The First Respondent, Gabriele Michael Giambrone, appealed to the High Court (Administrative Court) against the Tribunal's decision dated 5 April 2013 in respect of findings, sanction and costs. The appeal was heard by Lord Justice Laws and Mr Justice Foskett on 4 March 2014. The appeal was dismissed in its entirety and the First Respondent was ordered to pay the costs incurred by the Solicitors Regulation Authority on the appeal summarily assessed by the High Court in the sum of £26,388. Giambrone v Solicitors Regulation Authority [2014] EWHC 1421 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 10463-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

GABRIELE MICHAEL GIAMBRONE — First Respondent

[NAME REDACTED] — Second Respondent

[NAME REDACTED] — Third Respondent

Before:

Mr K. W. Duncan (in the chair)
Mrs J. Martineau
Mr G. Fisher

Date of Hearing: 22nd, 23rd, 24th and 25th January 2013
and 1st February 2013

Appearances

Geoffrey Williams QC, Geoffrey Williams & Christopher Green, The Mews, 38 Cathedral Road, Cardiff CF11 9LL for the Applicant.

Simon Monty QC, 4 New Square, Lincolns Inn, London WC2A 3RJ instructed by Reynolds Porter Chamberlain LLP Solicitors for the Respondents.

JUDGMENT

Allegations

1. The allegations against the Respondents Gabriele Michael Giambrone, *Second Respondent – Name redacted and Third Respondent – Name redacted* were that they had:

Contained in a Rule 5 Statement dated 26 February 2010

1.1 Failed to maintain properly written up books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR");

1.2 Drawn money out of client account otherwise than in accordance with Rule 22 SAR;

1.3 Operated client bank accounts which did not include the word "client" in their titles contrary to Rule 14 SAR;

1.4 Failed to produce documentation contrary to Rule 41 SAR;

1.5 Failed to promptly remedy breaches of the SAR contrary to Rule 7 SAR;

1.6 Transferred conveyancing files to Italy thereby breaching the terms of Rule 1.04 and 1.05 of the Solicitors' Code of Conduct 2007 ("SCC");

Against the First Respondent, Gabriele Michael Giambrone, alone

1.7 Failed to co-operate with the Solicitors Regulation Authority ("SRA") contrary to Rule 20.03 SCC;

1.8 [Withdrawn]

1.9 [Withdrawn]

Against all the Respondents

1.10 Utilised professional notepaper which contravened Rule 7.07 SCC; and

1.11 Improperly permitted themselves to be held out as practising with each other in partnership in England and Wales and latterly as members of a Limited Liability Partnership in England and Wales when in fact the First Respondent was practising in both capacities as a sole practitioner contrary to Rule 1.06 SCC.

The further allegations against the Respondents were that they had:

Contained within a Rule 7 Statement dated 13 October 2010

1.12 Improperly paid deposit monies out of their client bank account contrary to assurances given to clients contrary to Rule 1.02, 1.04, 1.05 and 1.06 SCC;

1.13 Paid deposit monies out of client bank account otherwise than as permitted by Rule 22 SAR;

1.14 Failed to ensure that clients received proper advice and adequate communication contrary to Rule 1.04 and 1.05 SCC;

1.15 Further transferred conveyancing files to Italy without authority contrary to Rule 1.04 and 1.05 SCC;

1.16 Wrote misleading letters to clients or permitted staff for whose conduct they were responsible to do so contrary to Rule 1.02 and 1.06 SCC;

1.17 [Withdrawn]

1.18 [Withdrawn]

1.19 [Withdrawn]

The further allegations against the Respondents were that they had:

Contained within a second Rule 7 Statement dated 15 February 2011

1.20 Failed to deliver an accountant's report with respect to their practice under the style of Giambrone & Law contrary to S34 Solicitors Act 1974 (as amended) and the Rules made thereunder;

1.21 Failed to deliver an accountant's report with respect to their practice under the style of Giambrone Law LLP contrary to S34 Solicitors Act (as amended) and the Rules made thereunder.

Documents

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

Applicant:

- Application dated 26 February 2010
- Rule 5 Statement dated 26 February 2010 and exhibit "GW1"
- Rule 7 Statement dated 13 October 2010 and exhibit "GW2"
- Rule 7 Statement dated 15 February 2011 and exhibit "GW3"
- Note on behalf of the Applicant and attached authorities
- Schedule of Costs
- Submissions on behalf of the Applicant with respect to costs

The Respondents:

- Response to the Rule 5 and Rule 7 Statements dated 20 April 2011

- Witness statement of the First Respondent dated 15 January 2013 and exhibit "GMG1"
- Witness statement of the First Respondent dated 31 January 2013
- Witness statement of the Second Respondent dated 15 January 2013
- Witness statement of the Second Respondent dated 31 January 2013
- Witness statement of the Third Respondent dated 15 January 2013
- Witness statement of the Third Respondent dated 31 January 2013
- Note on behalf of the Respondents and attached authorities
- Table of allegations, responses and findings
- Respondents' costs submissions
- Bundle of references/testimonials

Preliminary Matter 1

3. Mr Williams QC made an application under Rule 11(4)(a) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") for permission to withdraw allegations 1.8 and 1.9 against the First Respondent and allegations 1.17, 1.18 and 1.19 against all three Respondents on the basis that there was no public interest in pursuing these allegations. The Tribunal consented to the application.

Preliminary Matter 2

4. The Tribunal was told that the Respondents objected to the Forensic Investigation Officers giving evidence in this case as neither had filed a statement and so had failed to comply with Rule 14 (6) of the SDPR. Mr Williams said that it was in the interests of justice for the Officers to be able to give evidence. He explained that Mr Ferrari had prepared the first Forensic Investigation Report which formed the subject of the Rule 5 Statement and Mr Howland had prepared the second Report which was the basis of the first Rule 7 Statement in this case. Mr Williams said that although the Reports had been signed by other individuals at the SRA, the Officers themselves had written the Reports and would be able to give the Tribunal information about the investigations that had been carried out. He pointed out that the Respondents had been aware of the existence of the Reports for some considerable time and they had dealt with the matters raised by the Reports in their own statements and in correspondence. Mr Williams said that the Respondents could not possibly be prejudiced by the Officers giving evidence and it would be in the public interest for the Officers to be allowed to do so. He reminded the Tribunal that under Rule 13 (10) of the SDPR, the strict rules of evidence did not need to be applied and Rule 21 (2) of the SDPR provided that the Tribunal could dispense with the requirements of the Rules altogether where it was considered just to do so. He confirmed that he had no objection to the Respondents' statements being allowed in evidence despite the fact that the statements had not been filed in accordance with the time limits contained within the SDPR.

5. Mr Monty QC told the Tribunal that although the Respondents' evidence had been filed late, the SRA had not objected to this and it must be right that the Respondents

be given the opportunity of answering the allegations that had been made against them. He declined to set out the reason for the statements having been produced so late and said that he could not do so without going into matters that it would not be right to raise before the Tribunal.

6. Mr Monty said that it was clear that the information contained within the first Report had been derived from enquiries made by Mr Ferrari and his colleague Miss Seager but neither of them had signed the Report. He pointed out that the second Report had been complied by a number of individuals and Mr Howland had only taken over the investigation some nine months after it had first started. He said that if only two of the Investigation Officers were going to be tendered to give evidence then those Officers should have filed statements setting out which parts of the investigation each had carried out as otherwise he was hindered in the preparation of his cross examination. He pointed out that these were serious allegations and he needed to know which parts of the investigation had been dealt with by each Officer. He told the Tribunal that the SRA had failed to explain why only Mr Ferrari and Mr Howland were being called to give evidence.

7. Mr Williams explained that the first investigation had been started by Mr Ferrari and he had been assisted by Ms Seager. He said that the Report had been signed by Mr Calvert, as the head of the department, which had been standard practice at the SRA at that time. He said that several individuals had been involved in the preparation of the second Report but Mr Howland would be able to confirm that the second Report was his own work.

The Tribunal's decision

8. The Respondents had been late in filing their witness statements and no apology had been tendered. At the request of both parties, the Tribunal had delayed sitting in order to allow time for negotiations which should have taken place at an earlier stage if the Respondents had filed their witness statements when they had been ordered to do so. Notwithstanding this, it was right that the Tribunal should allow the Respondents' statements to be submitted as evidence in these proceedings.

9. It was in the public interest and in the interests of the Respondents themselves to allow the Investigation Officers to give evidence. The Respondents had engaged in these proceedings throughout and it should have come as no surprise to them that the Officers would be called as witnesses in this case. The Respondents would not suffer any prejudice whatsoever if the Officers gave evidence and the Tribunal would ensure that whoever gave evidence on a particular point was an appropriate individual to do so.

Factual Background

10. The First Respondent was born on 20 September 1976 and became a Registered European Lawyer ("REL") on 19 April 2005. His name remained on the Register. The Second Respondent was born on 4 March 1975 and became an REL on 16 April 2007. Her name remained on the Register. The Third Respondent was born on 3 January 1976 and became an REL on 16 April 2007. Her name remained on the Register.

11. On 19 April 2005, the First Respondent registered the firm of Giambrone & Law International Law Partnership as a partnership of England and Wales ("the partnership/firm"). In April 2007, the Second and Third Respondents became salaried partners and the First Respondent opened an office in Calabria as an Italian office of the UK firm. In May 2007, another office in Calabria was opened on the same basis.

12 On 5 April 2008, the partnership converted to a Limited Liability Partnership ("LLP") status practising under the style of Giambrone Law LLP ("the LLP/firm"). All three Respondents were held out as members of the firm with the First Respondent holding 95% of the equity and the Second and Third Respondents holding 2.5% each.

13. In April/May 2008, the two Calabria offices were closed and a new office was opened in Calabria as an Italian branch of the LLP.

14. In November/December 2008, the Second and Third Respondents resigned and left the firm. The firm ceased to practise on 5 April 2009.

15. An investigation of the firm's books of accounts and other documents was commenced on 4 August 2008 by representatives of the Forensic Investigation Unit ("FIU"). The investigation resulted in the preparation of a Forensic Investigation Report ("the Report") dated 20 February 2009. A further investigation commenced on 25 March 2009 which resulted in the preparation of a second Forensic Investigation Report ("the second Report") dated 1 July 2010.

Allegation 1.1

16. According to the Report, the firm's books of account were not in compliance with the SAR. In particular:-

- The client ledgers were incomplete and unreliable;
- The FIU could find no evidence of compliant client account bank reconciliations having been carried out for the period April 2006 to June 2008;
- Client ledger accounts featured mixed currencies;
- A suspense account ledger was in use which ran from 7 February 2006 to 6 July 2007; and
- All client accounting documents had not been retained for at least six years.

17. The Report was sent to the Respondents under cover of formal letters from the SRA dated 11 March 2009. The First Respondent replied on 1 April 2009. It was made clear that the First Respondent's reply had been written on behalf of all three Respondents. Subsequently, Murdochs Solicitors made representations on behalf of all of the Respondents.

18. Relevant matters arising from the First Respondent's letter were as follows:-

- The First Respondent admitted to an inadequacy in the accounts staff;

- The First Respondent accepted having fallen below the expected standards of book-keeping and pointed to the lack of a training requirement for RELs;
- The First Respondent accepted posting errors and computer problems. He later withdrew this admission;
- The computer system in operation for the accounts could not record foreign currencies; and
- The First Respondent stated that proper reconciliations were being carried out but conceded that perhaps the reconciliations were not compliant with the Rules.

19. Relevant matters arising from Murdochs' representations were as follows:-

- There were errors within the suspense account itself;
- The whole set of client accounts were being re-written;
- The allegation was broadly admitted.

Allegation 1.2

20. Due to the state of the book-keeping within the firm, the FIU was unable to express an opinion as to whether the firm held sufficient funds in client bank account to meet client liabilities as at 30 June 2008.

21. The FIU was able to identify debit balances on client ledgers as follows:-

- The ledger accounts of clients Mr and Mrs H and Mr and Mrs E;
- The suspense account;
- Bank interest and commissions had been debited to client accounts;
- A matter listing revealed two debit balances as at 30 June 2008. The position had deteriorated by 31 August 2008;
- A bank reconciliation statement as at 31 March 2007 revealed apparent shortages;
- Documents produced to the FIU revealed apparent shortages on every comparison date in the year ending 31 March 2007; and
- The First Respondent provided the FIU with schedules of balances held on client accounts as at 30 June 2008. The schedules included multiple debit balance entries.

22. On 25 January 2009, Murdochs sent an email to FIU referring to remedial action being taken at the firm.

23. Relevant matters arising from the First Respondent's letter dated 1 April 2009 were as follows:-

- The bank had been requested not to debit charges or commission to client account; and
- The client accounts had been closed.

24. Relevant matters arising from Murdochs' representations were as follows:-

- At the time of the winding down of the firm there were no shortfalls on client accounts. Previous errors had been rectified; and
- Funds held in client accounts had either been "disposed of" or returned to clients.

Allegation 1.3

25. Two client accounts maintained by the firm did not include the word "client" in their titles.

Allegation 1.4

26. The firm's accountant's report for the year ending 31 March 2008 contained a number of qualifications. Reference was made to various current year client account bank statements being missing.

Allegation 1.6

27. The firm conducted a substantial amount of property work with an overseas element. A decision was taken to re-locate the property department to an office of the firm in Italy.

28. The firm wrote to about 1,500 clients in relation to this decision. The letter that was sent to clients stated that from the time that the files were transferred to Italy, the transaction would be regulated in Italy and the Italian terms of business would apply. The letter went on to state that "Your continued instructions on this matter will amount to full acceptance of our Italian terms of business". The files were sent to Italy.

29. The Respondents said that the relevant standard client care letter stated:

> "All our lawyers in the London office are regulated by the strict rules of conduct imposed by the Law Society (England and Wales)... The lawyers in our Italian offices are regulated by the Italian *Consiglio dell'Ordine degli Avvocati* (Italian Bar Council)".

30. According to the SRA, the Respondents did not seek and did not obtain the express consent of the clients concerned and no contrast was drawn between the regulatory regimes in Italy and in England and Wales. It was the SRA's view that the letters effectively terminated the retainers in England and Wales without notice.

31. The Respondents stated that the firm had been advised by the Professional Ethics Department in June 2008 that no consent was required to transfer files between

branches of the same law firm. The Respondents stated that the advice was confirmed in the SRA's letter dated 1 September 2009.

32. Relevant points arising from Murdochs' representations were as follows:-

- There had been some (but not many) complaints in relation to some of the London files that had been transferred to Italy;
- Once the files had been transferred, the First Respondent had no control over them; and
- The majority of the complaints were raised after the files were sent to Italy.

Allegation 1.7

33. The FIU wished to inspect some of the property files which had been transferred to Italy. The request was made in August 2008.

34. In a letter to the FIU dated 25 August 2008, the First Respondent stated that he wished to seek legal advice as to whether or not he was obliged to comply with the request.

35. On 29 August 2008, the FIU wrote to the First Respondent and directed him to an SRA booklet entitled "Registered European Lawyers (RELs) and the Establishment Directive" which set out his obligations.

36. On 7 October 2008, the FIU returned to the firm and the First Respondent agreed to produce the files. Several of the files were incomplete. In his letter dated 1 April 2009, the First Respondent referred to the jurisdictional issues raised by this matter and explained that his disclosure of the Italian files had been under protest but had been done because he did not wish to seem uncooperative. Murdochs also addressed this issue in their response to the SRA.

37. In relation to the First Respondent's dealings with the FIU in relation to the accounts inspection, it was noted that:-

- The FIU made several visits to the firm over a three and a half month period but the books of accounts were not brought up to date;
- The FIU requested accounting information on 4 August 2008. It could not be produced;
- A further request for bank statements was made on 5 August 2008;
- On 25 August 2008, the First Respondent wrote to the FIU anticipating that the full reconciliations would be produced the following day. They were not;
- The problem caused by the delay in producing reconciliations was discussed at a meeting on 27 August 2008;
- On 27 August 2008, the First Respondent handed the FIU a letter offering to provide reconciliations within 14 days;

- The FIU replied on 29 August 2008. The reconciliations were requested within 14 days. They were not supplied;
- The FIU wrote a reminder letter seeking immediate disclosure on 24 September 2008;
- The First Respondent replied on 29 September 2008 stating that he was out of the country and confirmed that he would provide the information shortly;
- The promised documentation had not been supplied by the time of a further meeting held on 7 October 2008; and
- The further information provided was either incomplete or unsatisfactory.

38. In his letter dated 1 April 2009, the First Respondent placed blame on his accountants and addressed the progress of the accounts inspection.

Allegation 1.10

39. The FIU observed that the professional stationery used by the firm did not comply with the requirements of Rule 7.07 of the SCC. On 29 August 2008, the FIU asked the firm to explain how its professional stationery was in compliance with the SCC. By 27 November 2008, the stationery had not been changed. In the First Respondent's letter dated 1 April 2009, he stated that the notepaper had been amended.

Allegation 1.11

40. Professional notepaper issued by the firm stated that all three Respondents were partners at various dates.

41. The First Respondent informed the SRA that the Second and Third Respondents had resigned from the firm as at 30 January 2009. The firm's notepaper showed that they were held out as partners thereafter.

42. Solicitors instructed by the Second and Third Respondents informed the SRA that the Second and Third Respondents did not and never had practised in the UK and had, at all material times, practised in Italy.

43. It was noted from representations made by the First Respondent that:

- The Second and Third Respondents practised from the office of the LLP in Palermo. The First Respondent said that they were not bound by the SAR;
- The First Respondent did not regard the LLP in Italy as being regulated by the SRA. He stated that RELs were only regulated by the SRA in relation to practice in the United Kingdom;
- The Italian office was not within the scope of the SCC; and
- After 30 January 2009, the First Respondent was the sole member of the LLP. The Italian offices were completely separate from the LLP and were exclusively regulated in Italy and not registered with the SRA.

44. On 19 March 2008, an application was made to the SRA for recognition of the LLP. In the application form, it was stated that the principal practising address for the Second and Third Respondents in relation to the LLP was in London. The application was granted on 5 April 2008.

Allegations 1.12-1.16

The Transaction for Ms LM and Ms PM

45. LM and PM wished to purchase an apartment at the Pizzo Beach Club resort in Italy. The purchase price was 98,900 Euro.

46. On 22 September 2007, LM and PM signed a Reservation Form. In so doing, they paid a deposit of 3,000 Euro to VFI who were the promoters of the development. The apartment had yet to be built.

47. The Reservation Form required:-

- LM and PM to travel to Italy to inspect the development within 21 days; and
- To decide whether or not to proceed with the purchase during the inspection visit.

48. If the purchasers decided not to proceed, then the deposit would be refundable. If the decision was to go ahead, then the property would be allocated to the purchasers, a Real Estate Purchase Form would be completed and the 3,000 Euro deposit would no longer be refundable. Instead, it would be applied towards the 50% deposit which would be required within 28 days.

49. LM and PM inspected the development and decided to proceed. They signed the Real Estate Purchase form on 23 October 2007.

50. By signing this document:-

- LM and PM agreed to pay a 35% deposit upon signing a Preliminary Contract;
- A further 10% was to be paid in about one year's time; and
- A further 50% was to be paid on transfer of title – anticipated to be in March 2010.

51. By signing the Real Estate Purchase form, LM and PM authorised VFI to send the paperwork to "the legal representatives" i.e. the Respondents. Paragraph 3 of the form which related to the payment schedule appeared to contradict the payment terms referred to above.

52. The Respondents' firm was on a panel set up by VFI to receive referrals of such instructions.

53. Subsequent to the signing of these forms, LM and PM duly authorised the firm to act on their behalf.

54. According to the Real Estate Purchase Form, the purchase was regulated by Italian law. At the outset of the retainer, no advice was given to LM and PM in relation to the legal obligations that they had assumed. The Respondents stated that no advice was requested by LM and PM.

55. On 24 October 2007, the firm wrote a client care letter to LM and PM. The letter stated that all lawyers in the firm's London office were regulated by The Law Society and that professional indemnity insurance was in place. The letter also said that the firm would ensure that a bank guarantee would be obtained to protect LM and PM against any bankruptcy of the other parties.

56. On 2 November 2007, the firm wrote again to LM and PM. The letter enclosed, inter alia, the Preliminary Contract and a cover letter of advice.

57. This letter, via the advice document, gave LM and PM a clear assurance that their funds towards the purchase would be kept in the firm's client bank account in London until:-

- The Preliminary Contracts had been signed and executed by both parties; and
- The bank guarantees had been issued.

58. On 26 November 2007, the firm received the sum of 31,615 Euro into its client bank account from LM and PM for the deposit. On 7 March 2008, this sum was paid out to Maritur SrL by the Respondents. By this date:-

- Contracts had not been executed by both parties; and
- No bank guarantees had been obtained.

Six days later, the firm asked LM and PM to return their signed contracts.

59. It was apparent that LM and PM believed that the Respondents were still holding their deposit monies. They still believed this to be the case in September 2008.

60. E-mails from LM in September 2008, made it clear that LM and PM were considering whether or not to proceed and that they were disappointed with the firm's lack of communication.

61. On 7 October 2008, the firm advised LM and PM that they were entitled to withdraw from the transaction. On the same day, LM confirmed that she and PM did not wish to proceed with the transaction and LM asked for a return of their funds.

62. LM and PM sent further reminders to the firm and intimated that they would be making a complaint. The firm then advised LM and PM that any complaints should be submitted to the firm's Italian office. There were further delays by the Respondents in dealing with the matter.

63. In an e-mail dated 30 November 2008, LM and PM were advised that their file had been transferred to the firm's Italian office. It was noted that according to the SRA:-

- This was the first intimation as to what had happened; and
- No authority for the file transfer had been requested or obtained.

The e-mail represented the first notification to LM and PM that the deposit had been paid away.

64. The firm had apparently made efforts to recover the deposit that had been incorrectly paid away and asked the clients for additional funds to cover the cost of this exercise.

65. In due course, the Legal Complaints Service ("LCS") considered a complaint made by LM and PM and made awards in their favour based upon findings of Inadequate Professional Services ("IPS"). The Respondents complied with the awards.

66. In the course of the SRA investigation in relation to this matter, certain admissions were made by the First Respondent and his solicitor on behalf of all the Respondents:-

- Advice should have been given to LM and PM at the outset;
- Specific instructions should have been taken before the deposit was transferred;
- The firm should have notified its clients of the payment away of the deposit funds;
- LM and PM should not have been charged for the work done in attempting to secure the return of the deposit;
- The release of the deposit was wrong;
- There were shortcomings in the services provided to LM and PM;
- The deposit had been "lost" and LM and PM could have recourse to civil litigation;
- The First Respondent accepted responsibility for staff "errors"; and
- This scenario had arisen in 30 to 50 other cases.

<u>The transaction for Ms E</u>

67. The firm acted for Ms E in her proposed purchase of a new apartment in San Rocco II in Italy. The transaction was of a similar nature to that of LM and PM although different parties were involved in Italy.

68. The firm sent a client care letter to Ms E dated 27 October 2006. An assurance was given to Ms E to the effect that her deposit monies would be held in client account until after Preliminary Contracts had been exchanged so as to give her "extra peace of mind".

69. On 18 January 2007, the firm wrote to Ms E and confirmed that the proposed development was not proceeding. Ms E was offered a different property at another location. No advice was given as to the mechanics of withdrawing from the existing transaction. The letter stated that a report with photographs would be issued in relation to the alternative property "over the next few days" and that the firm would conduct due diligence over the area "within the next seven days".

70. In a letter to the firm dated 23 January 2007, Ms E expressed her disappointment and concern and raised several queries. In particular, Ms E was concerned about any right that she may have had in relation to the return of her deposit. She instructed the firm to cease work until further notice and asked for advice about the return of her deposit.

71. The vendors of the alternative plot were applying pressure upon purchasers and this was communicated to Ms E.

72. On 25 February 2008, Ms E sent the firm 33,495 Euro by way of deposit. This was paid away on 4 April 2008.

73. The payment away of the deposit was in response to a letter sent by Bella Calabria dated 1 April 2008 which sought the deposit "which we undertake to hold as a guarantee until signature of the preliminary contract". If the matter did not proceed then Bella Calabria gave an undertaking to return the deposit.

74. A letter from Ms E to the firm dated 9 April 2008 made it clear that she was unaware that her deposit had been paid away and referred to the fact that she may decide to refer the matter to the LCS.

75. The firm wrote to Ms E on 9 April 2008. The letter stated "We confirm your instructions to release the exact funds received in our client account to the Vendor upon receipt of their signed copy of the preliminary contract and the issue of a bank loan guarantee..." Ms E's deposit had been paid away some five days earlier.

76. On 24 April 2008, the firm wrote to Ms E enclosing a copy of the "bank loan guarantee" which was said to have been issued by an insurance broker. The client care letter stated that a guarantee would be issued by a bank. The firm had signed this guarantee on behalf of Ms E without having obtained instructions to do so.

77. Ms E wrote to the firm again on 2 May 2008. From the terms of her letter, it was apparent that she was unaware that her deposit had been paid away and she was concerned about the lack of a guarantee issued by a bank.

78. Ms E did not proceed with her transaction. She instructed a lawyer to recover her deposit. The ledger entry showed a return of the deposit funds to the firm's client account on 11 April 2008.

79. On 17 September 2008, the firm sent a remittance to Ms E's solicitors which appeared to represent her deposit less costs. According to the SRA, the Respondents knew that the costs were being disputed. An IPS award was made against the Respondents on 10 March 2009.

Allegations 1.20 and 1.21

80. The partnership between the Respondents under the style of Giambrone & Law International Law Partnership had commenced in April 2005 and ceased on or about 4 April 2008. The partnership continued to hold clients' funds until 31 March 2009.

81. On or about 6 April 2008, the partnership had converted to LLP status under the style of Giambrone Law LLP. The LLP held clients' funds until 30 September 2009.

82. The partnership was due to deliver an accountant's report for the year ending 31 March 2009 by 30 September 2009. No such report was delivered.

83. The LLP was due to deliver an accountant's report for the period 6 April 2008 to 30 September 2009 by the extended deadline of 30 June 2010. As in the case of the partnership, this would be a "cease to hold" report. No such report was delivered.

84. In the course of the SRA enquiry, explanations were put forward on behalf of the Respondents in relation to their failure to submit the outstanding reports. It appeared that the accounts of the partnership and the LLP required reconstruction before the reports could be prepared.

Witnesses

Roberto Ferrari

85. Roberto Ferrari, a Relationship Manager and former Forensic Investigation Officer ("FIO") with the SRA gave evidence and was cross examined by Mr Monty. He told the Tribunal that he had prepared the first Report which had been written on the basis of his own investigations and enquiries. He had been assisted by Miss Seager. He confirmed that the content of the Report was true and accurate to the best of his knowledge. He had attached copies of documents to the Report. These documents had either been taken from the firm, were his own notes or were copies of correspondence that had been sent and received during the investigation.

86. In evidence, Mr Ferrari confirmed that during the course of any investigation, he would check the firm's bank reconciliations in order to ensure that the firm held sufficient funds to meet clients' liabilities. He explained that a compliant reconciliation would involve a comparison between the firm's bank balance, the cashbook balance and the list of client ledger accounts. He told the Tribunal that he had been unable to place any reliance on the reconciliations produced by the firm and so he could not express an opinion as to whether the firm held sufficient funds to meet clients' liabilities as at 30 June 2008. He said that he had never seen accurate or complete documentation to enable him to ascertain whether the firm had been able to meet its liabilities to clients.

87. Mr Ferrari said that he had understood that the firm's server had overheated and crashed. He had been told that the back-up server which had been located nearby had crashed as well and that, as a result, the firm's accounting records had been destroyed in late September 2007. He explained that he had asked for accounting records that pre-dated the server crash. He told the Tribunal that the documentation that he had been given indicated that there were problems with the accounts prior to September 2007. He said that he had been given a list of reconciliation statements for the period 1 April 2006 to 31 March 2007. These had shown debit balances on the client account which had not been corrected by the date of the next reconciliation.

88. In continuing evidence, Mr Ferrari told the Tribunal that a suspense account was generally used on a temporary basis for unidentified funds which, once identified, could be allocated to the correct client ledger. He said that the firm's suspense ledger account had given him cause for concern. It had included debit balances which he would not normally expect to see and it appeared to show that payments had been made direct to third parties. He said that the firm had told him that the suspense ledger was being used as part of the reconstruction process and that it did not reflect a "normal" suspense ledger account.

89. Mr Ferrari said that he understood that the client account balances from the partnership had been transferred into the firm's LLP accounts. He told the Tribunal that in order to ensure that the firm's LLP accounts were compliant with the SAR, the firm should have started afresh and kept the partnership accounts separate from those of the LLP. He agreed that the reconstruction of the firm's accounts had not been a straightforward exercise and acknowledged that the process had been ongoing during the course of the investigation. He told the Tribunal that he had seen nothing to indicate that the reconstruction of the firm's accounting records had ever been completed.

90. In continuing evidence, Mr Ferrari said that the accounting records that he had requested from the firm had been provided on a piecemeal basis throughout the investigation. He did not believe that he had ever seen a complete set of the documentation that he had asked for and he told the Tribunal that, to his knowledge, the firm had never filed a "cease to hold" report. He acknowledged that the apparent difficulty in the firm providing the information that he had requested had been because the firm's bookkeeper had been away from the office due to illness. He confirmed that he had received a letter from the First Respondent about three weeks after the start of the investigation in which he had been told that the full reconciliations for the LLP would be provided for his next visit the following day. These had not been supplied. He said that he had also been promised some information in relation to the firm's earlier accounting records. He told the Tribunal that this was the first time that the firm had mentioned the loss of the accounting records. Mr Ferrari confirmed that, during the meeting on 27 August 2008, the First Respondent had conceded that that there had been no compliant client reconciliations for three years. He explained that he had later been provided with a letter indicating that the reconciliations would be provided within the next 14 days. He said that despite chasing for this information, he had never received the complete documentation.

91. In cross examination by Mr Monty, Mr Ferrari maintained that he had been correct to state that the suspense account ledger had been used over an extended period of time and that it had shown a debit balance since September 2006. He said that he was unable to say when the ledger had first been created. He acknowledged that the ledger had been said to be part of the reconstruction exercise but he could not recall whether that explanation had been given to him before or after the investigation. He agreed that it would have been logical for items to be removed from the suspense ledger once these could be allocated to a specific client ledger account. He told the Tribunal that the suspense ledger had indicated to him that the firm's accounts were unreliable and that a reconstruction exercise was underway. In later questioning, he accepted that his conclusion that receipts and payments had been posted to the

suspense account over an extended period of time had been drawn from the dates on the ledger which he now understood to have been created at a later date. He acknowledged that, in the light of what he had now discovered about the firm's use of the suspense account, it was not correct for him to say that the suspense ledger had shown a continuous debit balance since September 2006.

92. Mr Ferrari confirmed that he believed that he had been told about the server crash later in August 2008 and not during his initial visit. He agreed that he had been given details about the efforts that had been made to reconstruct the firm's accounts and he had been told that the firm was attempting to transfer its accounting records on to the Alpha Law system. He said that he was aware that the firm had lost a considerable number of accounting records. He accepted that the First Respondent had told him that regular reconciliations had been carried out on spreadsheets which had subsequently been lost in the server crash. He told the Tribunal that, by the time of his first visit to the firm, the reconstruction process was underway. He could recall that he had been informed that the firm had employed a number of different individuals to assist with the reconstruction and he accepted that the reconstruction had been a considerable task. He acknowledged that the situation had become further complicated by the fact that files were located in Italy and that it had been difficult to identify transactions that had involved payment made by bulk transfers.

93. In continuing cross examination, Mr Ferrari told the Tribunal that the ledgers relating to Mr and Mrs H and Mr and Mrs E showed that there were debit balances on the ledger accounts. He could not say whether these debit balances were actual shortages. He said that he could not recall being told that the ledger relating to Mr and Mrs H was a "work in progress" with entries being posted to the Alpha Law system as part of the reconstruction. He accepted that the firm had been in the process of reconstructing the accounting records during his visit but said that, on the basis of the records available to him at the time, the ledger relating to Mr and Mrs H had indicated that there was a debit balance on client account. He agreed that the ledger in relation to Mr and Mrs E had appeared to show that there was a debit balance as well. Mr Ferrari told the Tribunal that the accounting records that had been produced by the firm had been unreliable and he had been unable to say whether there had been any actual cash shortage in the firm's client account.

94. Mr Ferrari confirmed that he had known that the Italian transaction files had been sent to Italy. He had understood that the release of the files had been problematic and he acknowledged that the First Respondent had taken legal advice about the issue. He told the Tribunal that some of the files had been produced in October 2008 but these had appeared to be incomplete. He could not recall whether he had formed the impression that the First Respondent was unwilling to co-operate in relation to the disclosure of the Italian files but he had certainly been aware of the First Respondent's difficulties in relation to this matter at the time. Mr Ferrari agreed that he had been told that Mr Richardson, who dealt with the firm's accounts, was in hospital at the time of the visit. He did not accept that he had not believed the First Respondent's explanation about this. He acknowledged that the First Respondent had claimed that he found some of the accounts procedures confusing as he was not as familiar with accounting processes as a UK solicitor. He agreed that the First Respondent had said that he wanted to have someone with him during any questioning. He denied that he had known that the First Respondent was

uncomfortable in answering questions during a meeting when only his accountant was present. He said that this had not been a formal meeting and had started on an "ad hoc" basis. He certainly did not recall that the First Respondent had felt unwell at the time.

95. In continuing cross examination, Mr Ferrari told the Tribunal that he had no reason to disbelieve the First Respondent when he had said that there had been a server crash. He stated that there had clearly been a problem with the firm's accounts and the server crash was an explanation for the loss of the accounting records. He said that he had been surprised that the server crash had not been mentioned at the start of the investigation as this would have been a very significant event for the firm, particularly in the light of the reconstruction exercise. He accepted that he had only requested documentation relating to the LLP at the start of the investigation but said that this was because the LLP had been the firm that was in existence at the time. He did not agree that the server crash had not been a relevant issue at the start of the investigation because the crash only affected the partnership records. He explained that he had asked for documentation relating to the partnership shortly after the investigation had begun as he had become aware that the partnership was still holding client money. He maintained that a server crash of this type would have been a major incident for a firm of this size and he would have expected it to have been mentioned at the outset. He did not accept that his view of the server crash had affected his approach or the way in which he had prepared his Report and said that the Report had been based on the records which had been produced by the firm.

96. Mr Ferrari agreed that two of the firm's client bank accounts had not included the word "client" in the title. He accepted that he had been shown correspondence that indicated that the First Respondent had been in touch with the bank about this issue and that the account titles had eventually been corrected. He acknowledged that the First Respondent had provided him with documentation relating to reconciliations for the LLP. He told the Tribunal that these reconciliations had not been compliant with the SAR, as they had been incomplete and information was missing. He confirmed that at no stage had he interviewed the Second or Third Respondents or asked to meet them during the course of the investigation.

97. In re-examination by Mr Williams, Mr Ferrari confirmed that, where possible, he had been able to trace payments made from the firm's bank account which appeared on the suspense ledger account. He told the Tribunal that, although he had been informed that the partnership accounts had been reduced to zero, he had not seen any bank statements to confirm this. He said that if the partnership accounts had been reduced to nil then this should have made it easier for the firm to file a "cease to hold" accountant's report for the partnership. He said that the LLP had operated multiple client accounts, most of which had been set up in the names of developers.

Clive Howland

98. Clive Howland, a former senior FIO with the SRA gave evidence and was cross examined by Mr Monty. He confirmed that the content of the second Report was true and accurate and told the Tribunal that he had taken over the investigation on 22 January 2010. He said that he had been provided with the documentation that had been collected by the previous Officers but he had started the investigation again

afresh. He confirmed that there had been one interview with the First Respondent on 20 May 2010, which had been electronically recorded and at which the First Respondent's legal representative had been present.

99. In cross examination by Mr Monty, Mr Howland told the Tribunal that he had concentrated on the firm's property transactions during his investigation. In particular, he had considered the transactions relating to LM and PM ("M and M") and Ms E. He explained that all three Respondents had been invited to the meeting on 20 May 2010 but the Second and Third Respondents had not attended and so he had not spoken to them direct. He agreed that none of the Respondents had carried out any work on the M and M file themselves. He told the Tribunal that he had never seen the M and M file and had worked from the documentation that had been supplied to him by the previous investigators. He had understood that the file was in Italy and so not available to him. He did not accept that it was impossible to obtain a complete picture of the transaction without the file and said that a large amount of reconstruction was possible depending on the documentation that was available. He observed that the Respondents had retained the original file and had never challenged the veracity of what had been included in the second Report in relation to this matter.

100. Mr Howland agreed that he had not interviewed any of the individuals who had been involved in dealing with the M and M file at the firm. He said that, by the time of his investigation, the firm had closed and so he had not been able to contact any of the firm's former employees. He accepted that he had not attempted to speak to the Italian lawyers who had handled the transaction either. He told the Tribunal that this was because his powers of investigation had ended with the firm's closure and so this would not have been possible. He accepted that the firm's Italian lawyers may have advised M and M about the consequences of the documents that they had signed but said that this could not be confirmed either way.

101. In continuing cross examination, Mr Howland told the Tribunal that his task had been to prepare a fair summary of the facts and it was for others to decide whether there had been any breaches of the regulatory requirements. He confirmed that he had not spoken to M and M regarding the transaction although he had asked the firm to confirm whether their deposit funds had ever been returned to them. He said that he understood that Ms E had taken steps to recover her funds although he had not spoken to anyone in relation to the matter except for the First Respondent and his legal representative.

102. In re-examination by Mr Williams, Mr Howland confirmed that the First Respondent had accepted responsibility, on more than one occasion, for the staff who had dealt with these two transactions. He said that the First Respondent had been open about the fact that mistakes had happened and he had no reason to doubt the assurances that had been given to him by the First Respondent.

<u>First Respondent</u>

103. The First Respondent gave evidence and was cross examined by Mr Williams. He confirmed that the content of his first witness statement was true and he did not wish to make any alterations or amendments.

104. In cross examination by Mr Williams, the First Respondent denied that he had closed down the firm because he had lost control and could not carry on. He told the Tribunal that he had decided to close the firm following the resignation of the Second and Third Respondents as he had been unable to continue to operate as an LLP on his own. He confirmed that he had not worked in England since that time but said that he had continued to practise in Italy and he agreed that he currently made a decent living from his practice there.

105. The First Respondent accepted that he had been "pretty much aware" of his responsibility, as an REL, to comply with the SAR. He said that he had received training from an accountant and he had also undertaken management training courses before he had started to receive client funds. He agreed that initially things had gone well and the firm's first accountant's report had contained only minor qualifications. He confirmed that he had read the SAR and he agreed that the Rules were intended to ensure that the public was protected and that client funds were handled in a proper manner. He told the Tribunal that bank reconciliations enabled a firm to check that the money held on behalf of clients matched the balance held in the firm's bank.

106. The First Respondent acknowledged that his accountant, Mr Wilson, had referred to the fact that the most recent date that the firm's accounting records could be relied upon was March 2006 but said that he wished to put that comment into context. He explained that during the meeting with Mr Ferrari on 27 August 2008, at which Mr Wilson had been present, he had agreed to provide the 2007 reconciliations within 15 days and all 2008 reconciliations by 30 September 2008. He said that, with hindsight, this had been impossible to achieve. He told the Tribunal that the meeting had been disturbing as he could not answer the questions that he had been asked. He said that he had not appreciated that the meeting would take place in the absence of his legal advisers and he believed that if his solicitor had been present then the questioning would have been stopped. He said that he had been frightened of Mr Ferrari and he had felt that he had been "ambushed" by the meeting. He told the Tribunal that he had been aware of his duty to co-operate with the SRA and he had been doing his best to provide Mr Ferrari with the information that had been requested. He did not accept that it had been right for Mr Ferrari to say that Mr Wilson could not "confirm or refute" whether there had been any three way reconciliations of client funds for any date other than the comparison dates contained in Mr Wilson's report. He said that these comments had been inaccurately recorded by Mr Ferrari as Mr Wilson had said that he wanted to check the position before confirming either way. He told the Tribunal that a request had been made for a copy of Mr Ferrari's notes of the meeting but these had not been supplied. He maintained that it had been particularly important for him to have a legal representative present with him during questioning as he had not been as familiar with accounting processes as an English qualified solicitor.

107. In continuing cross examination, the First Respondent told the Tribunal that he could not recall having said that there may not have been any compliant client reconciliations for a three year period during the August 2008 meeting with Mr Ferrari. He said that he had been in shock at the time. He had not understood all of the technical jargon that had been used during the meeting and he was not sure what he had said. The First Respondent maintained that he had supplied the SRA with what he believed were reconciliations for the LLP. He did not accept that these were "schedules of documents" rather than bank reconciliations. He acknowledged that

one of the documents that he had supplied was a suspense account ledger which showed transactions that had not yet been posted to individual client ledger accounts. He also accepted that the list of client balances that he had provided showed several debit entries but pointed out that these balances were not actual cash shortages.

108. The First Respondent agreed that a reconciliation statement dated 31 March 2007 showed that the partnership accounts were not up to date. He went on to state that the partnership records had not been compliant with the SAR from September 2007 due to the server crash. He explained that the firm had been advised by their accountants that it would be impossible to produce reconciliations from September 2007 without all of the opening balances. It was for this reason that there had been no compliant books of account from September 2007 until the date that the partnership had ceased in March 2008. He accepted that it appeared as if the client account had been overdrawn but said that this was not the case. Instead, the firm had been trying to reconstruct the accounting records for the partnership and there were various un-allocated amounts which had created negative balances. He acknowledged that the documentation supplied to Mr Ferrari showed overdrawn client balances but said that these documents were part of a "work in progress" and had been supplied to try and demonstrate that the firm was doing its best to resolve matters and reconstruct the accounts. The First Respondent explained that following the closure of the partnership, the client accounts had been reduced to zero and he had no reason to think that any client money was missing. He said that he wished to draw a distinction between the accounting records of the partnership and those of the LLP. He told the Tribunal that once the LLP had been formed, reconciliations had been carried out "religiously" and he maintained that these had been given to Mr Ferrari.

109. In continuing cross examination, the First Respondent accepted that the accountant's report for the period ending 31 March 2008 was unable to show whether the firm's client account was in balance. He acknowledged that the report contained various qualifications which he accepted to be correct. He said that he had not been made aware of these qualifications prior to the report being sent to the SRA and he would have liked the opportunity to discuss matters with his accountant before the report had been submitted. He told the Tribunal that the accountant had been wrong to state that reconciliations had not been carried out during the period under review. He did not assert that the accountant had been lying about this but said that the accountant had not been present at the firm in the period before the server crash when reconciliations had been produced and sent to the accountants. He acknowledged that the documents which had been sent to the accountants before the server crash would have related, in part, to this accountant's report and accepted that these documents would have been with the accountant at the time that the report was prepared. Mr Monty, with the agreement of Mr Williams, later corrected this evidence and told the Tribunal that the First Respondent had meant to say that he had sent the reconciliations to the accounts department rather than to his reporting accountant.

110. The Tribunal was told that the firm's main server and back-up had crashed due to overheating over the course of a very hot summer. The First Respondent explained that a specialist IT company had tried to retrieve the data but this had not been successful and all of the accounting records together with other marketing material and lists of potential clients had been lost. He acknowledged that the last accountant's report for the partnership which had been filed with the SRA was for the

period ending 31 March 2008 and he accepted that no report had ever been filed for the LLP. He told the Tribunal that he had employed Mr Inman, who had previously worked at the SRA, to help with the reconstruction of the firm's accounts and he accepted that by January 2011, Mr Inman was still advising the SRA that the reconstruction process was underway.

111. The First Respondent told the Tribunal that the SRA had agreed that the firm should be closed in order to avoid an intervention. He maintained that, as part of this agreement, files were to be returned to clients. He explained that Mr Inman had advised him that the outstanding accountants' reports could not be filed unless the underlying transactions had been checked and this was not possible without the files. He was not able to explain why this issue had not been mentioned to the SRA at the time. In addition, he said that there had been other difficulties which had prevented the outstanding reports from being filed. The First Respondent explained that certain transactions were impossible to identify due to an inability to obtain the relevant data from third parties, such as foreign exchange agencies. He apologised to the Tribunal for the fact that the outstanding reports had still not been filed but pointed out that if any client money had been missing then the SRA would have discovered this during their investigations at the firm. He said that the outstanding reports could be delivered within two months if he could find an accountant who would be willing to certify the reports without having seen the underlying transaction files. He acknowledged that the firm had received bank statements for the client account together with most of the credit and debit advice slips which could be used by accountants to prepare the missing accounts. He explained that there were difficulties with the records from the foreign exchange companies as these did not identify the relevant client details. In addition, some of the developers had gone bankrupt and so there was no way of obtaining information from them. In summary, he said that if the process had been as straightforward as had been suggested then he would have been able to file the "cease to hold" reports by now and would not be facing these allegations.

112. In continuing cross examination, the First Respondent said that he understood the importance of being frank when dealing with the regulator and he took this obligation very seriously. He acknowledged that it had not been correct to state that the Second and Third Respondents practised from the firm's London address in the firm's application for recognition as an LLP. He said that he had understood that the SRA required a practising address for the LLP. At that point, the Italian offices had not been established. It had been necessary to have the LLP recognised by the SRA first before the firm could be registered as a foreign practice in Italy. He said that once the LLP had been recognised then the Italian offices could be included and he had indicated this to the SRA by providing them with a list of the prospective offices. He told the Tribunal that he had never intended to mislead anyone and, if he had done so, then this was a mistake.

113. The First Respondent agreed that it was necessary to tell clients everything that they needed to know in relation to their particular matter. He believed that it was necessary to communicate with clients in an open and transparent way. He accepted that the firm had been appropriately placed to deal with the Italian transaction work. He confirmed that he had been the managing partner of the firm but explained that the firm had been made up of lawyers working in various departments, each under the

control of a department head. He agreed that the firm had been his "baby". He had built it up from nothing and he had been proud of the fact that it had generated a substantial turnover and employed a number of people. He accepted that, as the firm's managing partner, he was ultimately responsible for what happened at the firm.

114. The First Respondent confirmed that he had travelled to Italy in order to train the Italian lawyers to English standards. He believed that the firm had been operating between about 2,000 and 2,500 files from its London office by mid 2007. He had been the only principal based in London and he had been the only person who had operated the client account. He accepted that he had been looking after client funds in relation to thousands of matters but pointed out that he had been assisted by staff in the accounts department. He told the Tribunal that, with hindsight, he would not have taken on so many clients. He said that there had been some initial problems with the operation as the Italian lawyers, for example, did not speak English as well as he would have liked but overall it had not been a difficult operation to run. In many cases, it was not necessary to deal with clients on a day to day basis and the firm would usually be holding deposit monies for no more than 28 days.

115. In continuing cross examination, the First Respondent did not accept that the property department had been unable to cope with the number of transactions. He acknowledged that his previous solicitors had referred to the "implosion" of the property department but he told the Tribunal that he had thought that this meant rapid growth. He explained that the files had been transferred to Italy in order to deal with completion matters more effectively. He said that following the financial crisis in 2008, the property market had collapsed and the firm had been left with clients who needed to complete their transactions. It had made sense for matters to be dealt with from Italy.

116. The First Respondent told the Tribunal that clients like M and M had already decided to proceed with their transaction before the client care letter had been sent to them from London and he said that clients had not decided to instruct the firm on the basis that it was regulated by The Law Society or anything of that nature. He explained that it was usual for clients who were looking for property in Italy to meet with a lawyer at the firm's Italian office for some initial advice. He assumed that this was what had happened with M and M, who having found a property that they liked and presumably being happy with the advice that they had received in Italy, had decided to instruct the firm. He told the Tribunal that the client care letter which had been sent to M and M had clearly set out what the firm had been engaged to do. He had been proud of the fact that the firm had been subject to regulation in London but said that the English regulatory regime did not give clients any more protection than that available in Italy. The two systems were different.

117. The First Respondent confirmed that he had drafted the standard letter notifying clients that their files would be transferred to the firm's Italian office. He said that he had taken advice from Professional Ethics regarding this issue and the letter had set out the advice that he had been given. He told the Tribunal that the letters had been sent to the clients shortly after the files had been transferred. He did not agree with the assertion that the firm should have obtained express consent from clients before transferring the files. He said that he had been advised by Professional Ethics that that was not necessary.

118. The First Respondent explained that he had asked the SRA to update its records and include a number of Italian offices in December 2007. He had received confirmation that the changes could be made and he had interpreted this to mean that the Italian offices had become part of the London firm. He said that following the conversion to an LLP, he had once again asked the SRA to include the Italian offices as part of the firm. No objection had been raised and he believed that this had been done. He confirmed that the files had been transferred in June and July 2008, when the Italian offices had been part of the LLP. He pointed out that a later letter from the SRA dated 1 September 2008 and which related to a complaint from a client had confirmed that the firm had done nothing wrong in re-locating the property department to Italy.

119. In continuing cross examination, the First Respondent told the Tribunal that by September 2008, he had noticed that the firm's overseas branches had not been included on The Law Society's website. After contacting the SRA about this, he had received an e-mail dated 20 November 2008 which had stated that the Italian branch offices could not be registered unless English solicitors were based there. He said that this was the first time that the SRA had mentioned this requirement. It had resulted in the Second and Third Respondents resigning from the firm in protest as they had been unhappy about the fact that the SRA were requesting files from the Italian offices which were apparently not subject to its regulation.

120. The First Respondent maintained that the standard letter relating to the re-location of the firm's property department and the transfer of files made it clear that clients would be protected by both the Italian regulatory system and the SRA. He did not accept that reference to the firm's Italian terms of business meant that the firm would no longer be subject to regulation by the SRA. He did not agree that the provisions of the SAR did not apply in Italy and he maintained that there had been no loss of protection for clients. He acknowledged that complaints had been made about the transfer of files in a public forum designed for Italian buyers but he believed that the transfer of the files had been legitimate at the time.

121. The First Respondent told the Tribunal that he had not been aware that the SRA could request the disclosure of client files until the start of Mr Ferrari's visit to the firm as this was entirely different to the system in Italy. He explained that he had needed to take advice in relation to the disclosure of the files that were held in Italy as the Italian Code of Conduct stated that files could not be disclosed without the consent of clients and he had made his position clear to Mr Ferrari. He had taken advice from The Law Society who had indicated that the firm needed to comply with the requirements of the local law. He said that in view of the fact that the SRA had not been prepared to treat the Italian offices as part of the LLP, he had considered that he only needed to ensure compliance with the Italian Code of Conduct in relation to the Italian offices. He explained that he had been aware of the fact that he needed to co-operate with Mr Ferrari and he had decided to hand over the files that had been requested, notwithstanding the concerns of his Italian colleagues. He pointed out that later correspondence received from The Law Society on 19 January 2009 had indicated that The Law Society viewed the Italian offices as overseas branches of the London firm. This was the complete opposite of the advice that he had received from the SRA and he had not known who to believe.

122. In continuing cross examination, the First Respondent told the Tribunal that he had not removed the Second and Third Respondents' names from the firm's notepaper because he had been hoping that he could revive the firm and convince them that the SRA had got things wrong. He said that they had resigned as a result of what he thought was a mistake by the SRA. He accepted that he had claimed that the use of the out of date notepaper had been accidental in his first witness statement and he acknowledged that this appeared to conflict with the evidence that he had just given to the Tribunal. In response to questioning about this issue, he confirmed that his statement was correct and his evidence had been given with the benefit of hindsight.

123. The First Respondent accepted that the client care letter which had been sent to M and M had been approved by him and was in the form of a standard document. He agreed that the letter referred to the fact that the firm would act in the best interests of clients and that clients could have complete confidence in the firm. He did not accept that the letter had contained a promise to retain the money paid by M and M in the firm's London client account until the preliminary contracts had been executed and bank loan guarantees issued. He told the Tribunal that this had been an explanation of how the process would work and he would prefer to refer to this as a "statement" instead. He said that he stood by the contents of his first statement when he had said that the firm had not been under any obligation to give anything other than basic advice at the outset. He acknowledged that he had told Mr Howland, in interview, that the firm had not given advice to M and M about what they had committed to by signing the purchase forms. He said that he had been speaking more generally at that time and without having the file in front of him.

124. In continuing cross examination, the First Respondent said that he believed that he had been right to take responsibility for poor judgements made by more junior staff at the firm but this did not mean that he was personally responsible for the advice which had been given. He told the Tribunal that he did not know if M and M had asked for advice and he suggested that the SRA could have contacted them in order to ascertain whether any advice had been requested so that he could have commented further. He confirmed that the firm had operated a system whereby prospective clients in Italy had been given some general guidance in relation to property purchases but said that it had not been possible to give more detailed advice as the Italian property system was complex. He told the Tribunal that, in his view, there had been a very remote risk that M and M may have been sued if they had pulled out of the transaction but he did not know if they had been told about this.

125. The First Respondent acknowledged that his first witness statement had referred to the fact that M and M's deposit money had been paid out before contracts had been executed and bank guarantees obtained. He conceded that this conflicted with the assertion that had been made to them in the client care letter. He did not accept that the firm had no right to pay out the deposit monies in such circumstances. He explained that the firm would receive requests for payment from the builders. The accounts department would check that the firm was in funds and a lawyer would check the underlying transaction to ensure that there was a signed contract and a bank loan guarantee. A cheque request would then be issued which he would authorise. He maintained that M and M had given clear instructions to the firm. They had wanted the payment to be made and had said that the contracts were in the post. He conceded that the firm had not dealt with the file in the way that it should have and he

accepted that the clients' money should not have been paid out until contracts had been exchanged and the bank guarantee issued but he stressed that M and M had been happy for the money to be released. He did not accept that this had been a serious breach of the SAR and a total failure to protect the clients.

126. In continuing cross examination, the First Respondent said that he could not be sure if he had checked with the lawyer before authorising the release of the deposit on M and M's file. He told the Tribunal that the instructions from M and M should have been confirmed in writing but he accepted that this had not been done. He maintained that this had not been his fault but acknowledged that he should have made sure that staff in the property department had followed the firm's guidelines. He pointed out that in this instance the firm had got things wrong but he did not believe that this meant that the firm had been operating in a shambolic way. He acknowledged that an e-mail from the clients received after the deposit had been paid out appeared to indicate that they believed that the deposit was still with the firm. He said that he could not really explain this but could only assume that the clients had changed their minds about authorising the payment of deposit. He did not accept that he had failed to make any checks before paying out the deposit and had simply made the payment at the request of the builders.

127. The First Respondent told the Tribunal that he had not meant to say, in interview with Mr Howland, that the firm had paid away clients' deposits in about 30 to 50 other cases. He said that he had been trying to be co-operative. He had not meant to assert that there were 30 to 50 other individuals who were in the same position as that of M and M and Ms E. He had been speaking more generally and had simply been referring to situations where mistakes had occurred.

128. In continuing cross examination, the First Respondent conceded that the first time that he had made reference to a discussion between the firm's practice manager, Mr Dine and M and M had been in his initial statement. He said that he had been trying to provide as much information as possible. He acknowledged that Mr Dine was present at the Tribunal but would not be giving evidence. He accepted that, in an e-mail to the firm sent in September 2008, M and M had referred to the fact that the firm was still holding their deposit money. He denied that M and M would have been dishonest to make this statement in circumstances where they had known that their deposit had been paid away following a conversation with Mr Dine. He told the Tribunal that M and M had sent this e-mail because they had wanted to understand their options and required further advice from the firm. He accepted that it had been wrong for the firm to attempt to charge M and M for attempting to put matters right and he admitted that the firm had been negligent.

129. In relation to Ms E, the First Respondent accepted that the client had instructed an Italian lawyer to recover her deposit monies which had been incorrectly paid out by the firm. He acknowledged that the firm's costs had been deducted from the amount paid to Ms E's new solicitors but told the Tribunal that a great deal of work had been carried out in relation to her case. He agreed that the firm had not disputed the findings made by the LCS in relation to Ms E's matter and which had included a refund of costs to her.

130. In conclusion, the First Respondent did not accept that he had failed to take enough care of clients' money or that he had no proper sense of professional responsibility. He denied that the conversation between Mr Dine and M and M had been fabricated. He told the Tribunal that he had not been there at the time and could only rely on what he had been told. He said that he did not know what had happened but Mr Dine had told him that M and M had given authority for the deposit to be paid out and he had to accept that. In answer to a question from the Tribunal, he said that if the conversation between Mr Dine and the clients had not taken place then he was sorry that he had relied on it as an explanation for the payment out of the deposit. He denied that, on the basis of this one transaction, clients could not rely on him personally and he reminded the Tribunal that many clients had successfully completed their Italian property transactions with the firm.

The Second Respondent

131. The Second Respondent gave evidence through an interpreter and was cross examined by Mr Williams. She confirmed that she had come off the register as an Italian *Avvocato* in order to take up her current position with the Ministry of Justice in Italy. She confirmed that her first witness statement had been prepared in English. She told the Tribunal that she could speak and write English with a certain degree of fluency but she had required the assistance of an interpreter for the current proceedings. She said that she did not wish to alter or amend anything in her statement.

132. In cross examination by Mr Williams, the Second Respondent confirmed that she had been aware of her obligations to comply with the SAR from the time that she had registered as a European Lawyer. She told the Tribunal that she had been able to operate the client account for both the partnership and the LLP but this had not been part of her job. She said that it was the First Respondent who had signed the cheques and bank transfers for the firm's client account.

133. The Second Respondent explained that she had worked with English or other non-Italian clients but she had not practised English law. She said that she had been based in Italy but she had travelled frequently to take instructions from clients or to attend meetings. She told the Tribunal that she had been involved in the plan to transfer files to Italy insofar as she had been present at meetings during which the transfer of the files had taken place. She did not accept that the reason for the transfer was because the London office could not deal with the number of files although she acknowledged that correspondence from the firm had referred to the "implosion" of the firm's real estate department. She said that the files had been transferred mainly so that transactions could be completed in accordance with Italian law. She told the Tribunal that she had been aware that her name had been included on the firm's notepaper by mistake after the date that she had resigned.

Third Respondent

134. The Third Respondent gave evidence through an interpreter and was cross examined by Mr Williams. She confirmed that her first witness statement had been prepared in English. She told the Tribunal that she could speak, comprehend and write English but she had requested the assistance of an interpreter for the current proceedings in case any technical or specialized vocabulary should present any difficulty for her.

She stated that she was currently an Italian *Avvocato* and she confirmed that her statement was true and that she did not wish to make any alterations or amendments.

135. In cross examination by Mr Williams, the Third Respondent confirmed that the First Respondent had been the managing partner at the firm's London office but said that he had not run the office himself as it had been organised in a more complex way. She told the Tribunal that she had initially worked with the firm as an external consultant and had then become a partner and subsequently a member of the LLP. She said that she and the other Respondents had been close friends for a number of years.

136. The Third Respondent confirmed that she had known that she was subject to the SAR from the time that she had become an REL. She had known that the firm had a duty to submit accountant's reports and she had been aware that the firm's accounting records had been subject to a computer crash. She said that she had been on maternity leave at the time but she had spoken with the First Respondent who had told her about the crash and the efforts that were being made to recover the data. She confirmed that she knew that the firm's accounts had never been fully reconstructed. She told the Tribunal that efforts had been made to rectify the position by recruiting staff to assist with the reconstruction exercise and by acquiring new computer software.

137. In continuing cross examination, the Third Respondent confirmed that she had visited the London office on a regular basis. She explained that she had worked on "cross border" files and she had also had client files of her own in London. She had never operated the firm's client bank account. She said that she had been aware of the transfer of client files to Italy. The Third Respondent told the Tribunal that, at the time, she had been responsible for registering the LLP with the Italian authorities. Following the registration, it had been decided that it would be easier to handle files on a local basis and this had been the reason for the transfer of the files to Italy. She believed that the files had been transferred to Italy in May or June 2008 but she had not been present in Calabria at the time and could not recall the date exactly. She had become aware later that the SRA wanted to inspect the files that had been transferred. She explained that the Italian regulatory authorities did not have the power to access client files and she had become concerned about the need to avoid comprising the position of the firm's Italian lawyers. She said that the situation had become further complicated by the fact that the SRA had then notified the firm that the Italian offices could no longer be seen as branches of the London office. She said that this had caused confusion and it had become difficult to understand which of the two regulatory regimes should apply. She explained that, at about this time, her daughter had suffered a serious accident and she had not felt able to continue to deal with these issues and so she had resigned from the firm. She confirmed that she had become aware later that her name had been included on the firm's notepaper after she had resigned but this had not caused her any particular concern.

138. In answer to questions from the Tribunal, the Third Respondent accepted that there was a contradiction between her evidence that she had practised in England and the comments made by her previous solicitors who had stated that she did not and never had practised in the United Kingdom. She explained that her previous solicitors had not understood the way in which the firm had worked and she had later decided not to continue to instruct them. She told the Tribunal that she had not been involved in any

detailed discussions about the transfer of files to Italy. She had not given her explicit consent to the transfer or offered any opinion on the matter and had relied on the First Respondent to bring any particular issues to her attention. She said that she had not received any official advice about the role of a REL in England and had familiarised herself with the relevant requirements. She said that she had understood the responsibilities involved in operating the firm's client account.

Findings of Fact and Law

139. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

140. Mr Williams told the Tribunal that by virtue of their registration, RELs were subject to regulation by the SRA in the same way as solicitors. He explained that as a result of Schedule 4 of The European Communities (Lawyer's Practice) Regulations 2000 ("the 2000 Regulations"), most of the statutory regime applying to solicitors through the Solicitors Act 1974 was extended to RELs. This included provisions relating to the powers of the Solicitors Disciplinary Tribunal. He said that, whilst recognising the distinction between RELs and solicitors, the Tribunal should approach this case in more or less the same way as it would when dealing with solicitors and the same standards should apply.

141. The Tribunal noted that, in accordance with the order dated 5 January 2012, the Respondents had been due to file and serve their witness statements by the 30 April 2012. This had been a date which had been agreed between the parties. In the event, the Tribunal had been served with voluminous evidence shortly before the start of the hearing. The First Respondent's statement amounted to 385 paragraphs and had 82 pages of exhibits. The Tribunal noted that Mr Williams had not received the hard copy of the exhibit until after the hearing had started. The Tribunal wished to give Mr Williams credit for the professional and gracious manner in which he had dealt with the late submission of the Respondents' evidence. The Tribunal noted that Mr Monty had declined to give any explanation for such late filing and serving of the Respondents' evidence and no apology had been tendered.

142. The Tribunal found the First Respondent to be a less than satisfactory witness. He had not been frank in relation to a number of points and large parts of his evidence had been self-serving. There had been a number of inconsistencies in his evidence, such as his explanation for the continuing use of the LLP stationery after the date on which the Second and Third Respondents had resigned. The Tribunal noted that the First Respondent claimed that a conversation had taken place between M and M and Mr Dine in which the clients had authorised the payment of the deposit. The Tribunal did not accept that such a conversation had ever taken place.

143. **Allegation 1.1: Failed to maintain properly written up books of account contrary to Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR").**

Allegation: 1.2: Drawn money out of client account otherwise than in accordance with Rule 22 SAR.

143.1 Mr Williams told the Tribunal that Mr Ferrari had ascertained that the firm's books of account were not in compliance with the SAR. He said that accounting records had not been properly written up and client ledger accounts had recorded debit balances over extended periods of time. He confirmed that where debit balances appeared, he was no longer seeking to prove that funds had been incorrectly paid away but instead would be asserting that the accounting system of the firm was a shambles. He said that Mr Ferrari had found that there was no evidence that a three way reconciliation of client funds had been carried out from April 2006 until June 2008. He told the Tribunal that it would hear evidence that the bank accounts had never been properly written up prior to the cessation of the practice. He said that the firm had operated a suspense account with a debit balance although there was a dispute as to how the suspense account had been used and the period of time over which it had operated and these were issues that would be dealt with by Mr Ferrari in his evidence.

143.2 Mr Williams said that Mr Ferrari had been unable to place any reliance on the reconciliations produced by the firm and so could not express an opinion as to whether the firm held sufficient funds to meet client liabilities as at 30 June 2008. He said that Mr Ferrari was still not satisfied as to the position. Mr Williams told the Tribunal that the accountant's report for the period ending 31 March 2008 showed that no meaningful comparisons had been possible during that accounting period. He referred the Tribunal to the various qualifications contained within the report which set out the breaches of the SAR. These included a lack of compliant bank reconciliations and the fact that various client ledger accounts had been in debit during the year. He said that it would be for the Tribunal to assess the state of the firm's books in the light of the breaches that had been identified by the accountant's report.

143.3 In continuing submissions, Mr Williams acknowledged that the First Respondent claimed that the firm had carried out three-way reconciliations. He told the Tribunal that where documents had been produced, these were not compliant with the SAR. He accepted that the First Respondent had said that, as an REL, he had not received the same accounts training as a solicitor. Mr Williams told the Tribunal that all RELs were aware that they had to comply with the SAR. He said that, although the Rules might be burdensome, they were not complicated and the First Respondent had employed staff to assist him. He reminded the Tribunal that in correspondence with the SRA, the First Respondent had given assurances that "cease to hold" reports would be filed for both the partnership and the LLP but this had never been done. He pointed out that the First Respondent had told the SRA that reconciliations for the LLP would be finalised in time for Mr Ferrari's next visit and that the firm's accountant would deal with any historical reconciliations that were not in the correct format but compliant reconciliations had never been produced.

143.4 The Tribunal was told that Mr Ferrari had noted that receipts and payments were posted to a suspense ledger account over an extended period of time and that the ledger had recorded a debit balance continuously from September 2006. Mr Williams said that the suspense ledger had indicated to Mr Ferrari that the firm had multiple funds which they were unable to allocate to clients and that instead of monies being promptly identified and transferred out to other ledgers, payments were being made direct to third parties. Mr Williams said that if the suspense ledger was an example of

bookkeeping errors, then this was a serious issue. In addition, he said that bank interest and commissions had been debited to client account when they should not have been. This had caused small overdrawn balances which were later rectified. He pointed out that Mr Ferrari had also observed that a client ledger in the name of an Italian developer connected with the Calabrian properties had shown debit balances as at June 2008 and by November additional debit balances had been recorded which was a further example of the shambolic state of the firm's accounts.

143.5 Mr Williams reminded the Tribunal that the firm's accountant, Mr Wilson, had indicated that he was still experiencing problems in reconciling the accounts as at March 2007. He referred the Tribunal to the documentation supplied by the firm and which purported to be the client account reconciliations. He asked the Tribunal to note that the reconciliation statements indicated that there were significant deficits on the firm's client bank account which, if correct, demonstrated a potentially catastrophic situation at the firm. Mr Williams told the Tribunal that this was not the situation in reality but the books were in such a poor state that this had been the result of the reconciliation exercise.

143.6 In continuing submissions, Mr Williams told the Tribunal that the information supplied to Mr Ferrari by the firm's accountant had shown that for every comparison date in the year to 31 March 2007, there had been a shortfall between recorded liabilities and funds held. The accountant had indicated that these figures remained a "work in progress" and so Mr Ferrari had been unable to place any reliance on the figures that had been produced. Mr Williams said that the documents supplied by the firm's accountant showed that from 30 April 2006 the firm's books had been in disarray and this had continued right through until 31 March 2007. He told the Tribunal that there was not a single month in that year when there was not a purported shortage of clients' money. Mr Williams reminded the Tribunal that these records, together with the accountant's report for the period up to March 2008, gave a clear picture of the firm's accounts.

143.7 Mr Williams said that Mr Ferrari had then been provided with copies of schedules that recorded balances held at 30 June 2008 for the individual LLP client bank accounts. These had included multiple debit balance entries. He said that Mr Ferrari had noted that funds had been transferred into the LLP accounts from the partnership thereby continuing the difficulties that had existed in relation to the partnership. He told the Tribunal that the First Respondent had then decided to retain new accountants and had indicated that his previous accountants would continue to assist in writing up and reconciling the partnership accounts. This had never been done. Mr Williams said that the First Respondent had asserted that he had provided Mr Ferrari with documentary evidence to show that the partnership client accounts had been closed with zero balances and that the LLP accounts were being properly maintained. He said that these were issues that would be dealt with as part of Mr Ferrari's evidence.

143.8 In conclusion, Mr Williams told the Tribunal that the firm's accounts had not been compliant in April 2006 and had remained non-compliant since that date. He said that no accountant had ever been able to tell the SRA that the firm's finances had been properly dealt with when the practice had closed. Mr Williams explained that it was not possible to say whether the debit entries in the firm's accounting records were actual shortages. In view of this, he did not intend to pursue allegation 1.2 but would

rely on the material that was relevant to that allegation as further examples of the very poor book-keeping that supported allegation 1.1.

143.9 Mr Monty told the Tribunal that the Respondents had admitted the errors in their accounting records right from the outset but he said that these admissions were made in the context of the server crash, covered the period after the crash and related only to the partnership. In addition, he said that the admissions had to be seen in the light of the efforts that had been made to reconstruct the records. He reminded the Tribunal that no dishonesty had been alleged and he stated that there was no longer any allegation relating to a loss of client funds.

143.10 Mr Monty explained that the documents relied upon by the SRA as showing poor book-keeping had been produced as part of the post server crash "work in progress". He reminded the Tribunal that prior to the server crash, accounting records were available and he referred the Tribunal to extracts from the First Respondent's statement which set out the way in which the partnership had dealt with its accounts. He asked the Tribunal to note that the firm's first accountant's report had contained only minor qualifications. He said that reconciliations had been carried out and everything had been stored electronically. It was the server crash that explained the current and ongoing absence of records after September 2007.

143.11 In continuing submissions, Mr Monty asserted that, in relation to the LLP, it appeared that allegation 1.1 was being put on the basis that the reconciliations had not been compliant. He said that the firm's accountant had stated that the LLP accounts were being reconciled to statements on a regular basis and Mr Ferrari had indicated that reconciliations were being done although he could not say whether these were compliant. Mr Monty pointed out that the SRA had never explained the way in which these reconciliations were said to be non-compliant and it was for the SRA to prove its case.

143.12 Mr Monty said that the accountant's report produced by Mr Wilson for the period ending March 2008 had not made any reference to the reconstruction task that the firm had undertaken or to the fact that the documents that the firm had produced were part of a "work in progress". It had not indicated the time period over which the accounts breaches had been identified. He told the Tribunal that it was unchallenged evidence that the First Respondent had not discussed the report with the accountant before it had been sent and he submitted that it was extraordinary that Mr Wilson had not shown the report, at least in draft, to his client before it was provided to the SRA. Mr Monty suggested that it was probably right for the First Respondent to say that a great deal of pressure had been placed on Mr Wilson to produce the report and that it had clearly been prepared in something of a rush.

143.13 Mr Monty asserted that he had demonstrated during Mr Ferrari's evidence that the firm's suspense ledger had been used as a "holding pen" following the server crash for transactions where it had not been possible to identify a client ledger to which the item should be posted. He told the Tribunal that the ledger had been created as part of the reconstruction process. It was intended to be a "snapshot" of the reconstruction at any particular date. Mr Monty said that the account was bound to have negative balances depending on what stage the reconstruction had reached. He said that he believed that, in the end, Mr Ferrari had accepted that this was the case although he

acknowledged that Mr Ferrari had maintained that the firm's accounting records were unsatisfactory. He reminded the Tribunal that this had always been admitted by the Respondents.

143.14 The Tribunal noted that allegation 1.2 was not being pursued by the SRA but the facts set out in support of that allegation were relied upon in relation to allegation 1.1. Allegation 1.1 had been admitted by the Respondents in part and the Tribunal found it substantiated in part as well, from December 2006 onwards in relation to the First Respondent, and from October 2007 onwards in relation to the Second and Third Respondents.

143.15 It was accepted that the firm's accounts had been more or less properly written up to the date of the first accountant's report which covered the period from 10 November 2005 to 9 November 2006. After that date, the firm's books of accounts had not been properly maintained. This was evidenced by the heavily qualified accountant's report for the period ending March 2008. There was no evidence that any reconciliations had been carried out from November 2006 onwards and the accountant's report for the period ending March 2008 had referred to the lack of reconciliation statements. Such reconciliations as had been produced were not compliant with Rule 32 of the SAR. The Tribunal accepted that Mr Ferrari had been unable to ascertain whether there was any shortage of client funds due to the state of the firm's accounting records and that, even now, the SRA could not be sure whether there was any shortage of client money. This was particularly serious as it undermined the public's confidence in the profession.

143.16 The Tribunal accepted that there had been a server crash and that client ledger cards and the suspense account had been produced as part of the reconstruction process as the First Respondent claimed. However, the suspense account was illustrative of the poor state of the firm's accounting records and demonstrated the difficulties that the SRA had encountered in trying to ascertain whether there was any shortfall in clients' funds.

144. **Allegation 1.3: Operated client bank accounts which did not include the word "client" in their titles contrary to Rule 14 SAR.**

144.1 Mr Williams told the Tribunal that two of the firm's client bank accounts had not included the word "client" in the title of the account. He accepted that the firm had made attempts to put matters right and that the title of the accounts had subsequently been corrected by the bank. He acknowledged that the First Respondent had said that the error was regrettable but reminded the Tribunal that the purpose of the Rule was to ensure the safety of client funds, particularly in the case of the death or insolvency of the account holder. He said that, essentially, the Rule prevented money being taken by the bank, to offset a firm's overdraft, for example.

144.2 Mr Monty told the Tribunal that this allegation related to only two of the firm's client accounts and the error had been due to the bank. He reminded the Tribunal that, in evidence, Mr Ferrari had accepted that he had seen e-mails passing between the firm and the bank in relation to this issue. He said that this Rule breach should be considered to be relatively minor in the circumstances.

144.3 The Tribunal found allegation 1.3 to be substantiated and indeed the Respondents had admitted the allegation.

145. **Allegation 1.4: Failed to produce documentation contrary to Rule 41 SAR.**

145.1 During the course of Mr Ferrari's cross examination, Mr Monty told the Tribunal that he was seeking clarification in relation to this allegation. He referred to correspondence from Mr Williams which had not been included in the documentation before the Tribunal but which, he said, confirmed that this allegation was restricted to Mr Ferrari's request for copies of bank statements and accounting information for the partnership client bank accounts as set out in paragraph 18 of the Report. Mr Monty said that Rule 41 of the SAR related to the provision of documentation to the firm's reporting accountant only and not to any requests for information made by Mr Ferrari and so he did not consider that the SRA could proceed with this allegation.

145.2 Mr Williams told the Tribunal that the information that Mr Ferrari had asked for was the same information that had been recorded as missing in the accountant's report for the period ending March 2008 but he was content to leave this matter for the Tribunal to decide. The Tribunal noted that Mr Williams had restricted this allegation to the request for information made by Mr Ferrari and this did not reflect a breach of Rule 41 of the SAR. Mr Williams confirmed that he would not pursue the allegation.

146. **Allegation 1.5: Failed to promptly remedy breaches of the SAR contrary to Rule 7 SAR.**

146.1 Mr Williams told the Tribunal that the firm's accounts had never been properly maintained in accordance with Rule 32 of the SAR and the only way that this breach could have been remedied was if the firm had written up its books. This had never happened. He reminded the Tribunal that in September 2007, the Respondents had known that there was a problem with their accounts following the server crash. The situation had not been remedied by the time that Mr Ferrari had started his inspection in August 2008 despite the passage of time. Mr Williams said that the reconciliations carried out after the server crash had still been inaccurate and Mr Ferrari had never seen a compliant set of books for either the partnership or for the LLP.

146.2 Mr Monty acknowledged that Rule 7 of the SAR imposed a duty both on individuals and on the principals of a practice to remedy any breaches promptly. This meant that if a solicitor or partner was in breach of a Rule then the duty to remedy rested not only on the solicitor or partner who had caused the breach but on all of the other principals in the firm. He pointed out that in the case of a "recognised body", this duty fell on the recognised body itself in accordance with the Rules and he reminded the Tribunal that a recognised body included an LLP that had been recognised by The Law Society. He said that in view of this, the duty under Rule 7 of the SAR rested on the LLP itself which was a corporate body with its own separate legal existence independent of its members. This could be contrasted with a partnership which did not usually have an independent legal existence of its own. He said that the SRA could have alleged a breach of Rule 6 of the SAR as this provided that all principals had to ensure compliance with the Rules and the duty was expressly extended to members of an LLP. He submitted that the alleged breach of Rule 7 was misdirected against the Respondents during the period of the LLP.

146.3 Mr Monty said that this allegation was only relevant to the period of the partnership and he pointed out that the Respondents had done everything that they could to remedy the situation after the server crash as part of the reconstruction exercise. This was not a situation where the Respondents had deliberately failed to take any steps to remedy the accounts breaches. He stated that if the Tribunal considered that this allegation was made out then it arose from the same facts as allegations 1.1 and 1.2 and should not result in any additional sanction.

146.4 The Tribunal found allegation 1.5 substantiated in relation to the partnership only. The allegation could not be maintained in relation to the LLP and the Tribunal accepted Mr Monty's arguments in this regard. The Tribunal acknowledged that this breach had arisen out of the same factual matrix as the breach of Rule 32 of the SAR and would take this into account when considering the appropriate penalty in this case.

147. **Allegation 1.6: Transferred conveyancing files to Italy thereby breaching the terms of Rule 1.04 and 1.05 of the Solicitors' Code of Conduct 2007 ("SCC").**

147.1 Mr Williams told the Tribunal that the firm had been conducting a considerable amount of conveyancing work for mainly UK and Irish clients who would retain the firm in London after agreeing to purchase holiday properties in Italy. He explained that the firm had decided to relocate its property department to Italy and said that, according to the First Respondent, the firm would conduct the actual legal work in Italy whilst retaining client money in its UK client account. He referred the Tribunal to the standard letter which had been sent to clients regarding the file transfers. He said that clients had been told that the transfer would be in their best interests and were promised a better level of service. In addition, clients had been informed that the firm's standard Italian terms of business would apply and that their continued instructions would amount to a full acceptance of those terms.

147.2 Mr Williams said that the Respondents had claimed that the reason for the transfer of the files was due to the "exponential" growth in instructions which had caused the "implosion" of the real estate department. He told the Tribunal that the standard letter painted a positive picture in relation to the transfer. It did not mention the differences between the system in England and Wales and that in Italy in relation to the SAR other than to refer to the fact that three way reconciliations of client funds were not required in Italy. Mr Williams suggested that the differences between the two regimes was an important matter which clients needed to address before being able to decide whether they were happy for their files to be dealt with in Italy. He pointed out that clients had been told that the LLP was not a recognised legal entity under the Italian legal system and so effectively the firm had operated as a partnership there. Mr Williams said that not only were files being transferred to Italy but they were being transferred to a totally different legal entity from that which the clients had first instructed. He said that clients should have been told about this and their express consent should have been obtained before the files were sent out to Italy in bulk.

147.3 In continuing submissions, Mr Williams said that it was not enough for the firm to assume that by continuing to give instructions, clients had approved everything. He submitted that the real reason for the transfer of files was that the London office could

not cope with the volume of work and he said that clients should have been told this. He stated that clients should have been informed that the protection given to them was being diminished by virtue of the transfer. He told the Tribunal that there had been a "downside" to the file transfers which the firm had known about and it had a duty to tell its clients.

147.4 Mr Williams said that the Respondents had contended that there were no effective regulatory implications following the file transfers but he reminded the Tribunal that the First Respondent had told Mr Ferrari that he needed to take legal advice concerning the disclosure of the files that had been transferred to Italy. Effectively, the First Respondent had not been sure about the status of the transferred files and how these were regulated and this had not been explained to clients. Mr Williams said that clients should have been told about this as they had instructed the firm partly on the basis that it was regulated by the SRA and, once files had been transferred to Italy, the First Respondent could not have been sure that the same degree of regulatory protection was available to those clients. He said that clients' interests could not be best served unless they were told about all material facts.

147.5 In summary, Mr Williams said that this allegation related to the despatch of the letters to clients, the question of whether clients' consent was needed for the file transfers, if consent was needed whether it was obtained and, if so, whether it was informed consent. In addition, the Tribunal had to consider whether clients should have been advised about the differences in the regulatory regimes between the two jurisdictions. Mr Williams acknowledged that the advice that the Respondents had received from Professional Ethics caused some difficulty but said that, as a matter of law, the Tribunal could not be bound by this. He accepted that there had been some shift in his position regarding this allegation from that set out in the Rule 5 Statement but said that he had been trying to react to the evidence that had been submitted by the Respondents before the start of the hearing. He reminded the Tribunal that the Respondents had only filed their detailed evidence shortly before the hearing and he had not received hard copies of all the documentation until after the hearing had started. He said that it was only right that, as a prosecutor, he took account of the evidence and representations made by the Respondents and adjusted his case accordingly.

147.6 Mr Monty told the Tribunal that there had been good reasons for the files to be transferred to Italy. Essentially, it had been easier to deal with the files from a local office. He said that the First Respondent had checked the position with the Professional Ethics Department at the Law Society and he had been told that this would be acceptable. Mr Monty explained that the First Respondent had confirmed that the transfer would be between branches of the same firm which was accurate as the Italian offices had been registered as overseas branches of the partnership in England and Wales and the SRA had been told about this in December 2007 and when the LLP had been registered in March 2008. Mr Monty said that the First Respondent had approached this issue with care and thought. The letters had been sent to clients and the transfer effected. Mr Monty said that it did not matter if the letters had been sent after the files had been transferred.

147.7 Mr Monty explained that many of the files which had been transferred had been awaiting completion and there had been no money to be transferred but, in any event,

any client money had been held in the firm's UK client account. Mr Monty stressed that there had been no intention to reduce client protection. He told the Tribunal that the First Respondent's position was that the SRA's protection applied in conjunction with local Italian law on the basis that work was being carried out in Italy by Italian lawyers and he said that there was no dispute about this.

147.8 In continuing submissions, Mr Monty said that, in essence, this allegation relied on the contention that there had been no consent from clients for the transfer of files and that clients had not given informed consent because there had been no explanation about the difference between the protections in this country and those available in Italy. He told the Tribunal that he understood that the SRA would no longer be relying on the allegation that the transfer had effected a termination of the England and Wales retainer as, due to the way in which the offices had been registered as branches of the London entity, this could no longer be pursued.

147.9 Mr Monty reminded the Tribunal that Professional Ethics had confirmed that the transfer of the files would be acceptable. In addition, when a complaint had been made by a client, Mr R, after the date on which the files had been transferred, the SRA had confirmed that the transfer of the firm's real estate department to Italy had not breached any rules of professional conduct. Mr Monty pointed out that the SRA was now attempting to prosecute the Respondents for something which it had previously said was acceptable.

147.10 The Tribunal was told that the SRA had failed to put forward evidence of any substantive differences between the regulatory regime in Italy and that in England and Wales save for a reference in one document to the fact that, in Italy, there was no need to carry out a three way bank reconciliation. Mr Monty said that it could not seriously be suggested that clients needed to be told about this and there was no other evidence to demonstrate any difference between the two regimes.

147.11 Mr Monty suggested that there could be no confusion about the way in which the regulatory regime would work in relation to the firm's files. There were English files which had been started in this country and where the files remained and so these were clearly regulated by the SRA. Secondly, the firm had dealt with purely Italian files where matters had been created in Italy and where work was carried out only in Italy by Italian lawyers who were governed principally by Italian regulation and with the overseas practice rules in place to deal with issues of conflict. Thirdly, there were the so called "Anglo-Italian" files, typically the Calabrian property transactions which usually related to clients either in this country or in Ireland where the files had been transferred to Italy. Mr Monty said that in those cases, files were regulated by the SRA as a result of the Code of Conduct and by the Italian Law Society where work was carried out in Italy by Italian lawyers who had to comply with their own regulatory jurisdiction.

147.12 Mr Monty explained that it had been necessary for all of the Calabrian property files to be transferred to Italy at some stage in order to complete the transactions. He pointed out that this was something which had occurred in the past on a case by case basis and so it made perfect sense for the firm to decide to transfer the files in the way that it had. He said that the files were still subject to the SAR as any money received was held here and that did not change with the transfer of the files.

147.13 The Tribunal was reminded that Rule 15 of the Code dealt with overseas practices. Mr Monty pointed out that most importantly, the Rule provided that "If compliance with any provision of these Rules would result in your breaching local law you may disregard that provision to the extent necessary to comply with that local law". In summary, Mr Monty stated that this meant that the Code could be disregarded in order to comply with local law if necessary. He said that the SRA had not established that there was a difference between the rules in the two jurisdictions anyway and this was the sole basis upon which the Respondents were said to have been in breach of a requirement to obtain clients' informed consent. Accordingly, he submitted that the allegation could not be made out.

147.14 The Tribunal accepted that there may have been sound practical reasons for the transfer of the files to Italy, either because it was easier to deal with completion formalities, or because the London office had too much work. However, the Respondents should have written to clients in advance in order to explain the implications of what was being proposed and should then have waited to see whether clients consented. In the Tribunal's view, the principal attraction of the service being offered by the Respondents and, which was at the forefront of their marketing material, was that work would be dealt with by Italian lawyers based in London who would be subject to regulation by the SRA. This fact had been referred to in the firm's standard letter to clients. Accordingly, it was extremely important to clients that the firm was based in London and the transfer of the files without clients' consent was a particularly serious matter. The Respondents should have explained the implications of moving the files to Italy particularly in relation to the differences between the two regulatory regimes. Those differences had become apparent when the SRA wished to inspect files and when the request had been initially refused because the Italian regime prohibited this. The Tribunal had taken note of the fact that the First Respondent had taken advice from Professional Ethics in relation to this matter. However there was no evidence that the Ethics Department had been given any detail of the way in which the transfer was presented to clients or of the terms of the initial retainer. Accordingly, the Tribunal found allegation 1.6 to be substantiated against the Respondents.

Against the First Respondent, Gabriele Michael Giambrone, alone

148. **Allegation 1.7: Failed to co-operate with the Solicitors Regulation Authority ("SRA") contrary to Rule 20.03 SCC.**

148.1 Mr Williams told the Tribunal that it had taken the First Respondent two months to provide Mr Ferrari with the files that had been requested and which had been transferred to Italy. He said that the allegation also related to the firm's accounting records which had either not been provided at all or, when they were provided, were inadequate and non-compliant. Mr Williams asked the Tribunal to consider the evidence that had been given by Mr Ferrari in relation to this matter.

148.2 Mr Monty said that the First Respondent had explained to Mr Ferrari that he was under a duty of confidentiality which applied to all Italian *Avvocati* and which prevented him from disclosing client files to any external authority. Mr Monty reminded the Tribunal that the First Respondent had taken into account the fact that,

under Rule 15 of the Code, local law was to be applied in circumstances where the exercise of the Code would cause local law to be breached. He said that there had been a real issue with the disclosure of the files and it was not unreasonable for the First Respondent to have needed to take legal advice as to his position. Mr Monty explained that there had been a short delay whilst the First Respondent had taken advice from a number of sources. He said that the First Respondent had been advised to be cautious but he had eventually decided to provide Mr Ferrari with the files irrespective of the consequences. Mr Monty submitted that the First Respondent had been entirely reasonable in relation to this issue and said that no attempt had been made to criticise the First Respondent's assessment of the position in Italy. Mr Monty said that the concerns of the Italian *Avvocati* were completely understandable, as by that stage, the SRA had said that it was not going to recognise the firm's Italian offices as properly registered branches of the UK entity. Mr Monty said that it was not surprising that the First Respondent had become exasperated with the whole process and that the Second and Third Respondents had resigned from the LLP as a result of this issue. He said that there was no basis for asserting that the First Respondent had failed to co-operate in relation to this matter.

148.3 Mr Monty told the Tribunal that it was unfair to assert that the firm's failure to keep proper accounting records was also a failure to co-operate with the regulator. He said that the Respondents had accepted that they had been unable to provide all of their accounting records and it was not right that this matter should have been brought as a separate allegation.

148.4 The Tribunal accepted that the First Respondent had made efforts to co-operate with the SRA in relation to the files which had been transferred to Italy. It was not unreasonable for him to have taken legal advice in relation to his position and he had attempted to deal with the matter. The First Respondent had failed to supply the requested accounting documentation to Mr Ferrari and so the Tribunal found allegation 1.7 to be substantiated in relation to the accounting records only. The allegation arose from the same factual matrix as that of allegations 1.1 and 1.2 and the Tribunal would take this into account when considering sanction in this case.

149. **Allegation 1.10: Utilised professional notepaper which contravened Rule 7.07 SCC.**

149.1 Mr Williams told the Tribunal that Mr Ferrari had observed that the professional stationery used by the firm did not comply with the requirements of the Code. He referred the Tribunal to examples of the firm's notepaper which had described the firm as "Solicitors and European Lawyers" but which had not included all of the detailed information that was required by the Code. Mr Williams said that he accepted that the situation had been put right by 1 April 2009 but observed that the breach appeared to have been constant until that time. He told the Tribunal that the purpose of the Rule was to ensure that the public always knew exactly who they were dealing with.

149.2 Mr Williams pointed out the First Respondent had given a different explanation in relation to this matter during his evidence before the Tribunal and this raised an issue of law. He said that, in his submission, the evidence given on oath should carry more weight.

149.3 Mr Monty told the Tribunal that this allegation had been admitted but could not be properly maintained against the Second and Third Respondents. He said that incorrect letterhead had been used for a period of two months and a few days following the resignation of the Second and Third Respondents. He told the Tribunal that this had been an error and it had never been suggested that the Second and Third Respondents had known or permitted the letterhead to be used.

149.4 Mr Monty accepted that, in evidence, the First Respondent had claimed that he had probably retained the names of the Second and Third Respondents on the notepaper because he had hoped that one day they would come back and rejoin the LLP. Mr Monty said that these comments had been made with the benefit of hindsight and when the First Respondent had been trying to rationalise in his own mind what he now thought must have been in his sub-conscious at the time. Mr Monty reminded the Tribunal that the First Respondent had then asserted that the letterhead had been used in error and that his statement was correct about this. Mr Monty said that whatever the Tribunal thought about the First Respondent's evidence on this point, the letterhead had been used for only a brief period following the resignation of the Second and Third Respondents and, in his submission, this allegation should be considered to be only a minor breach of the Rules.

149.5 Having considered the evidence that it had heard and the submissions made, the Tribunal found allegation 1.10 to be substantiated against the First Respondent only.

150. **Allegation 1.11: Improperly permitted themselves to be held out as practising with each other in partnership in England and Wales and latterly as members of a Limited Liability Partnership in England and Wales when in fact the First Respondent was practising in both capacities as a sole practitioner contrary to Rule 1.06 SCC.**

150.1 Mr Williams told the Tribunal that following the resignation of the Second and Third Respondents, they had still been held out as partners on the firm's professional notepaper. He reminded the Tribunal that it had been claimed by solicitors then acting for the Second and Third Respondents that they had never practised in the UK and, as RELs, were not subject to the SAR. He acknowledged that this letter had been "disowned" by the Second and Third Respondents in their evidence. Mr Williams pointed out that there was no such qualification on the firm's notepaper and, instead, the Second and Third Respondents had been shown as principals of the practice throughout and so the public was entitled to assume that they were bound by the SAR.

150.2 In continuing submissions, Mr Williams told the Tribunal that when the First Respondent had applied for recognition of the LLP, he had stated that the principal practising address for the Second and Third Respondents had been Essex Street in London. This was despite the fact that solicitors acting for the Second and Third Respondents had stated that they had never practised in the UK. Mr Williams said that it had been incumbent upon the Respondents to ensure that they had given correct information to the SRA in relation to this matter and this had not happened. He maintained that it was improper to "hold out" to the SRA and this part of the allegation did not need to be restricted to a member of the public.

150.3 Following a request for clarification from Mr Monty, Mr Williams confirmed that this was not an allegation of a "sham" partnership and there was no question of any dishonesty on the part of the Respondents. He said that the use of the word "improper" meant nothing more or less than something which had been done in breach of the Rule. He told the Tribunal that this allegation had been based on the fact that the Respondents had told the public by use of their notepaper and had informed the SRA in an application form that the firm had been a partnership of three individuals in London when the Second and Third Respondents had never been based there. He accepted that he may have presented this allegation differently to the way in which it was set out in the Rule 5 Statement but said that it had been necessary to reflect on the representations and documents put to him by the Respondents and adapt his case accordingly.

150.4 Mr Monty told the Tribunal that the Respondents were deeply concerned at the way in which this allegation had been pursued and then effectively withdrawn to a large extent during the course of the hearing. Mr Monty said that the evidence was clear. The Respondents had been in partnership together and had later all been members of the LLP. He reminded the Tribunal of the evidence given by the Second and Third Respondents about the work that they had done at the firm. He told the Tribunal that effectively this was an allegation of a "sham" partnership which was a serious matter and had various legal and other implications.

150.5 In continuing submissions, Mr Monty said that the allegation now appeared to be based on two matters, the first of which related to the use of the firm's notepaper after the resignation of the Second and Third Respondents. He pointed out that this was already the subject matter of allegation 1.10 and it was unfair for the Respondents to face a further allegation on the same facts. Mr Monty did not accept that the use of the letterhead had been a breach of Rule 1.06 of the Code as he said that there was no evidence that any members of the public had actually received letters from the firm following the resignation of the Second and Third Respondents.

150.6 Mr Monty told the Tribunal that the allegation also related to the LLP application form, in which the First Respondent had stated that the principal practising address for the Second and Third Respondents had been in London. He said that this form had been addressed to the regulator and had never been sent to a member of the public. It had nothing at all to do with the improper "holding out" of anyone as a partner or member and had simply been a mistake. Mr Monty reminded the Tribunal that, in evidence, the First Respondent had explained that the firm had been seeking recognition as an LLP from the SRA. Once the LLP had been recognised, the firm intended to approach the Italian authorities in order to obtain recognition of the LLP there. Mr Monty said that, in fact, there had been no other address that the First Respondent could have given as the practising address for the Second and Third Respondents but, even if the First Respondent had been wrong about this, then it was simply an error and could not possibly be a breach of Rule 1.06. He said that the Second and Third Respondents had always been members of the LLP and there had never been any dispute about this.

150.7 The Tribunal accepted that at all relevant times, the Respondents had been in partnership or in an LLP together. After the Second and Third Respondents had left

the LLP, the First Respondent had used letterhead which had included their names. This had already formed the subject matter of allegation 1.10. The only evidence before the Tribunal of the use of this letterhead related to correspondence sent to the SRA confirming that the Second and Third Respondents were members of the LLP. The Tribunal had seen nothing to suggest that the Respondents had improperly allowed themselves to be "held out" as practising with each other in partnership or as members of an LLP. The Tribunal accepted that the LLP application form had been correctly completed. Accordingly, the Tribunal did not find allegation 1.11 to be substantiated against the Respondents to the required standard of proof.

151. **Allegation 1.12: Improperly paid deposit monies out of their client bank account contrary to assurances given to clients contrary to Rule 1.02, 1.04, 1.05 and 1.06 SCC.**

Allegation 1.13: Paid deposit monies out of client bank account otherwise than as permitted by Rule 22 SAR (the like particulars).

Allegation 1.14: Failed to ensure that clients received proper advice and adequate communication contrary to Rule 1.04 and 1.05 SCC.

Allegation 1.15: Further transferred conveyancing files to Italy without authority contrary to Rule 1.04 and 1.05 SCC.

Allegation 1.16: Wrote misleading letters to clients or permitted staff for whose conduct they were responsible to do so contrary to Rule 1.02 and 1.06 SCC;

151.1 Mr Williams told the Tribunal that he did not assert that the Respondents had been dishonest and so he did not press the alleged breach of Rule 1.02 but he was pursuing the other alleged Rule breaches. He asked the Tribunal to consider the transaction relating to M and M who were acquiring a holiday apartment in Italy. He explained that at the time that M and M had decided to go ahead with their purchase, these types of development were proving very popular and he reminded the Tribunal that the First Respondent had said that the firm acted for about 1,500 clients who were proceeding with similar transactions. Mr Williams said that the property was "off plan" and not yet built when M and M had travelled to Italy in order to confirm that they wished to continue with their purchase.

151.2 Mr Williams explained that the Real Estate Purchase Form had been signed by M and M before they had instructed the Respondents. He said that they had been entitled to be advised as to the consequences of signing such a form and he asserted that the Respondents had been under a duty to ensure that M and M were given information about the nature of any legal obligations that they had entered into. Mr Williams asked the Tribunal to note that, in interview, the First Respondent had acknowledged that by signing the Purchase Form, clients would either lose their reservation fee if they did not continue with the purchase or there was a "very remote possibility" that the builder could take legal action for enforcement of the balance of the purchase price if the clients did not proceed. Mr Williams said that as the First Respondent had believed that the risk of a builder pursuing a client was extremely remote, he had not spoken to clients about this. Mr Williams asserted that clients should have been told that they were legally bound to proceed but that if they did not do so then the risk of

losing anything other than the reservation fee was extremely remote. He said that it did not amount to a defence for the Respondents to say that clients had not asked for this advice. It was for solicitors and RELs to advise clients. He acknowledged that none of the Respondents had been responsible for the day to day conduct of M and M's transaction and he accepted that he would need to show a degree of culpability on the part of the Respondents in relation to this matter.

151.3 The Tribunal was asked to consider the client care letter that had been sent to M and M in October 2007. Mr Williams said that the letter had been issued by the firm in London and it claimed expertise in Italian real estate law and "off plan" property acquisitions. The letter confirmed that relevant advice would be given to clients in relation to Italian law. Mr Williams said that the letter also gave an assurance that a bank guarantee would be obtained so that if the developers went bankrupt, the clients would receive the return of their money. He observed that clients would be waiting a long time for their transactions to complete and so this was particularly important. He reminded the Tribunal that in a letter of advice from the firm, clients had been told that their deposit funds would be retained in the firm's client account in London until contracts had been executed by both parties and the bank guarantee issued. He said that it was this assurance that formed the basis of allegation 1.12 and he pointed out that, in interview, it had been clear that the First Respondent had understood the importance of both the bank guarantee and the contract. Mr Williams told the Tribunal that it was remarkable that deposit monies could ever be paid out before contracts had been signed but that was exactly what had happened here.

151.4 In continuing submissions, Mr Williams told the Tribunal that following receipt of M and M's deposit into the firm's client bank account, a payment had been made to the builders in the same sum on 7 March 2008. At the time that the payment was made, the preliminary contracts had not been signed and no bank guarantee had been obtained. In addition, M and M had not been told that the payment had been made. Mr Williams referred the Tribunal to further extracts from the interview in which the First Respondent had confirmed that, in some cases, deposits had been transferred out before the contract and bank guarantee had been in place. He said that the First Respondent had accepted that mistakes had been made. Mr Williams said that it had appeared that pressure had been exerted upon the firm from the vendors in Italy to pay out the deposit monies within 28 days or clients would risk losing their deposit and the property. Mr Williams observed that the First Respondent had claimed that there had not been time to ask clients, in each case, whether it was acceptable to pay out their deposit money but, he said, this explanation was no defence to these allegations.

151.5 Mr Williams said that the First Respondent had conceded that the deposit had been paid out before M and M had returned the signed contract but he had claimed that this had been done because either the developer or builder had been chasing for the payment and had threatened to cancel the purchase and retain the reservation fee. He told the Tribunal that the First Respondent had accepted responsibility for these matters which was to his credit. He commented that this was the reason why Mr Howland had not had to speak to the more junior file handlers. Mr Williams asserted that not only was this a breach of the SAR, it was also a breach of Rule 1 of the SCC as clients had been given very clear assurances as to the steps that would be taken to protect their funds and those assurances had been completely ignored.

151.6 The Tribunal was asked to consider an e-mail sent by Mr Sterl at the firm to M and M on 13 March 2008 in which the clients had been asked to return the signed contracts. Mr Williams pointed out that this e-mail made no reference to the fact that the deposit monies had already been paid out. He said that the reply from the clients made it clear that they wanted their outstanding queries to be dealt with and referred to the fact that they believed that the deposit was being held by the firm. Mr Williams told the Tribunal that M and M had still been asking for confirmation that the firm was holding their deposit money in September 2008. He said that M and M had expressed doubts as to the safety of their funds for the first time in their e-mail to the firm of 7 October 2008. By that stage, they had decided to pull out of the transaction and had asked for the return of their money. Mr Williams told the Tribunal that the clients had subsequently been unhappy at the way in which the firm had dealt with their complaint.

151.7 Mr Williams told the Tribunal that it was not until the firm's e-mail of 29 November 2008, that M and M had received the first indication that their funds had been paid out. He reminded the Tribunal that this was some eight months after the money had been transferred. The clients had been told that their file had been sent to Italy and the firm had claimed that the deposit had been paid out in order to safeguard the transaction. Mr Williams said that the clients had not been advised about the situation and had not been asked about the payment of the deposit. He maintained that the firm had been negligent in paying out the deposit and had failed to tell the clients that they should obtain independent advice as to their position. Instead, it had been suggested that it would be in the clients' best interests to continue to instruct the firm to mediate with the builders in order to try and secure the return of the deposit. Mr Williams said that not only had the Respondents paid out the clients' money in breach of the SAR, but they had also tried to charge the clients to put matters right.

151.8 In continuing submissions, Mr Williams said that no proper advice had been given to the clients and that by the time that M and M had known that their money had been paid out, it was eight months after the event and was subsequent to their demand for the money to be returned to them. He told the Tribunal that all of the Respondents were responsible as principals of the practice and the First Respondent had, on more than one occasion, accepted personal responsibility. He asserted that the correspondence that he had referred to and which culminated in the attempt to charge the clients for the mistakes made by the firm demonstrated that communication with the clients had been inadequate and that no proper advice had been given. He submitted that this justified a finding in relation to allegation 1.14.

151.9 Mr Williams asked the Tribunal to consider the admissions that had been made by the First Respondent on behalf of all three Respondents and on which he intended to rely. Firstly, he said that the First Respondent had accepted that the firm should have advised M and M about the risk of litigation in writing and should have taken specific instructions before transferring the deposit. Mr Williams said that the First Respondent had claimed that the firm believed that it was acting in the best interests of the clients in transferring the deposit in the way that it had but, he submitted, it was not for the Respondents to decide what was in the best interests of clients. He said that the First Respondent had also acknowledged that the firm had not provided

specific written advice on the legal effect of the Purchase Form and the liability that this had imposed on M and M. He told the Tribunal that the First Respondent had accepted that the firm had failed to notify M and M that their deposit had been paid out and had acknowledged that the firm should not have attempted to charge the clients for the work done to try to recover their deposit monies. He reminded the Tribunal that the First Respondent had accepted the Adjudicator's findings and had complied with the award. However, M and M had been left in the position of having to seek recovery of the remainder of their deposit by way of civil proceedings which could be of little comfort to them.

151.10 In conclusion, Mr Williams said that this matter was very serious indeed. He told the Tribunal that the breach of the SAR was of the utmost gravity which had a bearing on the duty of stewardship over clients' funds owed by these Respondents to their clients and in particular to M and M. He asserted that files should have been inspected before money was paid out of client account, irrespective of where the file was located. He said that if the files had not been seen then payments should not have been made in any circumstances. He asked the Tribunal to consider the fact that the payment in relation to M and M's matter had taken place against a background of poor accounting records. He said that solicitors and RELs were there to protect people. In this case, specific protections had been offered to M and M but their money had been paid out when the Respondents had no business to do so and the clients had been left in the position of having to sue if they wished to have their money back.

151.11 In relation to the transaction concerning Ms E, Mr Williams told the Tribunal that, effectively, the firm had given an assurance to the client that her deposit monies would be held in client account until after preliminary contracts had been executed. In addition, the client had been told that a bank loan guarantee would be obtained. Mr Williams explained that the client had been told, in the letter from the firm dated 18 January 2007, that the proposed development would not be proceeding and an alternative property had been suggested. Mr Williams said that the client had not been advised of her ability to pull out of the transaction and he suggested that the litigation risk was likely to be similar to that of the M and M transaction. He told the Tribunal that, although the client had initially expressed disappointment, she had later decided to continue with the transaction and so it appeared that she had had a change of heart. He said that Ms E had complained that she had not been informed of her ability to withdraw from the transaction and seek the return of her deposit. She had told the firm to stop acting on her behalf and had said that she wanted immediate advice about the refund of her deposit.

151.12 Mr Williams said that at the date of the firm's letter in January 2007, the alternative land being offered to Ms E had not been acquired. He told the Tribunal that a report on title referred to the land having been purchased on 13 or 17 February 2007, which was some four weeks after the date of the letter. He submitted that in view of this, the firm's letter had been inadequate in the advice that it had given to Ms E. It had not told any lies but had missed out vital information for the client and was therefore misleading by omission. Mr Williams told the Tribunal that, in a letter to the client dated 9 April 2008, the firm had referred to the fact that funds would be released upon receipt of the signed preliminary contracts and the issue of a bank loan guarantee but the money had already been paid out by that stage and so, again, the client had been

misled by omission. In addition, he said that the firm had failed to address the fact that the guarantee had been obtained from insurance brokers rather than a bank. Mr Williams observed that he could not say whether a guarantee from an insurance broker had the same degree of security as that from a bank but this had clearly been an issue of importance to the client.

151.13 In conclusion, Mr Williams stated that the firm had failed to advise Ms E on her position should she have decided to withdraw from the transaction when the alternative property was put forward. He said that the firm had not been open about the fact that the deposit had been paid away and did not deal with the issue regarding the guarantee being from a broker and not a bank. He maintained that the firm's correspondence had misled by omission because Ms E had been kept totally in the dark as to what had happened to her deposit. He said that although the client had received the return of her money, these were nonetheless serious failures on the part of the Respondents.

151.14 Mr Monty submitted that these allegations had only been made on the basis that the Respondents were partners at the firm and because there had been an acceptance of responsibility by the First Respondent. He pointed out that there was no evidence that any of the Respondents had been involved in the transactions concerning M and M and Ms E. Mr Monty said that firstly, negligence could not be equated with misconduct and he referred the Tribunal to the comments made in Aaron v The Law Society [2003] EWHC 2271 (Admin) where it had been said that "solicitors are not liable in conduct for simple mistakes or errors of judgement but negligence may, depending on the circumstances, amount to professional misconduct". In addition, he observed that in the case of Connolly v The Law Society [2007] EWHC 1175 (Admin) it had been said that "the honest and genuine decision of a solicitor on a question of professional judgement does not give rise to a disciplinary offence". He submitted that it was only in a very rare case that negligence could amount to misconduct.

151.15 The Tribunal was told that it was clear from the authorities that there was no basis for a finding of misconduct against a solicitor solely by reason of his or her status as a partner. Mr Monty said that under the Partnership Act 1890, a partner was liable for the acts of his or her fellow partners in the usual course of events. There may be exceptions, for example fraud or acting outside of the partnership business, but essentially partners were vicariously liable for each other's errors. However, he asked the Tribunal to note that in Rowe v Lindsay [2001] EWHC 783 (Admin) it had been said that "the vicarious liability of a partner for the acts of his or her partners... cannot of itself justify a finding of misconduct by a Solicitors Disciplinary Tribunal". Mr Monty said that most importantly in this regard, was the decision in Akodu v The Solicitors Regulation Authority [2009] EWHC 3588 (Admin) in which it had been said that "in those circumstances there is no other reasonable conclusion that can be reached other than that the basis upon which he had been found guilty was merely on the basis that he was a partner of the firm. If that was the only basis, then there has been no argument advanced on behalf of the Law Society to suggest that that was a lawful basis upon which any solicitor can be found guilty of conduct unbefitting his or her profession... some degree of personal fault is required". Mr Monty also referred the Tribunal to Flenley and Leech on Solicitors' Negligence and Liability (Third Edition) which, he said, made it clear that misconduct could not be found purely on

the basis that a Respondent occupied a position as partner. It was necessary to show that the partner was responsible for the breach. Mr Monty said that any attempt to find the Respondents liable simply due to their position as partners, and later members of the LLP, would not be right.

151.16 Mr Monty acknowledged that the First Respondent had accepted responsibility but pointed out that Mr Williams had conceded that this was not proof, in itself, that the First Respondent was responsible for the alleged Rule breaches. Mr Monty said that the SRA needed to prove its case. In any event, he said that the First Respondent had made it clear in his evidence that he stood behind his employees as the partner of the firm and he accepted responsibility for the mistakes that had been made. This did not mean that he was accepting liability himself for the alleged Code breaches.

151.17 In continuing submissions, Mr Monty told the Tribunal that the Respondents admitted allegation 1.13 solely on the basis of their status as partners in the firm. He said that it had never been part of the Second and Third Respondent's case that they had been involved in the M and M transaction or that they had anything to do with the operation of the client account in relation to the transfer. He acknowledged that the position in relation to the First Respondent was slightly different because it was accepted that the First Respondent had effectively signed or permitted the transfer to be made. Mr Monty said that by the time of the transfer, the firm had been carrying out a considerable amount of work, particularly in relation to the Calabrian property transactions and had employed a large number of people. He suggested that the First Respondent had been entitled to rely on the work being done by those who were actually dealing with the transactions. He reminded the Tribunal that the First Respondent had given evidence that a request would come in for the transfer of monies which would be accompanied by a list of relevant clients. The First Respondent would then rely on the solicitors who were doing the work to check that everything was in order before he signed off on the transfer. Mr Monty said that all of the Respondents had been entitled to depend on the assurances given by those who were carrying out the work and on the system that was in place.

151.18 Mr Monty stated that the remaining allegations concerning breaches of the Code had always been denied. He reminded the Tribunal that, in his statement, the First Respondent had questioned how he could have been said to be responsible for something that had been done by someone else in another country. Mr Monty said that there was no evidence that any of the Respondents had been involved at any stage in the transactions concerning M and M or Ms E. He pointed out that no case had been advanced against any of the Respondents in relation to allegation 1.14 as the SRA had never stated what the Respondents should have done to ensure that the clients received proper advice and adequate communication. There was no evidence that any of the Respondents had known anything about the transactions at the time and, accordingly, Mr Monty asserted that allegation 1.14 could not be substantiated.

151.19 Mr Monty told the Tribunal that allegation 1.16 could not be proved either as there was no evidence that the Respondents had written the misleading letters. He stated that there was nothing to show that the Respondents had known what was going on at the time or that they should have known but had turned a blind eye. He said that, in any event, the Second and Third Respondents could not be liable for anything that the First Respondent was said to have done and he stated that this allegation was put

together in a most unsatisfactory way. He reminded the Tribunal that, in evidence, Mr Howland had admitted that he had never seen the M and M file and he had worked from documentation that had been passed to him by the previous investigators. Mr Monty said that there was no evidence in this case from either M and M or Ms E or from any of the firm's former clients although they had clearly been spoken to.

151.20 In continuing submissions, Mr Monty asked the Tribunal to consider the fact that there had been no allegation of a breach of Rule 5 of the Code in relation to these transactions. He pointed out that there had been no attempt by the SRA to allege that there had been a breach of the supervision and management responsibilities contained within Rule 5. Instead, these allegations had been framed as a breach of the core duties under Rule 1 against partners who had absolutely no conduct of the matters in question. Mr Monty said that a decision appeared to have been taken to prosecute these Respondents for matters in which they had no personal involvement whatsoever. He told the Tribunal that the position in relation to allegation 1.15 which related to the transfer of the M and M file to Italy was no different to that set out in relation to allegation 1.6 and which concerned the transfer of all the other files to Italy.

151.21 Mr Williams told the Tribunal that the comments made in Rowe and Akodu related to the practice of alleging conduct unbefitting a solicitor which had now been replaced by allegations concerning breaches of the Code. He acknowledged that there had to be some degree of culpability on an individual or institutional basis and told the Tribunal that these allegations related to the institutional organisation and set up of the firm. Mr Williams stated that the Tribunal could find culpability notwithstanding the fact that the Respondent in question had not written the e-mail or signed the letter. He said that it was for the Tribunal to consider how the property department had been set up, how it had been run and then ask itself whether there had been any institutional failures. If so, then as a matter of law, the Code had been breached.

151.22 Mr Williams reminded the Tribunal of the leading case of Bolton v The Law Society [1994] 1WLR in which it had been said that "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions...." He maintained that this applied as much to RELs as it did to solicitors. He also referred the Tribunal to the case of Weston v The Law Society which, he stated, was of particular importance here as it had said that the SAR existed "to afford the public maximum protection against the improper and unauthorised use of their money..." Finally, he asked the Tribunal to consider the case of Iqbal v The Solicitors Regulation Authority [2012] EWHC 3251 (Admin) which, he suggested, brought the principles set out in Bolton up to date and where it had been said that "...being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence".

151.23 The Tribunal noted that Rule 1.02 was not being pressed in relation to allegation 1.12 but found that the other Rule breaches contained in the allegation were substantiated but in relation to the First Respondent only. On his own evidence, the First Respondent had drafted the standard letter which had been sent to clients and which gave an assurance that their deposits would not be paid out until contracts had been signed and a bank guarantee was in place. The First Respondent had confirmed, in evidence, that

he had signed the payment in relation to M and M and there was no evidence that the clients had ever authorised the payment. This was a particularly serious matter. The Tribunal rejected the First Respondent's assertion that he had checked with the lawyer concerned before authorising the payment. In his oral evidence, the First Respondent had sought to justify the payment by saying that the clients had agreed that the payment should be made during a conversation with Mr Dine. The Tribunal did not accept that such a conversation had ever taken place. There had been no suggestion on the part of the First Respondent that Mr Dine should be called to give evidence to support this assertion and the Tribunal noted that Mr Dine had been present throughout the hearing.

151.24 The Tribunal found allegation 1.13 to be substantiated against all three Respondents and indeed the Respondents had admitted the allegation.

151.25 Allegation 1.14 was found to be substantiated against the First Respondent only and was limited to the improper payment away of the deposit monies in relation to the transaction concerning M and M. There was no evidence before the Tribunal, save in relation to the release of the deposit, to indicate any culpable conduct on behalf of the Respondents personally. The Tribunal noted that the part of the allegation that had been found proved had the same factual matrix as allegation 1.12 and the Tribunal would take this into account in relation to sanction.

151.26 The Tribunal found allegation 1.15 to be substantiated against all three Respondents but this did not add anything further to allegation 1.6 and this would be considered when the Tribunal decided on sanction.

151.27 The Tribunal did not find allegation 1.16 to be substantiated to the required standard of proof. There was no evidence of any personal culpability on the part of the Respondents.

152. **Allegation 1.20: Failed to deliver an accountant's report with respect to their practice under the style of Giambrone & Law contrary to S34 Solicitors Act 1974 (as amended) and the Rules made thereunder;**

Allegation 1.21: Failed to deliver an accountant's report with respect to their practice under the style of Giambrone Law LLP contrary to S34 Solicitors Act (as amended) and the Rules made thereunder.

152.1 Mr Williams told the Tribunal that when a practice ceased to operate, it was mandatory that a final accountant's report was filed. This was known colloquially as a "cease to hold report". He said that its purpose was to demonstrate that a firm had dealt with clients' money properly upon closure. He stated that these documents were crucially important because the firm no longer existed. It was difficult to regulate a non- existent practice and accountants' reports were pivotal to any proper system of self regulation.

152.2 The Tribunal was asked to consider various e-mails from Mr Inman who had been employed by the firm. Mr Williams pointed out that Mr Inman had given repeated assurances to the SRA, on behalf of the firm, that the accounting records for both the LLP and the partnership were being reconstructed and that once the reconstruction

exercise had been completed, the "cease to hold" reports would be submitted. Mr Williams said that by 1 October 2010, the SRA had been chasing for the outstanding reports. Solicitors instructed by the Respondents had then explained that the process of reconstruction was taking longer than anticipated and had apologised, on behalf of the Respondents, for the delay. Mr Williams said that nothing further had been heard in relation to this matter since January 2011 and it was probably fair to assume that the SRA would never receive the outstanding reports.

152.3 Mr Williams said that both solicitors and RELs had to be punctilious in their dealings with client funds and they needed to demonstrate this to the public and to the profession. The mechanism for doing that was by the filing of accountants' reports. He said that the SRA had never seen a "cease to hold" report in relation to the firm and it was now years after the closure of these practices. He claimed that the obligation to file an accountant's report was a continuing one and was not "wiped out" by an appearance before the Tribunal. In summary, Mr Williams stated that this was a thoroughly unacceptable situation.

152.4 Mr Monty confirmed that these allegations were admitted by the Respondents. He said that there was no question that the Respondents were wilfully refusing to provide the "cease to hold" reports but it had simply not been possible to complete the task. This was because the accountants would need to check the underlying transactions and the files had been returned to clients. Mr Monty said that the situation in relation to the partnership was even worse as it had been necessary to "unpick" the bulk payments that had been made. Any documentation received from the bank did not identify each client and transaction and this was a problem that had become clear during the reconstruction exercise. Mr Monty said that this was not a case where the Respondents had simply sat back and done nothing. They had been trying to reconstruct the accounts. He said that the First Respondent accepted that numerous promises had been given to the SRA to provide the final accounts but unfortunately this had proved to be impossible.

152.5 The Tribunal found allegations 1.20 and 1.21 to be substantiated against all three Respondents and indeed the Respondents had admitted the allegations. The Tribunal did not accept that adequate efforts had been made to reconstruct the firm's accounts. Whilst the First Respondent sought to rely on the absence of paperwork and difficulties with foreign exchange bureaux, the Tribunal did not find his evidence on this point to be convincing. Had the First Respondent acted promptly and diligently then he should have been able to complete the reconstruction exercise. It was of great concern that the firm had been unable to properly account for clients' money and that, even now, it appeared that the firm would never be able to file its final accounts and demonstrate that its accounting records were in order at the point of closure.

Third Party Application

152.6 Dr Austen Morgan, Counsel, made an application for disclosure of the Respondents' witness statements. He told the Tribunal that he was working on behalf of a number of the firm's former clients who were taking civil proceedings in the High Court. He explained that some of his clients had been able to attend the Tribunal each day but their ability to follow the oral evidence had been circumscribed by the fact that there

had been no evidence in chief as written statements had been filed and those statements had formed the basis of cross-examination.

152.7 Dr Morgan told the Tribunal that a request had been made to the Respondents' solicitors for the disclosure of the witness statements yesterday but there had not been any reply. He submitted that the Tribunal did have the power to release any evidence that had been included in the proceedings and he asked for permission to inspect the Respondents' witness statements and to take copies at charge if so required. He said that if the Tribunal was not minded to agree to his request then he would pursue the matter in other jurisdictions.

152.8 Mr Monty told the Tribunal that he was not aware of any rule which permitted the Tribunal to disclose copies of the Respondents' witness statements. He said that he doubted that Dr Morgan had any *locus* to make such an application as he was not a party to the proceedings. He pointed out that the evidence before the Tribunal contained a large amount of confidential material relating to clients and attempts had been made during the course of the proceedings to preserve clients' confidentiality. He submitted that the appropriate forum to make such a request was within the litigation proceedings. It would then be for the judge to decide whether those documents were relevant to the issues and, if so, whether they should be disclosed with the appropriate redactions if necessary.

152.9 Mr Williams said that this was not really a matter for the SRA as it did not involve any of its documentation. He observed that there was nothing within the Tribunal's own rules that related to applications of this nature. He reminded the Tribunal however, that it could regulate its own procedure under Rule 21 of the SDPR. Mr Monty accepted that the Tribunal could regulate its own procedure but submitted that it must do so within the confines of the SDPR.

152.10 Having considered the matter carefully, the Tribunal decided that it did not have the jurisdiction and in any event it was not appropriate to accede to Dr Morgan's request and advised Dr Morgan that any application for disclosure would need to be made to the relevant court. Dr Morgan attended again on the final day of the hearing, with a view to resubmitting his application, but left before being able to do so.

Previous Disciplinary Matters

153. None.

Mitigation

154. Mr Monty submitted that the Tribunal should treat the Respondents differently as the First Respondent had always accepted that he should take a greater share of the blame. He told the Tribunal that this was reflected in the agreement that had been reached in relation to costs where the First Respondent would accept full responsibility for any costs order made. Mr Monty explained that the First Respondent had agreed to do this on the basis of his long-standing friendship with the other two Respondents and also because of their lack of direct involvement in the matters that had come before the Tribunal. Mr Monty said that the First Respondent

had found the Tribunal's remarks about his credibility to be distressing. This had been a very sobering experience for him and he had learned lessons as a result of these proceedings. He said that the First Respondent remained concerned about the impact that any sanction here would have on his ability to practise in Italy.

155. The Tribunal was told that it was clear that the involvement of the Second and Third Respondents had been limited. Mr Monty suggested that the findings which had been made against them appeared to be on the basis that they had been partners and later members of the firm and not due to any direct involvement on their part. He asked the Tribunal to take the Second and Third Respondents' culpability into account when considering sanction against them. He also reminded the Tribunal that the way in which it expressed its findings in relation to the Second and Third Respondents would undoubtedly impact upon their position in Italy.

156. Mr Monty pointed out that a number of the allegations overlapped and this was reflected in the Tribunal's findings. He said that he was in some difficulty in putting forward mitigation in circumstances where the Tribunal's detailed reasons were not yet available and he hoped that the Tribunal would take this into account.

Allegations 1.3 and 1.10

157. Mr Monty told the Tribunal that he would characterise these as more minor allegations. He said that the bank had been at fault for not including the word "client" in the title of the firm's bank accounts. This had eventually been corrected and all of the Respondents had admitted this breach from the outset. Mr Monty reminded the Tribunal that allegation 1.10 had been found proved against the First Respondent only and no doubt related to the use of notepaper for the short period after the Second and Third Respondents had resigned from firm. He said that the breach had always been admitted and the SRA had been aware of the position as one of the letters that it had received from the firm had been written on the offending notepaper. He submitted that this was not a "public facing" offence and he hoped that the Tribunal would reflect this in its deliberations regarding sanction in relation to this matter.

Allegations 1.6 and 1.15

158. Mr Monty said that he understood that these allegations were considered to be very serious by the Tribunal. He observed that the SRA had pursued this matter on the basis that the firm had failed to obtain clients' informed consent for the transfer of their files to Italy. He reminded the Tribunal that the firm had attempted to seek consent in the standard letter that had been sent to clients advising them that the property department was to be relocated to Italy. He said that he anticipated that the Tribunal had found that this letter was insufficient. He pointed out that the only evidence of the difference in the two regulatory regimes was the fact that there was no need to maintain three way bank reconciliations in Italy. He said that the SAR had applied to funds held here and he asserted that conveyancing files had needed to be transferred to Italy anyway in order to deal with completion formalities. He said that he must assume that the Tribunal considered that the transfer of files had taken place prematurely.

159. In continuing submissions, Mr Monty asked the Tribunal to note that the First Respondent had taken advice from Professional Ethics before making his final decision to transfer the files. He said that this showed that the transfer had not been done on a whim and that the First Respondent had given careful thought to the matter. He reminded the Tribunal that, in a letter dealing with Mr R's complaint, the SRA had told the First Respondent that he was entitled to transfer files to Italy and would not be in breach of any regulatory obligations for doing so.

160. Mr Monty asked the Tribunal to consider the level of seriousness in relation to this matter by way of reference to its own Guidance Note on Sanctions. He said that the First Respondent had clients' best interests at heart and the files would have been transferred to Italy anyway. He had taken advice on the issue and he was sorry that his decision was now considered to be incorrect. Mr Monty pointed out that any involvement of the Second and Third Respondents in relation to this matter had been minimal and there was little, if any, evidence of harm caused by the transfer of the files. Mr Monty stressed that there had never been any intention to mislead anyone or to offer clients less protection. He said that funds had remained in this country throughout, subject to the provisions of the SAR, and the transfer of the files had been designed to make things easier.

Allegations 1.12 - 1.15

161. Mr Monty said that he presumed that the findings which had been made against the Second and Third Respondents were due to their position as partners in the firm as they had no connection with the transactions at all. He anticipated that the findings made against the First Respondent relied on the fact that he had some culpability for the payment of the deposit in relation to M and M. Mr Monty told the Tribunal that there had been no deliberate attempt to deprive clients of any money. He explained that the First Respondent had believed that M and M had received all of their deposit back from the firm, through their insurers. He said that the First Respondent had now checked the position and had discovered that, although the LCS award and costs refund had been paid in full, the clients had not received all of their deposit and were out of pocket by about £9,000. Mr Monty said that the First Respondent had contacted M and M and had apologised, on behalf of the firm, for what had occurred. He had then offered to reimburse the clients from his own funds. Mr Monty asked the Tribunal to note that there was a letter from LM which was attached to the First Respondent's second statement which summarised the position. Mr Monty said that the First Respondent had taken this step without any reference to his legal team and he hoped that the Tribunal would consider this to be commendable in the circumstances.

162. In continuing submissions, Mr Monty said that he was unsure about the Tribunal's findings in relation to the alleged conversation with Mr Dine. He did not know if the Tribunal was going to say that the conversation between the First Respondent and Mr Dine had not taken place or that the conversation between Mr Dine and M and M had not occurred or both. Mr Monty asserted that the First Respondent had been trying his best to reconstruct what had happened. He reminded the Tribunal that the First Respondent had not had anything to do with the transaction save for the payment out of the deposit and so his involvement had been limited. However, he said that the

First Respondent understood and respected the Tribunal's findings in relation to this matter.

Allegations 1.1, 1.2, 1.5, 1.7, 1.20 & 1.21

163. Mr Monty said that he must assume that the Tribunal considered that the situation at the firm had deteriorated from the date of the first accountant's report in a way that was not yet clear in the absence of the Tribunal's detailed findings. He said that the Respondents relied heavily on the server crash and the steps that had been taken afterwards to rectify matters. He said that the Respondents had acted immediately to try and resolve this matter and had not waited for the SRA visit. He pointed out that the Respondents had admitted the breaches of the SAR from the outset and had accepted that the firm's accounting records were not in good order. They acknowledged that they had failed to file "cease to hold" reports. Mr Monty said that there was nothing deliberate about the state of the firm's accounts. There had never been any question of a breach of trust and the server crash had not been planned. Mr Monty said that the SRA had never suggested that there was any shortfall in client funds and there had been no complaints from clients in relation to this issue.

164. In continuing submissions, Mr Monty pointed out that RELs did not need to have any particular training in relation to the SAR. He said that the Respondents had been aware of the SAR and there had been no attempt to deliberately flout the Rules. There had been no dishonesty and no purposeful concealment of anything from the SRA. He said that the failure to co-operate had been due to the fact that documents were being collated as part of the reconstruction exercise and there had been no intention to keep things from the SRA. Mr Monty asked the Tribunal to note that the First Respondent had apologised for the errors that had occurred which he had said were the result of his inexperience and a lack of training. Mr Monty said that this showed clear awareness on the part of the First Respondent who had taken full responsibility for what had gone wrong. He asked the Tribunal to note the lack of direct involvement in these matters on the part of the Second and Third Respondents. He submitted that their liability had arisen as a result of their position as partners and later members of the firm.

165. Mr Monty told the Tribunal that none of the Respondents had practised as RELs since June 2008 when conditions had been imposed upon the First Respondent's registration. He explained that the Second Respondent was no longer an REL as she had ceased to practise as an Italian *Avvocato* when she had taken up her position with the Ministry of Justice. Mr Monty said that it was inevitable that the Italian regulator would closely examine the Tribunal's findings and may wish to take further action of its own if it considered that the Respondents' reputation as *Avvocati* had been brought into disrepute.

166. Mr Monty observed that this was the first occasion upon which any RELs had appeared before the Tribunal. He said that the Tribunal would need to consider the sanctions that were available in relation to RELs as opposed to solicitors as the position was not exactly the same. He referred the Tribunal to the 2000 Regulations which made reference to modifications to the Solicitors Act 1974. He said that it was curious that Section 47 of the Solicitors Act 1974 which allowed the Tribunal to strike off solicitors had not been expressly modified by the 2000 Regulations to include

striking off a REL from the register. He pointed out that subsequent sections within the Regulations did refer to striking off the register and, in addition, Regulation 26(2) expressly referred to the withdrawal or suspension of a REL. Mr Monty suggested that having taken all of this into account, it was likely that all three remedies were available to the Tribunal and it could make such order as it saw fit.

167. In answer to a question from the Tribunal as to the practical difference between a strike-off and a withdrawal of registration, Mr Monty said that he believed that there were two ways of approaching this. He said that either a withdrawal of registration was a blanket term used in the 2000 Regulations as the Regulations were addressed not only to the SRA, but to all other regulators who might regulate RELs and who may not have a specific sanction for strike off. Alternatively, he said that the withdrawal of registration could be considered as an intermediate sanction which was serious but not as severe as a strike off. Mr Monty said that if the Tribunal did not consider that there was any practical difference between the two penalties then it should think carefully about the impact of whatever it imposed on the regulatory authorities in Italy who were likely to see a strike off as being more serious than a withdrawal of registration.

168. Mr Monty said that whatever the Tribunal's decision was in relation to sanction, any route back on to the register for RELs was dealt with by the SRA Practising Regulations 2011. He explained that the effect of the 2011 Regulations was that the SRA had a much greater control over who was allowed back on to the register following the withdrawal or suspension of a registration which was entirely different to the position in relation to solicitors. He pointed out that under the 2011 Regulations, the Respondents would be removed from the register by virtue of any disciplinary sanction made by the Tribunal. He submitted that the Tribunal did not need to be inevitably drawn down the route of either a suspension, withdrawal or strike off as the SRA, under the 2011 Regulations, was the "gatekeeper" who would prevent the Respondents from returning to the register once they had been removed.

169. In continuing submissions, Mr Monty said that the Tribunal did not need to order a strike off, withdrawal or suspension of registration in order to protect the public. He suggested that an appropriate sanction in relation to the First Respondent would be the imposition of a substantial fine. He said that the Second and Third Respondents should either be reprimanded or should face a very modest fine due to their lack of involvement. He told the Tribunal that it could also consider practising conditions, similar to those which were currently imposed against the First Respondent. He stated that the Respondents were all very concerned that a serious sanction could have a detrimental impact on them in Italy and could affect the success of the First Respondent's firm. The Tribunal was told that the First Respondent worked as a sole principal in Italy. He was involved in about 350 civil actions and employed 80 staff who could all lose their jobs as a result of any action taken by the Italian regulator following these proceedings. Mr Monty said that any sanction imposed by the Tribunal could also affect the Second and Third Respondents in Italy and he reminded the Tribunal that the Third Respondent was currently employed as a consultant in the First Respondent's firm. He asked the Tribunal to consider the information contained in its last annual report. He pointed out that none of the categories for which solicitors had been struck off by the Tribunal applied to this case.

170. In conclusion, Mr Monty asked the Tribunal to consider the references that had been provided on behalf of all the Respondents. He said that these spoke of the Respondents in glowing terms and he asked the Tribunal to take these into account. In answer to a question from the Tribunal, Mr Monty accepted that not all of the individuals who had provided references had been aware of the details of the allegations made against the Respondents but he said that the references had all been provided in good faith. He reminded the Tribunal that the First Respondent had confirmed that his clients were fully aware of these proceedings and had given their references in the light of that knowledge. Mr Monty also asked the Tribunal to consider what had been said about the financial position of the Second and Third Respondents.

Sanction

171. The Tribunal had regard to its own Guidance Note on Sanctions when it considered the appropriate penalty in this case. The Tribunal accepted that there had been no dishonesty but these were still very serious matters. The First Respondent had opened up a practice in England. He had quickly obtained large numbers of clients but his accounting records had been a shambles. He had not put matters right and no final accounts had been filed. The SRA was still unable to ascertain whether there was any shortage in relation to client funds. The Tribunal did not consider that the First Respondent had taken sufficient steps at the appropriate time to resolve the difficulties that had arisen as a result of the server crash. He had walked away from his responsibilities and had returned to Italy where he had established a successful firm. It was not acceptable for RELs who practised in this country to flagrantly disregard the regulatory regime that existed. The Tribunal believed that any member of the public would consider that the First Respondent's behaviour had had a detrimental effect on the reputation of the profession. If the First Respondent had been practising in England, then subject to any particular circumstances that may have existed at the time, he would undoubtedly have been struck off the Roll.

172. One of the purposes of any sanction imposed by the Tribunal was to deter others from behaving in the same way. The Tribunal considered the comments set out in Bolton where it had been said that "... a penalty may be visited on a solicitor... in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way..." It had been said that it was open to the Tribunal to order a strike off, a withdrawal of registration or a suspension of registration. Whilst noting that Mr Monty accepted that the Tribunal may be entitled to strike off the First Respondent from the register of European Lawyers, the Tribunal considered that this situation was expressly provided for in Regulation 26(2) of the 2000 Regulations and accordingly decided that the appropriate and proportionate penalty was that the First Respondent should be withdrawn from the register of Registered European Lawyers.

173. The Tribunal accepted that primary responsibility for these matters rested with the First Respondent. The Second and Third Respondents had been found liable because of their position at the firm rather than due to any action that they had taken. Nevertheless, the Tribunal regarded their involvement in these matters as serious. They had taken up positions as partners without accepting the obligations that went with that. By becoming partners, and later members, at the firm, the Second and Third Respondents had added credibility and respectability to the practice which had

been portrayed as being a three partner firm whereas, in reality, only one partner had run the practice. The Tribunal did not consider that a reprimand was a suitable penalty in this case as it did not sufficiently reflect the seriousness of what had been done. In the circumstances, the Tribunal would ordinarily have considered a substantial fine to be appropriate but given what it had been told about the limited financial circumstances of the Second and Third Respondents, it concluded that the Respondents should pay a fine of £2,000 each.

174. Mr Monty made an application under Rule 17 of the SDPR for the orders to be suspended until after the Tribunal had delivered its reasons. He said that a failure to suspend the orders could have a detrimental effect on the Respondents in Italy as the Italian authorities would not understand the reasons for the orders that had been made in the absence of the Tribunal's detailed findings.

175. The Tribunal did not consider that the potential impact of the orders on the Italian regulator was sufficient reason to suspend the filing of the orders and declined to accede to Mr Monty's request.

Costs

176. The Applicant's claim for costs was £113,829.18. This included the costs of the forensic investigations. Mr Williams told the Tribunal that an agreement had been reached whereby the First Respondent would take responsibility for all the SRA's costs, limited to the sum of £70,000 and with £20,000 being paid within 28 days and the balance over 12 months.

177. Following negotiations between the parties, the Tribunal was provided with a copy of the agreement in relation to costs. Under the terms of the agreement, the First Respondent would pay costs fixed in the sum of £70,000 with the first payment of £20,000 being payable within 28 days of 1 February 2012, the next £25,000 by 30 June 2013 and the final £25,000 by 31 January 2014. The Tribunal agreed to make an order in those terms.

Statement of Full Orders

178. The Tribunal Ordered that the Respondent, Gabriele Michael Giambrone, Registered European Lawyer, be Withdrawn from the Register of Registered European Lawyers and they further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £70,000.00, payable as follows:

    (i) as to the first £20,000 within 28 days of today;
    (ii) as to the next £25,000 by 30 June 2013; and
    (iii) as to the final £25,000 by 31 January 2014.

179. The Tribunal Ordered that the Second Respondent – *Name Redacted*, Registered European Lawyer, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen.

180. The Tribunal Ordered that the Third Respondent – *Name Redacted*, Registered European Lawyer, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen.

DATED this 5th day of April 2013
On behalf of the Tribunal

K. W. Duncan
Chairman