in the course of the hearing that his initial proposition - that he had been entitled to use the money for his office expenses - had been undermined. He had then proposed that he had paid the money for disbursements for the client – in some way to facilitate the potential marriage, by paying it to the prospective bride via Mr TA – but had not produced any evidence to support this assertion. The £2,500 was clearly client money, paid on account, but had not been treated as such. Rather, Mr Emele had used it for his own purposes.

170.20 The Tribunal was satisfied beyond reasonable doubt that Mr Emele had misappropriated at least £2,000 of Mr K's money in that he had received it, had used it for some unknown or unclear purpose such that it was no longer available on account to be refunded to the client, and that Mr Emele had not been entitled to deal with Mr K's money as he had.

170.21 The Tribunal noted that the allegation was pleaded as being a matter of dishonesty. The test for dishonesty applied by the Tribunal in such matters is that set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12, [2002] All ER 377.

170.22 The Tribunal found that in receiving £2,500 from Mr K, not holding that sum on client account, not recording when or how it was disbursed or used, and being unable to account to Mr K for the £2,500 on request, Mr Emele's conduct was dishonest by the standards of reasonable and honest people. Having heard and seen Mr Emele give evidence, and heard his various explanations for the way he had dealt with Mr K's money, the Tribunal was satisfied so that it was sure that Mr Emele did not have an honest belief that he was entitled to deal with Mr K's money as he did, and therefore that he knew that what he was doing was dishonest by those same standards. In giving his various explanations to Mr Grehan, to the client, and to the Tribunal, Mr Emele must have lied in at least one of those explanations. However, what the Tribunal was concerned with was whether the misappropriation of Mr K's money in January 2009 was dishonest, and the Tribunal was so satisfied beyond reasonable doubt.

170.23 Accordingly, this allegation including the allegation of dishonesty, had been proved against Mr Emele.

171. **Allegation 2.2: He failed to produce all records and other documentation of the firm to the representative appointed by the Solicitors Regulation Authority ("SRA") contrary to Rule 34 of the 1998 Rules and/or Rule 20.5 of the Solicitors Code of Conduct 2007 ("SCC")**

171.1 This allegation was made against Mr Emele only, and was denied by him.

171.2 The SRA's evidence in support of this allegation was contained in the FIR and in Mr Grehan's oral evidence.

171.3 The Tribunal noted, and accepted the evidence in the FIR that Mr Emele failed to produce any client account reconciliations during Mr Grehan's investigation; failed to produce any list of client liabilities during the investigation (although he produced a list of clients); provided a form of cash book and accompanying narrative which showed intermixing of office and client monies, did not contain entries beyond 31 May 2009 and that numerous receipts on the firm's client account bank statements did not appear on the cashbook provided by Mr Emele. Accordingly, the Tribunal was satisfied that Mr Emele had not produced the documents and books of account which were properly and reasonably required by the SRA's officer in the course of his inspection.

171.4 In his main witness statement Mr Emele stated "I can confirm that all the documents requested of me that was available to me was promptly made available to the Applicant" (Paragraph 43). That may have been the case, in that there was a dearth of documents and those which existed were inadequate. In any event, it was clear that the documents properly required by the SRA had not been produced.

171.5 Mr Emele had sought to persuade the Tribunal that he was not the responsible party and accordingly it was not up to him to provide the documents and co-operate with the SRA. The Tribunal noted that in the course of his cross-examination of Mr Grehan Mr Emele had alleged that there had been a "witch hunt" against him, and had even gone so far as to accuse Mr Grehan of hacking his telephone and/or bugging his office. Mr Emele had appeared convinced that the SRA had some sort of agenda to pursue him, rather than anyone else involved in the firm.

171.6 The fact remained that at the time of the SRA inspection in early July 2009 the only person who appeared on the SRA records as a partner in Credo was Mr Emele. He had been in correspondence with the SRA in relation to a number of matters. He was referred to in a client care letter to Mr K on 23 January 2009 as the "Managing Partner"; in a letter to Mr K of 28 April 2009 he had been listed as a partner (and had also incorrectly listed [SECOND RESPONDENT – NAME REDACTED] as a partner); he had been listed as a partner in a letter to the SRA on 10 June 2009 (together with Mrs FO, who was not recognised by the SRA as a partner in the firm).

171.7 It was clear that Mr Emele was at the relevant time the only person who was in any way managing or responsible for the firm. It was true that that situation should not have occurred. However, the Tribunal accepted Mr Grehan's evidence (which was disputed by Mr Emele), that in the course of his inspection the only people he met at Credo's office were Mr Emele and an unadmitted assistant, a Mr W.

171.8 The Tribunal was satisfied that in the circumstances the requirements of the SAR and SCC applied to Mr Emele, that he was the relevant party from whom the SRA could and should request documents, and that he had failed to do so. Accordingly this allegation had been proved against Mr Emele.

Previous Disciplinary Matters

172. There were no previous matters recorded against any of the Respondents.

Mitigation

The First Respondent, Mr Chukwuma Emele

173. Mr Emele had denied all of the allegations.

174. Mr Emele submitted that the SRA had breached their statutory responsibility. The SRA had not defined his status properly from December 2008 when his registration as a RFL had been terminated. It was submitted that the SRA were responsible for any problems with Credo because they had negligently failed in their duties.

175. Mr Emele did not make any submission in relation to the finding of dishonesty, as he told the Tribunal that that would be a matter for appeal.

176. Mr Emele submitted that there had always been solicitors in the firm, even if they were not partners. He told the Tribunal he had been up front and had cooperated with the SRA. If the SRA had exercised their powers properly and had not "passported" the firm, the various defaults would not have arisen.

177. Mr Emele submitted that he had made a conscious effort to rectify problems which had arisen.

178. Mr Emele told the Tribunal that he had been a barrister qualified in Nigeria for 26 years. He had been called to the bar in England and Wales approximately two years ago, and his life had moved on smoothly since Credo had closed. Mr Emele was presently working for a charitable organisation, established as a company limited by guarantee, of which he was the director. His drawings from the company varied but were sometimes less than £300 per month. Mr Emele was also trying to run a training programme for immigration advisers. He had no property, savings or a bank account and was supported by his family.

179. Mr Emele told the Tribunal that these proceedings had been hanging over his head and that he wanted to move on to the next stage of his life. He asked the Tribunal to consider all of the circumstances.

The Second Respondent

180. [SECOND RESPONDENT – NAME REDACTED] submitted that the role of the SRA in the affairs of Credo should be taken into account.

181. [SECOND RESPONDENT – NAME REDACTED]'s position, as stated in evidence, was that Credo had effectively been operated as a sole practice by Mr Emele, and that he had had no power to change anything in the firm. [SECOND RESPONDENT – NAME REDACTED] had sought to submit that his partnership with Mr Emele had been void, and of no effect, as it had been based on a misrepresentation by Mr Emele that he was a solicitor.

182. [SECOND RESPONDENT – NAME REDACTED] told the Tribunal that he had recently started work as a solicitor with a firm. He was not receiving a salary but a share of the fees. [SECOND RESPONDENT – NAME REDACTED] practises in the

field of litigation. He told the Tribunal that he does not own any property or investments and has an overdraft.

The Third Respondent,

183. No findings having been made against the third Respondent, no mitigation was required.

Sanction

First Respondent, Mr Emele

184. The Tribunal had determined that it had jurisdiction to hear allegations against a former RFL. In relation to any acts or faults which occurred whilst that Respondent was a RFL, the Tribunal had jurisdiction to make an order that a Respondent should not be re-registered as a RFL without the permission of the Tribunal.

185. Further, the Tribunal had determined that in relation to any acts or defaults which occurred when a former RFL was "involved in a legal practice", but was not a solicitor, the Tribunal had jurisdiction to make an order under Section 43. The Tribunal was satisfied that Mr Emele had been, from the termination of his registration on 15 December 2008, "a person involved in a legal practice for the purposes of this section", as he had been "a manager of a recognised body" and/or "had or intended to acquire an interest in such a body".

186. The Tribunal's jurisdiction was clear. Mr Emele had been acting in such a way that he had operated Credo at all times up until the intervention in that firm. Further, his evidence was that he had invested £71,000 of his own money in matters relating to the business, had paid the professional indemnity insurance and had from time to time paid staff from his personal account.

187. The Tribunal had made findings against Mr Emele which included acts or defaults at the time when he was a RFL under allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7. The allegations found proved which related wholly or partly to the period after termination of Mr Emele's RFL status were 1.1 to 1.7 inclusive and 2.1 and 2.2.

188. In considering whether it was appropriate to make the orders requested by the SRA, the Tribunal considered the nature of the proved allegations, which were wide-ranging and serious. In particular, a finding of dishonesty had been made against Mr Emele in relation to an act in the period after he ceased to be a RFL.

189. Mr Emele had submitted that he did not intend to apply for re-registration as a RFL, and that there was therefore no reason for the Tribunal to make any such order against him. However, the Tribunal was satisfied in all of the circumstances that for the protection of the public and the protection of the reputation of the solicitors' profession it was appropriate and necessary to make an Order that Mr Emele should not be registered as a RFL without the further permission of the Tribunal.

190. Further, in the light of the various findings against Mr Emele, in particular the finding of dishonesty, it was clear that Mr Emele had been a party to "an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal

practice in one or more of the ways mentioned in sub-section 1(A)...” (Section 43(1) Solicitors Act 1974 (as amended)).

191. In determining that both of these sanctions were reasonable and appropriate, the Tribunal could not ignore the fact that it had seen Mr Emele giving evidence and making submissions on a number of occasions over a prolonged period. The Tribunal had found him to be a wholly unreliable witness, whose defence had been contradictory and inconsistent. He had in the course of the proceedings made outrageous and unsubstantiated allegations against officers of the SRA. He had been an evasive witness, who had sought to cast the blame for his defaults on others, in particular [SECOND RESPONDENT – NAME REDACTED]. The Tribunal was concerned about Mr Emele’s ability to work within a professionally regulated framework. He had told the Tribunal about his experience as a barrister over many years, his qualifications and had referred to his experience as an advocate. However, the Tribunal had found he was unable to deal with the proceedings against him in a straightforward and reasonable way.

192. Whilst the primary factor was and had to be the serious allegations which had been proved against Mr Emele, the correctness of the Tribunal’s decision to make two orders against Mr Emele was confirmed by the way he had conducted himself throughout the proceedings. On the basis of the proved allegations, and being aware that the purpose of sanction in the Tribunal is primarily to protect the public and the reputation of the solicitors’ profession, making both orders was necessary and appropriate.

<u>The Second Respondent</u>

193. The Tribunal noted [SECOND RESPONDENT – NAME REDACTED]’s submission that his partnership with Mr Emele had been void from its inception, so he should not be held liable as a partner for any breaches of the SAR or other regulatory breaches which had occurred. Whatever the position might have been between Mr Emele and [SECOND RESPONDENT – NAME REDACTED], so far as the public was concerned [SECOND RESPONDENT – NAME REDACTED] was until March 2009 a solicitor partner in Credo. He had believed himself to be a partner.

194. The Tribunal was concerned that although [SECOND RESPONDENT – NAME REDACTED] had begun to have concerns about his relationship with Mr Emele in or about September 2008 - having given evidence that a loan application appeared to have been made in his name, without his knowledge - [SECOND RESPONDENT – NAME REDACTED] did not resign until March 2009. Further, [SECOND RESPONDENT – NAME REDACTED]’s evidence had been that he had discovered Mr Emele was a RFL in or about December 2008: again, he took no active steps until he indicated to Mr Emele his intention to resign, which was in February 2009. The Tribunal accepted [SECOND RESPONDENT – NAME REDACTED]’s evidence that Mr Emele had moved the firm’s office without telling him where they had moved. However, [SECOND RESPONDENT – NAME REDACTED] had been dilatory in trying to regularise his position.

195. The Tribunal accepted as a fact that [SECOND RESPONDENT – NAME REDACTED] had not had any power or control and that Mr Emele had operated Credo as a de facto sole trader business. However, [SECOND RESPONDENT –

NAME REDACTED] was liable for breaches of the SAR and other regulatory breaches which occurred during the time he was a partner. Further, the fact that he had allowed himself to be a partner, and held out as such, had enabled Mr Emele to carry on in practice without proper supervision or management, thereby creating a risk to the public. The breaches which had been proved against [SECOND RESPONDENT – NAME REDACTED]were more than merely technical breaches: the situation at Credo had been catastrophic. [SECOND RESPONDENT – NAME REDACTED] had continued to deny liability for the breaches which had occurred whilst he was a partner when it was clear that he would be held liable, even if he were not as culpable as Mr Emele.

196. In order to mark the seriousness of [SECOND RESPONDENT – NAME REDACTED]'s failures, under the breaches which had occurred whilst he was a partner, it was appropriate that he should be fined £5,000.

Costs

197. An application was made by the SRA for Mr Emele and [SECOND RESPONDENT – NAME REDACTED] to pay the SRA's costs of the proceedings. No schedule of costs was available but it was anticipated that the costs would be very substantial, given that hearings in this matter had taken place over a period of eight days. The Applicant therefore sought an order for the costs to be assessed, with an interim order for costs of £5,000 against each party. This would enable the SRA to assess the ability of the Respondents to pay any more substantial order that might be made against them, as neither had submitted a proper schedule of income, expenditure, assets and liabilities.

198. Mr Emele told the Tribunal that the SRA should not be entitled to any costs. They had gone ahead and passported Credo when they should not have done so, and if they had exercised their powers properly the various problems would not have arisen. If any order for costs were made in their favour, it would be compensating the SRA for their lack of supervision. Mr Emele's financial position was outlined and is noted above in the section on mitigation.

199. [SECOND RESPONDENT – NAME REDACTED] submitted that he accepted it was clear that costs would follow the outcome of the case. He asked the Tribunal to take into account the fact that he could not have changed the way Credo was operated. Further, it was submitted that as the SRA had acted inappropriately there could be reason to depart from the usual rule that costs would follow the event. [SECOND RESPONDENT – NAME REDACTED]'s financial position was outlined and is noted above in the section on mitigation.

200. The Tribunal considered carefully the position with regard to the costs of these proceedings.

201. The Tribunal considered that it would be appropriate for it to order costs in favour of the SRA. Even if there had been any fault on the part of the SRA - and the only possible default was in automatically "passporting" Credo on 31 March 2009 - this in no way had contributed to the breaches committed by Mr Emele and [SECOND RESPONDENT – NAME REDACTED].

202. Much of the time in dealing with the case had been in consideration of the allegation of dishonesty against Mr Emele. Further, the Tribunal was satisfied that he had been in effective control of Credo and that he was therefore more culpable than [SECOND RESPONDENT – NAME REDACTED]. [SECOND RESPONDENT – NAME REDACTED] had, however, allowed Mr Emele to operate the firm in a way which should not have happened and had either failed to understand his responsibilities as a solicitor, or had failed to act in accordance with them.

203. The Tribunal was satisfied also that the length of the proceedings had been contributed to substantially by Mr Emele's prolixity in his various submissions and preliminary applications, his unfocused and ineffective cross-examination and because of the way his defence had shifted during the course of the hearing.

204. Bearing in mind issues of culpability, the amount of costs generated in relation to each Respondent, and all of the circumstances of the case, the Tribunal considered it appropriate to order Mr Emele to pay 90% of the costs to be assessed and [SECOND RESPONDENT – NAME REDACTED]to pay 10% of such costs. Further, the Tribunal determined it would be appropriate to order each Respondent to make a payment on account of costs. The initial payment to be ordered against [SECOND RESPONDENT – NAME REDACTED] would be £3,000: it was clear that the total costs would be well in excess of £30,000, so such a payment would not exceed the overall liability for 10% of the costs. The Tribunal further decided that Mr Emele should be ordered to pay £5,000 as an interim payment towards costs. Both interim payment orders would allow the SRA to conduct some enquiries to determine whether it would be worthwhile to pursue a detailed assessment of the overall costs.

205. The Tribunal was satisfied that the allegations had been properly brought. Whilst no findings had been made in relation to certain allegations, as the SRA had had to withdraw the evidence of Ms JC, it had been proper to bring those allegations and no deduction should be made from the overall costs simply because the SRA was unable to pursue those allegations as it had wished.

Statement of Full Order

206. The Tribunal Ordered that the respondent Chukwuma Emele former registered foreign lawyer, be prohibited from being re-registered as a Registered Foreign Lawyer except by further Order of the Tribunal.

The Tribunal further Ordered that as from the 1st day of March 2012, except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Chukwuma Emele;

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Chukwuma Emele;

(iii) no recognised body shall employ or remunerate the said Chukwuma Emele;

(iv) no manager or employee of a recognised body shall employ or remunerate the said Chukwuma Emele in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Chukwuma Emele to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Chukwuma Emele to have an interest in the body;

And the Tribunal further Ordered that he do pay 90% of the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society with an interim payment of £5,000.00 to be made within 28 days.

207. The Tribunal Ordered that the Second Respondent, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay 10% of the costs of and incidental to this application and enquiry to be subject to a detailed assessment unless agreed between the parties to include the costs of the Investigation Accountant of the Law Society with an interim payment of £3,000.00 to be made within 28 days.

DATED this 25th day of April 2012
on behalf of the Tribunal

E. Richards
Chairman