SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10487-2010
Case No. 10388-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

RICHARD GRAHAM SIMKIN — First Respondent

and

ZAKIA NASEEM SHARIF — Second Respondent

Before:

Mr J C Chesterton (in the chair)
Mr D Glass
Mr S Marquez

Date of Hearing: 6th July 2011

Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent ME15 6JX for the Applicant.

The First Respondent, Richard Graham Simkin, did not appear and was not represented.

The Second Respondent, Zakia Naseem Sharif, did not appear and was represented by Mr Neil Mercer of Counsel in relation to the application for an adjournment only. She was not represented at the substantive hearing.

JUDGMENT

Allegations

The allegations against the First Respondent Richard Graham Simkin were:

1. The First Respondent practised as a solicitor without professional indemnity insurance;

2. The First Respondent made false claims for reimbursement of expenses, in breach of Rule 1(a) of the Solicitors Practice Rules 1990 and Rule 1.02 of the Solicitors Code of Conduct 2007. It was alleged that the First Respondent had been dishonest;

3. The First Respondent received fees and other remuneration for work undertaken for individuals and organisations which he did not disclose to his firm, in breach of Rule 1(a) of the Solicitors Practice Rules 1990 and Rule 1.02 of the Solicitors Code of Conduct 2007. It was alleged that the First Respondent had been dishonest.

4. The First Respondent misled Stephen Vogel by wrongly stating to him firstly that the Second Respondent, Zakia Naseem Sharif was a solicitor when she was not, and secondly by overstating her salary in each case in breach of Rule 1(a) of the Solicitors Practice Rules 1990. It was alleged that the First Respondent had been dishonest.

The allegations against the Second Respondent, Zakia Naseem Sharif were:

5. The Second Respondent whilst employed or remunerated by solicitors Fulbright and Jaworski International LLP ("the firm") occasioned or had been a party to acts or defaults the particulars of which were:

    (a) In April 2007 she made a booking with DialAFlight for a journey to Tokyo undertaken in May 2007 with the First Respondent (with whom she was then conducting a relationship and who she married on 23 June 2007). The air fare and hotel bill were together £10,710. This sum was charged to the firm by the Second Respondent as a business expense when she knew it was not. It was alleged that the Second Respondent had been dishonest;

    (b) The Second Respondent charged the expenditure described in (a) above to her firm by firstly requesting a quotation from DialAFlight for two other members of the firm to undertake the same journey at the same time and on the same flights as she had already booked for herself and the First Respondent. Following its receipt from the travel agent she altered the wording on it so that instead of appearing to be a quotation, it resembled a bill describing business travel and accommodation expenses incurred by the two members of the firm. She then substituted it for her and the First Respondent's bill and attached it to an Expense Reimbursement form which she herself countersigned to authorise the expenditure by the firm. The authorisation form described the expenses it was authorising as "Air fares and hotel bookings: [MK and CCD]". Neither member undertook any such journey or incurred any such expenses. It was alleged the Second Respondent had been dishonest.

    (c) The Second Respondent created false invoices on the firm's information technology system purporting to be addressed to the firm by RS and AS

Recruitment Services for the provision by them of recruitment services, when no such invoices were in fact submitted and no legitimate recruitment services provided to the firm, which it did not in any event authorise. It was alleged the Second Respondent had been dishonest.

(d) The Second Respondent forged the signature of Stephen Vogel (the former Managing Partner of the firm's London office) on Cheque Requisition/ Expense Reimbursement forms in order to obtain payment of the invoices referred to in (c) above in the sum of £59,425. It was alleged the Second Respondent had been dishonest.

(e) The Second Respondent paid monies purporting to be due to RS and AS Recruitment Services pursuant to such false invoices into her personal account, and in so doing misappropriated the firm's money. She paid other sums to Mr RS, who was a personal friend, thereby misappropriating the firm's money. Mr RS subsequently paid the Second Respondent some of the money. It was alleged the Second Respondent had been dishonest.

(f) The Second Respondent improperly and in breach of her duty of confidentiality disclosed information about candidates, employees, partners and client matters to a third party;

(g) The Second Respondent paid £2,000 of the firm's money to Mr RS when she had no authority to do so. The money was paid to him, in part, for the purchase by him of duty free items for her whilst he was abroad.

6. In a curriculum vitae presented to the firm the Second Respondent falsely stated that she had graduated from King's College London with a degree in Law (LLB (Hons) 2:1);

7. In the same curriculum vitae the Second Respondent falsely stated she had a Masters Degree in Law;

8. In the same curriculum vitae the Second Respondent falsely stated she had undertaken a solicitors training contract with WF and W Solicitors.

9. The Second Respondent falsely represented to the firm that her salary from RB Solicitors on leaving was £85,000 whereas it was £56,300. The figure was used to negotiate a higher starting salary from the firm;

10. On 4 October 2005 the Second Respondent approved an expenses claim submitted to her by the First Respondent (with whom she was conducting a relationship) claiming as business expenses the sum of £4,229.20 being the cost of flights for them both to New York on 29 August 2005. The Second Respondent did not travel for business purposes.

11. On 24 November 2005 the Second Respondent approved an expenses claim submitted by the First Respondent claiming the sum of £1,111.27 being the cost of hotel accommodation at the Omni Berkshire Place Hotel, New York for them both. The hotel bill accompanying the claim form had been amended to remove her name as

occupant of the room. The Second Respondent did not stay there for business purposes. Her presence in New York was unknown and unauthorised by the firm.

12. On 13 March 2006 the Second Respondent approved an expenses claim submitted by the First Respondent claiming the sum of £6,804.00 said to have been wholly incurred in connection with a business trip to Phoenix, Arizona. The Second Respondent approved the reimbursement by signing off the expenses form and approved the repayment to the First Respondent of additional expenses unknown to the firm of £3,117.09;

13. On 7 November 2007 the Second Respondent approved a false expenses claim by signing the form to show approval utilising the Attorney ID of Lista Cannon. An email exchange between the Second Respondent and her husband, the First Respondent, demonstrated the dinner claimed was not a business expense but a private dining function she attended.

14. On 25 August 2006 the Second Respondent approved a false expenses claim in relation to a dinner she attended said also to include AM, who did not in fact attend. The Second Respondent, having herself been present, would have known AM was not at that dinner.

15. On 27 September 2006 the Second Respondent approved an expenses claim which was false.

At a hearing on 28 October 2010 the Tribunal ordered case number 10388-2009 (Zakia Naseem Sharif) be consolidated with case number 10487-2010 (Richard Graham Simkin).

In his written submissions dated 29 June 2011 the First Respondent admitted allegation 1.

Documents

16. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 22 March 2010 together with attached Rule 5 Statement and all exhibits;
- Application dated 17 November 2009 together with attached Rule 5 Statement and all exhibits;
- Supplementary Statement dated 16 March 2010 together with all exhibits;
- Indictment in the case of R v Zakia Naseem Sharif and Richard Graham Simkin
- Email dated 1 July 2011 from the Applicant to both Respondents.
- Schedule of Costs dated 4 July 2011 in relation to the First Respondent.
- Schedule of Costs dated 4 July 2011 in relation to the Second Respondent.

First Respondent, Richard Graham Simkin:

- Submission by RG Simkin dated 29 June 2011;
- Email from Mr Simkin to the Applicant dated 4 July 2011;
- Letter dated 4 July 2011 from Mr Simkin to the Tribunal;
- Email dated 5 July 2011 from Mr Simkin to the Tribunal;
- Email from Mr Simkin to the Tribunal dated 6 July 2011.

Second Respondent, Zakia Naseem Sharif:

- None.

Preliminary Matters

Application for an Adjournment by the Second Respondent

17. Counsel for the Second Respondent made an application for the Second Respondent's application for an adjournment to be heard in private, given that criminal proceedings against the Second Respondent were outstanding. The First Respondent had sent an email to the Tribunal dated 5 July 2011 in which he requested the hearing to be held in camera.

18. The Tribunal had considered carefully the written submissions of the First Respondent, the position of the Second Respondent and had also considered Rule 12(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 which stated:

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of –
>
> (a) exceptional hardship; or
> (b) exceptional prejudice
>
> to a party, a witness or any person affected by the application."

19. The Tribunal was satisfied that it was appropriate, given the circumstances of this case, for the application for an adjournment to be heard in private.

20. Counsel on behalf of the Second Respondent reminded the Tribunal that the Second Respondent had submitted an application for an adjournment of the substantive hearing on 30 June 2011 which had been refused by the Chairman. The Second Respondent had been instructed to make a further application for an adjournment on behalf of the Second Respondent today. Counsel for the Second Respondent was not instructed in the criminal proceedings and he provided the Tribunal with a copy of the indictment setting out details of the charges faced by the Second Respondent. He submitted that it was clear from the indictment that the Second Respondent faced very serious offences and if convicted, she would lose her liberty. The Second Respondent had the benefit of public funding in the criminal proceedings but was unable to afford

to represent herself before the Tribunal and would effectively have to act without legal representation if she appeared before the Tribunal. The allegations in the Tribunal proceedings were similar and/or identical and based on the same facts as the offences in the indictment. A trial in the criminal proceedings had been listed to take place on 3 January 2012. It was likely that the same witnesses would be called to give evidence at both the criminal hearing and before the Tribunal. If the Second Respondent could be represented in the Tribunal proceedings, her Counsel would attack those witnesses in a particular way and as a result of this, the witnesses would be warned of the Second Respondent's defence in the criminal trial in January 2012. They would then be pre-prepared for the trial and could mull over matters which would be dangerous.

21. The Second Respondent was in a Catch 22 situation in that if she represented herself in the Tribunal proceedings, it was unlikely she would be able to do so properly and she may make matters worse for herself. However if she was represented by Counsel in the Tribunal proceedings, that could prejudice the criminal proceedings. If the Second Respondent appeared before the Tribunal and said nothing then again, it was likely the Tribunal would find against her. In order to preserve her position in the criminal trial, the Second Respondent was compelled not to attend the substantive hearing before the Tribunal.

22. Whilst some of the Second Respondent's concerns could be allayed by the substantive hearing taking place in camera, the Tribunal was reminded that the case of R v The Solicitors Disciplinary Tribunal ex parte Gallagher [1991] (which stated it was in the public interest for complaints against solicitors to be disposed of quickly) was decided some considerable time ago, when there was no internet and the Tribunal's findings were not published where they could be easily accessed by the public and, potentially, by members of a jury. Counsel for the Second Respondent requested the Tribunal should embargo the publication of the Tribunal's conclusions until after the Second Respondent's criminal trial had concluded in any event.

23. Counsel further submitted it was still possible that the Second Respondent would suffer prejudice if adverse findings were made by the Tribunal, as these could be used as bad character information in criminal proceedings. The Tribunal could not make any order to prevent the Tribunal's findings being used adversely in a criminal trial as it was very easy to adduce bad character evidence.

24. Counsel submitted that the substantive hearing should not proceed today as there was no urgency for conclusion of these proceedings. Neither Respondent was engaged in private practice and nor did they intend to do so. The criminal trial was due to take place in January 2012 and it was the norm for regulatory bodies to wait until criminal proceedings were concluded before proceeding with any disciplinary hearing. Furthermore, if the criminal trial resulted in a conviction, this would considerably reduce the time that would be required for any disciplinary proceedings that would then be based on the conviction.

25. Although the Second Respondent was unregulated, she would be willing to give an undertaking to the Tribunal not to work in any legal practice. Furthermore, it was extremely unlikely that she could be admitted as a solicitor in the future without declaring these proceedings.

26. Counsel submitted there was a risk of serious prejudice to the Second Respondent who was not a solicitor and that the criminal proceedings she faced were extremely important and could lead to the Second Respondent losing her liberty. He submitted that it was in the interests of justice that the substantive hearing before the Tribunal should be adjourned until after the criminal proceedings had concluded.

The written submissions of the First Respondent

27. The First Respondent in an email to the Tribunal dated 5 July 2011 requested the Tribunal should hold the hearing in camera and also that any decision against the First Respondent should be subject to a complete embargo until conclusion of the criminal proceedings. The reasons were set out in the First Respondent's submissions dated 29 June 2011. The First Respondent was facing criminal proceedings expected to take place in January 2012. The First Respondent stated all his efforts were focused on his defence in the criminal proceedings and any decision taken was directed at minimising any possible prejudice to his defence in those proceedings. He confirmed he did not intend to take any further part in the Tribunal proceedings and that he would allow the proceedings to continue to a conclusion without opposition although he did not admit the whole case as represented by the documents. He confirmed much of the criminal trial would involve cross examination of witnesses who would be the same witnesses giving oral evidence before the Tribunal, if he actively contested the Tribunal proceedings.

The Submissions of the Applicant

28. The Applicant referred the Tribunal to a Memorandum of a Tribunal previous hearing which took place on 11 January 2011. At that time the Tribunal had made an order that any application to vacate the substantive hearing should be made by Tuesday 15 February 2011. Neither Respondent had made any application for an adjournment by that date and the Tribunal had been given no explanation as to why.

29. The Applicant had communicated with the Second Respondent by email and apart from an indication that some allegations may be accepted, he had heard nothing until 30 June 2011 when the Second Respondent had submitted an application for an adjournment.

30. The Applicant reminded the Tribunal that the First and Second Respondents lived together as husband and wife and that the Second Respondent had made significant admissions in a number of documents that had been placed before the Tribunal and that had been sent to the Authority. In those admissions the Second Respondent had accepted that she had forged Stephen Vogel's signature and had admitted the allegation relating to the Tokyo flights which involved about £10,000. The Applicant sought a Section 43 Order on the basis of those admissions which he accepted had to be proved to the criminal standard.

31. The First Respondent did not seek an adjournment and he was in the same position as the Second Respondent in relation to the criminal proceedings. It was in the public interest for these proceedings to be concluded quickly, particularly as there was concern that the Second Respondent could work in a firm of solicitors.

32. In relation to the Findings being used as evidence of bad character in criminal proceedings, the Applicant submitted the prosecution would have to make an application to adduce such evidence and the Second Respondent could oppose that application. There was considerable similarity between the two sets of proceedings and if the Tribunal was of the view that the substantive hearing should proceed today, then that hearing could be conducted in private and the Tribunal could make an order embargoing any judgment until the conclusion of criminal proceedings against both Respondents in order to ensure there would be no prejudice in those criminal proceedings. The Applicant submitted it was in the public interest for these proceedings to be concluded quickly.

The Tribunal's decision on the Second Respondent's application for an Adjournment.

33. The Tribunal had considered carefully the submissions made by all parties and the documents provided. Counsel for the Second Respondent had invited the Tribunal to adjourn the substantive hearing on the basis that the hearing before the Tribunal today could inhibit a Crown Court trial in six months time. Conversely, he reasoned that to avoid prejudicing the Crown Court proceedings, his client's defence would be inhibited before the Tribunal.

34. The Tribunal had deliberated this point at some length and did not agree with the Second Respondent's Counsel. The Second Respondent, Ms Sharif, must conduct her defence as she saw fit but the Tribunal as a regulatory body had an overriding objective to resolve cases before the Tribunal as soon as possible so long as the interests of justice were preserved.

35. It was relevant that a different division of the Tribunal had focused on the issue of "muddying the waters" at the hearing on 11 January 2011 and at that time, the Respondents were invited to make any application to adjourn by 15 February 2011. The Second Respondent chose not to do so until 30 June 2011, less than a week before the substantive hearing.

36. The Tribunal had already indicated how it proposed to deal with the issue of "muddying the waters" in that the findings would be embargoed until the criminal proceedings against both Respondents were concluded, however long that may be and further the Tribunal proceedings would be held in camera. This suggestion had found favour with those present.

37. It had been suggested to the Tribunal that the Crown Court judge may use these Findings with a jury however, the Tribunal did not accept this to be correct as, on the same facts, if a Crown Court judge did use the Tribunal's Findings, the effect of this would be that all decisions of the Tribunal would hereafter have to wait until criminal proceedings were concluded, however long that may be, and that would not be in the interests of the public or the profession. The Tribunal did not therefore agree that proceedings in this regulatory Tribunal should always await the outcome of criminal proceedings. Indeed, the Tribunal's Policy/Practice Note on Adjournments dated 4 October 2002 stated at paragraph 4(a) and 4(d):-

> "4) The following reasons will NOT generally be regarded as providing justification for an adjournment;

> **a) The Existence of Other Proceedings**
> The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may "muddy the waters of justice" so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so....."
>
> "**d) Inability to Secure Representation**
> The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non attendance of the Respondent"

38. Counsel for the Second Respondent had raised the issue of representation and it was clear from the Tribunal's Policy/Practice Note on Adjournments that the inability of the Second Respondent to secure legal representation for financial reasons would not provide justification for an adjournment.

39. The Tribunal had also considered the case of Gallagher and noted in particular the comments of Lord Justice Parker who had stated:-

> "It is perfectly plain, in my view, that the Disciplinary Tribunal, if faced with a situation where, for example, they were about to make a finding and order a day or two before the criminal proceedings began, might well consider that to do so would muddy the waters."

Lord Justice Parker went on to say:-

> "It also accepted that there is a public interest in that complaints against solicitors, perhaps particularly complaints of a nature which are made in disciplinary charges, should be disposed of quickly..."

40. The Tribunal had also considered the Human Rights Act 1998 and determined that, in ordering the Tribunal Findings be embargoed until the conclusion of the criminal proceedings against both Respondents, and in further ordering that the substantive hearing should take place in private, the Tribunal had dealt with "muddying the waters" in respect of a criminal hearing which was six months away. By dealing with the substantive hearing in this way, the Second Respondent would not be prejudiced and at the same time the Tribunal would be able to deal with the regulatory issues. This also took into account the submissions of the First Respondent who requested the substantive hearing should be held in camera and any decision against him should be subject to a complete embargo until conclusion of the criminal proceedings. Accordingly, the Second Respondent's application to adjourn the substantive hearing was refused.

Factual Background

41. The First Respondent, Richard Graham Simkin, was born on 14 July 1952 and was admitted as a Solicitor on 1 April 1976. His name remained on the Roll of Solicitors.

42. At all material times the First Respondent was carrying on practice as a member (partner) of Fulbright and Jaworski International LLP at the firm's former London office of 90 Long Acre, Covent Garden, London WC2E 9RA ("the firm"). The First Respondent joined the firm in July 2004 as a partner. At all material times, the First Respondent was the firm's Risk and Compliance Partner and Money Laundering Reporting Officer. He resigned on 4 March 2008.

43. The Second Respondent, Zakia Naseem Sharif, was employed by the firm as Director of Administration from 11 July 2005 to 23 January 2008, on which date she resigned without notice. Although her formal employment by the firm commenced on 11 July 2005, she was remunerated for consultancy services provided before that date.

44. Both respondents joined the firm from RB Solicitors. They commenced a relationship in November 2004 and in December 2004 the First Respondent introduced the Second Respondent to Stephen Vogel ("Mr Vogel") at the firm to assist the firm to recruit paralegals.

45. In March 2007 Mr Vogel was relocated to Hong Kong and he was succeeded as Managing Partner by Lista Cannon ("Ms Cannon") who became a member of the firm in April 2005. She had also previously been with RB Solicitors.

46. The Respondents married on 23 June 2007. Neither Respondent disclosed their relationship to Mr Vogel at any time. The First Respondent participated with Mr Vogel in the recruitment of the Second Respondent in July 2005 but did not disclose his relationship with her. The First Respondent participated in the Second Respondent's continuing employment as her appraiser without disclosing his continuing relationship with her.

47. Following the Second Respondent's resignation from the firm on 23 January 2008 the firm discovered that she appeared to have been authorising the payment of money to herself from the firm's office account. This discovery inevitably led to an examination of the First Respondent's financial records, as the payments had been authorised while the First Respondent was the firm's Risk and Compliance Partner and Money Laundering Reporting Officer at a time when he was conducting his undisclosed relationship with the Second Respondent. As Director of Administration, the Second Respondent was able to and did authorise reimbursement of the First Respondent's expenses.

Allegations 4, 6, 7, 8 and 9

48. The First Respondent introduced the Second Respondent to Mr Vogel in late 2004 and arranged for her to meet him and another partner DH in December 2005. The First Respondent stated to Mr Vogel that the Second Respondent's annual salary at RB Solicitors was £85,000 whereas it was approximately £56,300. It was alleged that the Second Respondent stated that her salary with her previous employer was £85,000 per year, whereas it was £56,300. Mr Vogel relied on the First Respondent's statement in proposing a starting salary for the Second Respondent of £95,000.

49. The First Respondent stated to Mr Vogel that the Second Respondent was a solicitor and that she had trained at WFW Solicitors. The curriculum vitae given to the firm by the Second Respondent stated that she had a Law Degree from King's College London and that between 1994 and 1996 she obtained a Masters degree in law from Kings College, London. On further enquiry, Kings College, London had no record of the Second Respondent acquiring either qualification. It was alleged that in a later version of her CV, the Second Respondent stated she had undertaken a training contract with WFW Solicitors in London.

50. The First Respondent was the Second Respondent's appraiser. The appraisal process required the Second Respondent to submit to her appraiser her self evaluation assessments. The First Respondent conducted an appraisal without the firm knowing of their relationship. The firm had a policy on "at work relationships" and an anti nepotism policy.

Allegation 2

51. The First Respondent was entitled to claim reimbursement of expenses incurred in connection with the business of the firm. He submitted claims for and obtained reimbursement of expenses which were not incurred in connection with the business of the firm but which were nonetheless described as such. He also claimed from the firm, and was paid, expenses he claimed from individuals/organisations he was privately billing.

52. Both the Respondents were permitted to use the firm's Corporate American Express Card. On 12 August 2005 the First Respondent drafted and circulated a Memorandum to all members of staff which set out the firm's policy on the use of the firm's Corporate American Express Card. The firm's procedure for claiming reimbursement of business expenses required the completion of a document titled "Check (sic) Requisition/Expense Reimbursement Form" (expense forms). The First Respondent completed expense forms, signed them and had them countersigned to signify approval. The Second Respondent as Director of Administration was permitted to and did approve some of the First Respondent's expense claims.

53. Expense forms were accompanied by receipts in accordance with the firm's policy. Each signatory, the person claiming and the person approving, had an "Attorney Number" unique to him/her. The First Respondent's was 12645 and it appeared next to his signature. Other relevant attorney numbers were 00570 for Mr Vogel who was the Managing Partner until he moved to Hong Kong in March 2007, and Ms Cannon (12850) who succeeded him. The Second Respondent's number was 13072. The numbers identified the signatories on relevant occasions, and also on one material occasion showed that the Second Respondent used Ms Cannon's number when the Second Respondent signed to approve a claim by the First Respondent for reimbursement of personal expenses on 7 November 2007. The First Respondent made a number of claims for reimbursement of expenses.

Allegations 2 and 10

54. On 4 October 2005 the First Respondent claimed the sum of £4,229.20 being the cost of flights for himself and the Second Respondent to New York on 29 August 2005.

The First Respondent's expenses form was submitted with the voucher for his flight only and was approved by the Second Respondent. The First Respondent travelled for business purposes but the Second Respondent did not.

Allegations 2 and 11

55. On 24 November 2005 the First Respondent claimed the sum of £1,111.27 being the cost of hotel accommodation at the Omni Berkshire Place Hotel, New York. The hotel bill accompanying the First Respondent's expenses form had been amended to remove the name of the occupant of the room, the Second Respondent, who also approved the payment. The First Respondent travelled for legitimate business purposes, but the Second Respondent did not. Her presence in New York was unknown and unauthorised by the firm.

Allegations 2 and 12

56. On 13 March 2006 the First Respondent claimed expenses in the sum of £6,804.00 said to have been wholly incurred in connection with a business trip to Phoenix, Arizona. The Second Respondent approved the reimbursement by signing off the expenses form and approved the repayment to the First Respondent of additional expenses unknown to the firm of £3,117.09.

Allegation 2 and 13

57. On 7 November 2007 the First Respondent claimed the expenses for a dinner on 6 November 2007 which was attended by both Respondents and the First Respondent's daughter. An email exchange between the Respondents dated 6 November 2007 demonstrated this was a private dinner not a business expense. The expense form described it to be a dinner with AB and TM. AB and TM did not attend the dinner. The expense form was countersigned by the Second Respondent, who was by then married to the First Respondent. The Second Respondent utilised the Attorney ID of Ms Cannon.

Allegation 2 and 14

58. On 25 August 2006 the First Respondent claimed expenses for an interview over dinner with AM. The Second Respondent attended that dinner. The expense form was countersigned by the Second Respondent. AM was not interviewed by the firm and was not present at that dinner.

Allegations 2 and 15

59. On 27 September 2006 the First Respondent claimed £3,109.31 expenses, which were countersigned by the Second Respondent, and were a claim for reimbursement for business travel to America that he undertook with her. This included a personal trip by them both to Mexico.

Allegation 2

60. On 26 April 2006 the First Respondent claimed £5,194.00 (£3,200 to the firm and the

balance to clients) being the cost of business travel to Boston, USA. The travel itinerary did not accompany his expenses form, but when it was obtained from Dial A Flight it revealed that the Second Respondent had accompanied him. She did so without the knowledge or approval of the firm. The claim included a holiday to Cape Cod which was added to the business trip and included in the expenses reimbursement claim. The claim was authorised by the Second Respondent.

Allegations 2 and 3

61. On 9 February 2005 the First Respondent claimed reimbursement of the sum of £17.75, described in the Detail of Expenses form as arising out of his attendance at RAC Club, Pall Mall on 14 December 2004 with PH and BD. The First Respondent's narrative said "F&J London practice - £17.75" and in attendance were [PH] and [BD] of [FP] (sic)". The expense actually incurred by the First Respondent at the Pall Mall Club was a haircut. FP was also one of the organisations the First Respondent undertook private work for and he billed them privately on 31 December 2004 for the period up to that date. The private billing was material in relation to this expense claim because it was firstly misdescribed, and secondly was said to have been incurred in connection with the firm's London practice. It emerged from the audit that on 31 December 2004 the First Respondent drew a private bill for FP covering the period up to that date. The bill charged for communication with PH who was named in the expense form. Thus the claim against the firm was improper irrespective of its description because it was incurred in connection with an organisation the First Respondent was secretly billing and there was no business element to it as far as the firm was concerned.

Allegation 2

62. On 24 March 2005 the First Respondent claimed reimbursement of £61.43 being the cost of a meal taken at Tuttons Brasserie on 18 March 2005. The First Respondent's justification for the claim was business entertainment with AV of PC, who stated to the firm that he had not been to Tuttons Brasserie.

63. On 5 October 2005 the First Respondent claimed reimbursement of £53.44 being the cost of a meal for two taken at Matsuri restaurant. The First Respondent's justification for the claim was business entertainment with RB. RB stated he did not attend this meal.

64. On 14 December 2004, 18 January 2005 and 1 June 2006 the First Respondent claimed the cost of business entertainment of CC and AF (who at the relevant times worked at MS, a client of the firm) at firstly Carluccio's restaurant on 28 November 2004, secondly at Orso on 21 December 2004 (CC only), and thirdly at the Oxo Tower on 23 May 2006 (CC only). CC was not present at any of these events. AF was at a family Christening and Evensong at St Paul's on 28 November 2004. The Carluccios claim identified the business guests as AF and CC, but the receipt confirmed there were only two covers. The total cost was £326.50. The claim form dated 1 June 2006 was approved by the Second Respondent and had her signature.

65. On 14 December 2004 the First Respondent claimed £88.95 for a dinner with Ms Cannon at the Admiral Codrington on Saturday 27 November 2004 and a taxi fare of

£13. Ms Cannon did not attend this dinner with the First Respondent and was engaged elsewhere.

66. On 15 June 2005 the First Respondent claimed £55.35 for a dinner with AF at Scoffs Eating House on 10 June 2005. AF was not in London on that date and had never been to the restaurant.

67. On 6 June 2005 the First Respondent claimed reimbursement of the sum of £528.50 being the cost of eight tickets to the Hampton Court Music Festival on 15 June 2005. AF was listed as one of the guests but was neither invited to nor did she attend the event.

68. On 18 January 2005 the First Respondent claimed £11.20, purportedly to reimburse the cost of business entertainment of Ms JM. She had never been to Cactus Blue restaurant where the entertainment was said to have taken place on 21 December 2004.

69. On 28 December 2007 the First Respondent claimed £218.25 in respect of the business entertainment of three individuals, namely FL, OR and GV. The entertainment was stated to have taken place on 21 December 2007 at Moti Mahal and the bill showed that there were in fact only two persons present on that evening. Further, FL confirmed to the firm that he did not attend the dinner. That claim was refused as it was submitted shortly before the internal auditors commenced their investigation.

70. On 9 August 2006 the First Respondent claimed expenses for a dinner with Ms Cannon and KC. The expense form was countersigned by the Second Respondent. Neither Ms Cannon nor KC were present at the dinner.

71. On 30 July 2007 the First Respondent claimed expenses for a hotel invoice for FL and his wife. The expense form was countersigned by the Second Respondent. Neither FL nor his wife stayed at the Hotel.

72. On 14 December 2004 and 6 June 2005 the First Respondent claimed expenses for meals and a charity concert attended by Dr JR. The expense form was countersigned by Mr Vogel. Dr JR was, according to the First Respondent, an individual for whom he was undertaking private work, nor was he present at these events.

Allegation 1, 2 and 3

73. Following an internal audit investigation, it appeared that the First Respondent had delivered bills and been paid for work conducted from his home address (although utilising on occasions the firm's resources), and that a consultancy agreement existed pursuant to which the First Respondent received remuneration. The First Respondent did not disclose to the firm his private billing or consultancy remuneration.

74. The audit also discovered that the First Respondent had caused a bill in the name of the firm to be debited to the ledger of one such client although he did not at any time actually deliver the bill (he only delivered and was paid his private bills). This had the effect of rendering the firm's financial records inaccurate, and disguised or

obscured the fact he was conducting private work. The First Respondent did not carry professional indemnity insurance for his private work.

75. The First Respondent claimed and obtained from the firm reimbursement of expenses which he had also claimed from individuals and/or organisations for whom he was conducting private work. The effect of this was that he was reimbursed twice.

76. On 1 October 2004 the First Respondent confirmed in writing his agreement to the terms of the Members' Agreement of Fulbright and Jaworski International LLP. The material provisions were as follows:

> **Clause 4.2.** The Managing Partner is responsible for deciding whether any Partner "may undertake to provide consulting services or any other type of services, whether or not compensation is expected, for any organisation, public or private, profit or non-profit";
>
> **Clause 9.2.1.** Each partner covenants to devote his full time and attention to the firm's business "except to the extent that the Managing Partner has in his absolute discretion approved a specific proposal to the contrary by each Partner";
>
> **Clause 9.2.2.** Each partner covenants not without the consent in writing of the Managing Partner to be concerned, interested or involved in any capacity in any business or undertaking save for that of the firm "provided that the Managing Partner may determine otherwise and may, as a condition of giving his consent, require that all benefit to be derived by a Partner from such concern, interest or involvement shall belong to the firm".

77. The First Respondent undertook private work for seven organisations and/or individuals. He rendered and was paid private invoices submitted from his home. The bills totalled £89,783.

78. The First Respondent also had a consultancy agreement with FI which commenced on 1 July 1999, which was not disclosed to the firm, nor was the remuneration. An expenses claim for a meeting with BD of FI was made notwithstanding the undisclosed consultancy agreement. The consultancy agreement was found on the firm's IT system. It was not at any time disclosed by the First Respondent to Mr Vogel or Ms Cannon or the firm. Various communications with FI from 19 December 2001 to 14 November 2006 were also found on the IT system. In the calendar year 2005 the Respondent charged for 36 days.

79. The existence and extent of the private and undisclosed legal and consultancy work undertaken by the First Respondent emerged incrementally following the instigation of the firm's internal auditor's investigation in February 2008.

80. On 21 February 2008 the First Respondent met with Fox Williams who were instructed to act on behalf of the firm. In advance of the meeting the firm had obtained documentary evidence that the First Respondent had delivered three invoices in a personal capacity to Dr JR and Dr E and had retained the fees paid to him. The First Respondent admitted this at the meeting, and stated to Fox Williams that it had been a "misjudgement" on his part.

81. The First Respondent also stated that a bill recorded in the firm's books of account as delivered but unpaid had not in fact been delivered by him. In this respect the ledger and financial records were misleading. The First Respondent's private and undisclosed bills were delivered and paid.

82. The First Respondent was informed that the audit was continuing and the meeting was the First Respondent's opportunity to disclose any further irregularities to the firm. The First Respondent replied to Fox Williams' letter on 4 March 2008 and asserted that the firm's investigation was not being conducted in good faith but was intended instead to bring about his departure. In his letter the First Respondent confirmed his acceptance "that this matter [private work and billing] should have been handled differently". He attributed his "misjudgement" to stress and pressure, and that he had intended to reflect on the situation in relation to Dr JR and Dr E when time permitted. He had not at any time done this, until confronted on 21 February 2008 with the existence of his private bills. He stated that he:-

> "remained in two minds as to whether to render any bills for my own time. As a compromise to which I gave little contemporaneous thought I raised personal bills for the time I had spent, outside the firm's time, at a reduced rate. If the matter had been dealt with formally through the firm it would have been uneconomic for the clients to have my assistance. I did raise a separate and formal bill for the firm, though I did not deliver it to the clients at that time. My intention was to review the matter when I had time, but in the frenzied period before my holiday in January 2008 I failed to carry out that review".

Between March 2005 and November 2007 when the private bills were delivered and paid, the First Respondent did not disclose the receipts or ask for permission to retain them. The money was retained by the First Respondent for his personal gain.

83. In a Memorandum from the First Respondent dated 2 August 2007 to Ms Cannon and the Second Respondent, the First Respondent sought permission to open a file in accordance with the firm's procedure for doing so. He had by that date rendered Dr JR and Dr E private bills totalling £12,562.50 and did not at that stage disclose this. This was not the first occasion on which the First Respondent had sought and obtained permission to act for a new client for whom he had already been conducting private work and where that was not disclosed to the firm. On 15 June 2005 the First Respondent addressed a Memorandum to Mr Vogel seeking permission to act for TA as a new client. That was approved on 29 June but there was no disclosure then or at any time thereafter that the First Respondent had previously acted privately and billed TA. He had by that date billed a total of £15,674 in invoices dated 2 April 2005 (2), 2 May 2005, and 2 June 2005 (2). In relation to Dr JR and Dr E, on 5 October 2007 and 29 November 2007 the First Respondent went on to deliver further bills to them totalling £15,600.

84. The bills known to the firm as at 12 March 2008 were dated 17 March 2005, 16 March 2007, 26 March 2007, 18 July 2007 (2), 5 October 2007, and 29 November 2007 (2), although when the First Respondent replied on 4 March 2008 the firm knew only of three of them. The First Respondent did not on 4 March disclose the other Dr JR or Dr E invoices, or those relating to other clients for whom he also undertook

private work. All the bills bore his home address and one quoted his work email address.

85. On 14 May 2008 the First Respondent's solicitor wrote to Fox Williams, giving explanations. The letter stated the firm did not undertake or have any interest in the type of work the First Respondent had undertaken privately. However, the narratives set out in the invoices described the provision of legal services. The First Respondent sought to draw a distinction between the provision of legal services and those of a mediator. The services to two private clients were provided during normal business hours on 1 February 2007. Further, the First Respondent charged expenses in connection with mediation and one private client to the firm. The firm undertook and was interested in undertaking the type of work carried out by the First Respondent. Furthermore, he undertook such work at the firm, using staff and other resources.

86. On 31 October 2006 the First Respondent purchased a book titled "Mediators on Mediation" at a cost of £95.00 which he claimed from the firm on an expenses form dated 31 October 2006. The form was approved by the Second Respondent on 16 November 2006. The First Respondent had asserted that the firm was not interested in mediation but still claimed for this textbook.

87. The First Respondent made two claims for expenses in connection with mediation services. The first was for £68.65 on 16 December 2004 when he entertained KD and the second was for £57.60 on 9 January 2005 when he met with PB of LC in relation to the "possibility of RG Simkin becoming a mediator". Those two items were charged to the firm and the First Respondent did indeed undertake mediation services for LC, but billed the work privately. The income derived from the provision by the First Respondent of private services during the year ended 5 April 2007 was £58,785, none of which was disclosed to the firm.

88. By letter dated 9 June 2008 to the SRA the First Respondent's solicitor accepted that the First Respondent had provided legal services to Dr JR and Dr E, that he had raised private bills to them and that as a consequence the circumstances had created the requirement for professional indemnity insurance.

89. The financial implications for the firm were that work had been carried out on the firm's time and the value of work recorded on the time recording system was £21,201.50. A bill in the sum of £7,061.75 was raised, but the First Respondent accepted that it was never delivered to the clients. His own undisclosed bills in the sum of £24,700 were raised, delivered and paid.

90. In a memorandum dated 21 May 2007 from the First Respondent to the Executive Committee of the firm, he stated that he would be attending and speaking in Tokyo at a dinner and seminar of a Trade Association to celebrate the success of TA between 28 and 29 May 2007. He provided details of his involvement with the Association and his anticipated expenses in the total sum of £2,560. In an agreement found by the Firm on its IT system, it was clear the First Respondent had a longstanding professional association with TA but he did not take the opportunity to disclose his private work for and billing of TA. The Firm was nonetheless asked to pay his expenses. This memorandum was followed up on 6 August 2007 when the First Respondent stated "When travelling to Tokyo in May to a seminar organised by the

[S] Corporation I paid the difference myself between premium economy and business class". This was untrue as a travel itinerary of which a visit to Tokyo was part, was in fact undertaken with the Second Respondent between 24 and 30 May 2007 as a private holiday. It had been booked by the Second Respondent on 13 April 2007 and according to the itinerary, the First Respondent was due to arrive in Tokyo on 27 May and leave on 29th May. The Second Respondent had claimed and approved the entire cost of the journey in the sum of £10,710 as a business expense undertaken by MK and CC (which it was not). The First Respondent never in fact spoke at the Trade Association and admitted so to Fox Williams. In his solicitor's letter of 25 July 2008 the First Respondent explained that the August memorandum confused two Tokyo trips and was thus an error.

Allegations 5(a) and (b)

91. The Second Respondent communicated by email with DialAFlight. On 13 April 2007 she booked a flight and accommodation to Tokyo and received a booking confirmation form dated 26 April 2007. The trip to Tokyo with accommodation cost £10,710 and was a wholly private trip for both Respondents.

92. On 18 April 2007 the Second Respondent asked DialAFlight to send her an invoice detailing flight itineraries for MK and CC, Members of the Firm. Neither of these individuals took the trip to Hong Kong, and one of them was in Kazakhstan at the time. By an email dated 1 May 2007 DialAFlight sent the Second Respondent a quotation for the itineraries of the two named individuals which was identical to hers and the First Respondent's. The quotation was headed "Travel Quotation Prepared for Miss Zakia Sharif".

93. A Cheque Requisition/Expense Reimbursement form dated 14 May 2007 was signed as approved by the Second Respondent, and attached to it was the quotation of 1 May 2007 with the words "Travel Quotation Prepared for Miss Zakia Sharif" removed. The signed reimbursement form appeared to claim for business travel and accommodation by MK and CC. The Cheque Requisition/Expense Reimbursement form carried the words "Air fares and hotel bookings: [MK] and [CC]". Two cheques dated 9 May 2007 for £5,000 and £5,710 were signed by the Second Respondent and made payable to DialAFlight. The Second Respondent had authority to sign office account cheques up to £10,000 and could not send one cheque in settlement.

94. In a letter dated 25 February 2008 to Fox Williams the Second Respondent stated in relation to the DialAFlight allegation, that:

> "This was clearly wrong and a huge error of judgement on my part and done at a time when I was under a lot of stress. I shall repay the full amount."

By her solicitor's letter of 18 March 2008 the Second Respondent's solicitors stated that:

> "As to the £10,000 odd of expenditure on a Hong Kong trip, our client deeply regrets her actions in relation to the claim for expenses in respect of her trip with Graham Simkin in May 2007. This was a gross error of judgment and our client will repay the same in full subject to what is said below".

Allegation 5(c) (d) and (e)

95. Payments totalling £33,000 were made to Mr and Mrs RS on 28 February, 21 November and 27 December 2007 for invoices dated 24 February 2007, 16 November 2007, 14 and 18 December 2007 in relation to recruitment services. . None were genuine invoices submitted by the RS's to the firm. A number of invoices were false in that they were not created by the RSs and delivered to the firm but were created by the Second Respondent on her work computer. This resulted in money going to Mr RS and to the Second Respondent. A Memorandum dated 2 May 2008 from JC to Ms Cannon related to the production of a 10 page word document comprising 10 separate one-page invoices bearing the address "FAO Zakia Sharif, Fulbright and Jaworski International LLP" which had been created, accessed and modified by the Second Respondent on her personal computer. The Memorandum confirmed that apart from one person who retrieved the document, the Second Respondent was the only user who had contact with that document.

96. Payments were made to the Second Respondent's bank account on 19 March, 30 March and 31 May 2007 totalling £63,425.00 in relation to further RS invoices. Of this sum, £59,425 was authorised by Cheque Requisition/Expense Reimbursement forms purporting to have been signed by Mr Vogel as the firm's managing partner. The invoices were paid on 19 and 29 March 2007. Mr Vogel did not sign the forms and the Second Respondent admitted in a letter from her solicitors dated 18 March 2008 that she had "represented Steve Vogel's signature on invoices on 19th and 29th March 2007 in the sum of £59,425 and now accepts this may not be construed as appropriate conduct..."

97. A number of invoices dated from 5 September 2005 to 13 January 2007 described the vendor of the services as AS (Mr RS's wife). The invoices were marked with the words "I was asked by Zakia to pay these urgently as the invoices had been with S. F. Vogel for some time awaiting authorisation". The "I" was the Firm's legal cashier who was asked by the Second Respondent to pay them quickly because, she represented to him, and she had discharged these invoices with her own funds and was thus claiming reimbursement. The Second Respondent did not produce any evidence to show that she made such payments to Mr RS or anyone else and her explanation was that she had paid to herself for Mr RS money apparently due to Mrs AS (his wife). The firm's money in the sum of £59,425 was paid to her by the creation of false invoices, the forgery of Mr Vogel's signature on the authorisation forms, and the presentation of them to the cashier for payment.

98. In her letter of 25 February 2008 to Fox Williams the Second Respondent stated "I should not have shown the approval nor made the payment in the manner I did and I truly regret that." In her letter of 18 March 2008 the Second Respondent through her solicitors also admitted that the Firm's money drawn to pay the RS's invoices was paid into her personal bank account. She asserted this happened because she was asked by Mr RS not to pay all the money into his account because of his separation from his wife and a pending divorce. She further stated that she considered the payment to Mr RS to be "a fair market rate consistent with what recruitment agencies would charge".

99. In that letter the Second Respondent's solicitors accepted that if viewed without explanation the payments to her personal bank account would "appear to be unusual business practice". The explanation offered was that the payments were held by her for the benefit of Mr RS against legitimate invoices rendered by him in respect of legitimate recruitment services provided to the Firm. At that stage in the exchange of correspondence, neither the Second Respondent nor her solicitors had in their possession the Memorandum dated 2 May 2008 detailing the history of the RS invoices as a Word document created, accessed and amended on the Second Respondent's personal work computer over several months in 2007 and 2008. No explanation was offered by the Second Respondent to deal with this Memorandum.

Allegation 5(f)

100. Communications between the Second Respondent and Mr RS consisted of short emails disclosing personal information about members of the partnership and potential recruits. None was consistent with the provision of professional recruitment services. They describe various individuals. One candidate was apparently "half mental", and another "Outspoken. Manipulative." In emails to Mr RS dated 8 May and 12 September 2007 the Second Respondent described Ms Cannon, the Firm's Head of the London office as a "witch". The Second Respondent admitted disclosing the information but asserted it was within her remit to do so.

Allegation 5(g)

101. Fox Williams put to the Second Respondent in their letter of 21 February 2008 that she had paid £2,000 of the Firm's money to Mr RS, a personal friend of hers. In her letter of 25 February 2008 the Second Respondent admitted that she had paid the said sum to Mr RS. By her email dated 20 November 2007 the Second Respondent stated to Mr RS that she paid to him £2,000 that day from her "Fulbright account" and he acknowledged it on the following day. The money was stated in the email to be "£1,000 loan to you, £1,000 I need you to buy xmas presents (duty free) gifts for me". Mr RS replied on 21 November 2007 as follows: "Thx for transferring funds. Do let me know whatever u need from here".

102. On 27 December 2007, the sum of £20,000 was paid into Mr RS's bank account from the firm's office account. On a cheque stub numbered 100108 which was dated 30 December 2007 made payable to the Second Respondent the reverse contained the words "By mistake got the funds from F & Jworski". Mr RS's bank statement showed the receipt of £20,000 from "F&J Office" on 27 December 2007 and a payment out by cheque number 100108 on 3 January 2008 of the same amount. Accordingly Mr RS paid the Second Respondent the sum of £20,000 which had been paid to him from the firm's office account.

Witnesses

103. No witnesses gave evidence.

Findings of Fact and Law

104. The Tribunal had considered carefully all the documents provided and the

submissions of the Applicant. The Tribunal considered each allegation using the higher criminal standard of proof which required allegations to be proved beyond reasonable doubt.

105. **Allegation 1. The First Respondent practised as a solicitor without professional indemnity insurance.**

105.1 The First Respondent in his written submissions dated 29 June 2011 admitted this allegation and the Tribunal found it proved.

106. **Allegation 2. The First Respondent made false claims for reimbursement of expenses, in breach of Rule 1(a) of the Solicitors Practice Rules 1990 and Rule 1.02 of the Solicitors Code of Conduct 2007. It was alleged that the First Respondent had been dishonest.**

106.1 In his written submissions dated 29 June 2011, the First Respondent accepted that within this allegation there were claims for expenses that he should not have made. The Tribunal noted the First Respondent had submitted claims for business trips to New York and Boston which included expenses for the Second Respondent and his wife who had accompanied him without the knowledge or approval of the firm. He had also claimed for a trip to America with the Second Respondent which included a personal trip to Mexico by them both. Furthermore, the First Respondent had made a number of claims for meals, other events, hotel expenses and entertainment where the persons named on the claim forms as attending had not attended. The First Respondent had also made claims from the firm for his personal private expenses related to private clients.

106.2 The First Respondent had claimed for the cost of a haircut in the sum of £17.75 which was described as arising from an attendance at the RAC club with PH and BD, who were clients he had worked for privately. The First Respondent's explanation in his solicitor's letter of 25 July 2008 was that this "was a pure mistake" and that the First Respondent must have given this to his secretary in error and did not check the details of the form when they were returned to him for signature.

106.3 In his solicitor's letter of 25 July 2008, the First Respondent claimed that the Second Respondent had been authorised by the firm to travel to America on various trips for business purposes. However this was contradicted by the various reports made to the SRA by Ms Cannon who succeeded Mr Vogel as the Managing Partner of the practice. The First Respondent had chosen not to challenge her reports having not attended before the Tribunal. It was accepted that the trip to America in April 2006 included a holiday to Cape Cod, by both Respondents, but it was claimed that there had been no cost to the firm as the First Respondent had secured a "two for one" or similar air fare. However the Tribunal had not been provided with any evidence of this and if true the firm had not approved the arrangement or even been aware.

106.4 In the same letter, the First Respondent's solicitor stated that the Hampton Court Music Festival consisted of two concerts booked in June 2005 and the expenses were legitimately incurred, guests had dropped out and due to a lack of further replacements nobody attended the second concert. It was accepted that some expenses claimed were false and it was submitted that the First Respondent had acted

in an uncharacteristic way due to his ill health, anxiety and severe depression. However the Tribunal had not been provided with any up to date independent medical report dealing with this issue. The only report before the Tribunal was from Dr Wilkins (a Consultant Psychiatrist) dated 30 June 2008.

106.5 The Tribunal was mindful that the firm operated a nepotism policy and that the First Respondent at the material time had been the firm's Risk and Compliance Partner and Money Laundering Reporting Officer. Furthermore, he was married to the Second Respondent who had authorised many of his expenses. Neither Respondent had disclosed their relationship to the firm. The First Respondent had accepted there were some claims that he should not have made. It was clear to the Tribunal that the First Respondent had submitted claims for items which were not genuine as persons claimed to have attended those events clearly did not do so. This was compounded by the fact that the Second Respondent, his wife, had attended a number of those events claimed. Accordingly the Tribunal was satisfied that this allegation was proved.

106.6 In relation to the question of dishonesty, the Tribunal considered the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In that case Lord Hutton stated:

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

The Tribunal was satisfied that the first part of that test was satisfied in that the First Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people in that he had submitted expenses claims that he himself accepted he should not have made. In relation to the subjective part of the test, the Tribunal was satisfied that by claiming for meals, hotel expenses, events and business entertainment that the First Respondent had purportedly undertaken with clients who, it transpired had not attended, and meals that he claimed were attended by clients but were in fact attended by his wife and daughter, the First Respondent must himself have realised that by those standards his conduct was dishonest.

106.7 There were also trips to America on which the First Respondent had been accompanied by the Second Respondent, who was not on official business. In claiming for the full costs of those trips, including the cost of the Second Respondent's attendance, the First Respondent must have realised that that was not legitimate expenditure to be claimed from the firm. These expenses were also authorised by the Second Respondent who was his wife. The Tribunal was satisfied that in these circumstances the Respondent's conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people. The First Respondent knew his wife was not on official business and therefore must have known that by claiming for her expenses, in circumstances where she was in a position to authorise those expenses was dishonest by those standards. The Tribunal found the First Respondent had acted dishonestly in relation to this allegation.

107. **Allegation 3. The First Respondent received fees and other remuneration for work undertaken for individuals and organisations which he did not disclose to**

his firm, in breach of Rule 1(a) of the Solicitors Practice Rules 1990 and Rule 1.02 of the Solicitors Code of Conduct 2007. It was alleged that the First Respondent had been dishonest.

107.1 The First Respondent did not accept allegation 3 in his written submissions dated 29 June 2011 and alleged this was a partnership issue. Rule 1(a) of the Solicitors Practice Rules 1990 stated:-

> "A solicitor shall not do anything in the course of practising as a solicitor, or permit another person to do anything on his or her behalf, which compromises or impairs or is likely to compromise or impair any of the following:-
>
> (a) the solicitors independence or integrity"

Rule 1.02 of the Solicitors Code of Conduct 2007 stated:

> "You must act with integrity"

107.2 The Members Agreement between the First Respondent and the firm stated at paragraph 9.2:-

> "Each partner covenants with the UK LLP that he shall:
>
> 9.2.1 Except to the extent that the Managing Partner has in his absolute discretion approved a specific proposal to the contrary by such Partner, devote his or her full time and attention to the UK LLP business.
>
> 9.2.2 Not without the consent in writing of the Managing Partner be concerned, interested or involved in any capacity in any business or undertaking save for that of the UK LLP or of the US LLP and, if such consent is given, a Partner's individual involvement in any other business or undertaking shall be solely in an individual capacity and shall not constitute an activity of the UK LLP or of an individual Partner in his capacity as member of the UK LLP provided that the Managing Partner may determine otherwise and may, as a condition of giving his consent, require that all benefit to be derived by a Partner from such concern, interest or involvement shall belong to the UK LLP.
>
> 9.2.3 Give to the Managing Partner, whenever required, a true account of all business transactions arising out of or connected with the business of the UK LLP..."

107.3 The First Respondent's legal representative had written to the Solicitors Regulation Authority ("SRA") on 9 June 2008 and in that letter it had been accepted the First Respondent had raised bills privately to Dr JR and Dr E. In a letter dated 14 May 2008 to Fox Williams LLP, the First Respondent's legal representative had submitted this had been "an error of judgment." It was further submitted that the bills sent to LC and TAKK were not for legal services. LC had been billed for the First Respondent's services as a mediator as it was alleged mediation was not a category of work which

the firm was interested in undertaking. It was submitted that the work for TAKK was undertaken by the First Respondent as a director/consultant and not in the role of a lawyer.

107.4 The Tribunal noted the First Respondent had submitted an expenses claim for reimbursement for a book on mediation. The Tribunal also noted from the report of Ms Cannon dated 8 December 2009 that the firm was not averse to conducting mediation work, and indeed the First Respondent had conducted a previous mediation on the instructions of LC in his capacity as a member of the firm in May 2005. He had then subsequently conducted a further mediation in the same matter in February 2007, used the firm's offices for the mediation, conducted correspondence by email signing himself "Graham Simkin Partner, Solicitor, Fulbright and Jaworski International LLP" but yet had rendered fee notes in his own name.

107.5 The Tribunal found that by receiving fees and remuneration for work privately which the First Respondent did not disclose to his firm, he had indeed acted in breach of Rule 1(a) of the Solicitors Practice Rules 1990 and Rule 1.02 of the Solicitors Code of Conduct 2007. By entering into an agreement with the firm, other members were entitled to expect the First Respondent to comply with the terms of that Members Agreement and failure to do so showed a lack of integrity. This was particularly pertinent in cases where some work had already been carried out by the First Respondent in his capacity as a member of the firm, and then subsequently further work for the same clients was billed privately.

107.6 On the question of dishonesty the Tribunal considered the test set out in the case of Twinsectra Ltd v Yardley and Others and was satisfied that a reasonable and honest member of the public would regard receiving fees and other remuneration for work undertaken for individuals and organisations, which were not disclosed to the firm, as dishonest, particularly in circumstances where bills for the firm had been prepared by the First Respondent for those same clients but not delivered to those same individuals and organisations. The First Respondent himself accepted that he should not have sent bills to Dr JR and Dr E which contained his home address. The Tribunal was satisfied that the First Respondent himself must have known that by the standards of reasonable and honest members of the public sending separate bills to clients using his home address and not disclosing these to his firm was dishonest behaviour towards his partners. Accordingly the Tribunal found that the First Respondent had acted dishonestly in relation to allegation 3.

108. **Allegation 4. The First Respondent misled Stephen Vogel by wrongly stating to him firstly that the Second Respondent, Zakia Naseem Sharif was a solicitor when she was not, and secondly by overstating her salary in each case in breach of Rule 1(a) of the Solicitors Practice Rules 1990. It was alleged that the First Respondent had been dishonest.**

108.1 The Applicant had referred the Tribunal to a witness statement from Stephen Vogel dated 5 March 2010 which stated:-

> "Graham Simkin told me that she was a Solicitor, having undertaken her training contract with W, F and W."

The statement also stated:-

> "...Graham Simkin had told me that her salary at RB was £85,000 p.a."

108.2 The First Respondent denied this allegation and stated he did not ever recall talking to Mr Vogel about the Second Respondent being a solicitor and that he did not overstate her salary. He submitted the Second Respondent's title was Director of Administration and this did not require her to be qualified. He also stated this could have been checked and Mr Vogel knew the Second Respondent was not a solicitor. He further stated the Second Respondent's salary was set by Ms Cannon and Mr Vogel and that he had not been involved in the decision.

108.3 The Tribunal had considered the Second Respondent's CVs and noted that these did not make any reference to the Second Respondent being a solicitor. Accordingly, the Tribunal was not satisfied to the requisite standard that this allegation was proved in that Mr Vogel's recollection was not supported by copies of the Second Respondent's CVs. Furthermore, as the Tribunal was no sure that Mr Vogel's recollection concerning the First Respondent advising him that the Second Respondent was a solicitor was accurate, the Tribunal could not be sure that Mr Vogel's recollection on being informed by the First Respondent of the amount of the Second Respondent's previous salary was accurate as well. Accordingly, the Tribunal found this allegation was not proved to the requisite standard.

109. **Allegation 5. The Second Respondent whilst employed or remunerated by solicitors Fulbright and Jaworski International LLP ("the firm") occasioned or had been a party to acts or defaults the particulars of which were:**

(a) In April 2007 she made a booking with DialAFlight for a journey to Tokyo undertaken in May 2007 with the First Respondent (with whom she was then conducting a relationship and who she married on 23 June 2007). The air fare and hotel bill were together £10,710. This sum was charged to the firm by the Second Respondent as a business expense when she knew it was not. It was alleged that the Second Respondent had been dishonest;

(b) The Second Respondent charged the expenditure described in (a) above to her firm by firstly requesting a quotation from DialAFlight for two other members of the firm to undertake the same journey at the same time and on the same flights as she had already booked for herself and the First Respondent. Following its receipt from the travel agent she altered the wording on it so that instead of appearing to be a quotation, it resembled a bill describing business travel and accommodation expenses incurred by the two members of the firm. She then substituted it for her and the First Respondent's bill and attached it to an Expense Reimbursement form which she herself countersigned to authorise the expenditure by the firm. The authorisation form described the expenses it was authorising as "Air fares and hotel bookings: [MK and CCD]". Neither member undertook any such journey or incurred any such expenses. It was alleged the Second Respondent had been dishonest.

109.1 The Tribunal's attention had been drawn to a number of documents in relation to the booking with DialAFlight for a journey to Tokyo in May 2007. In particular, the

Tribunal had been provided with two copies of a travel quotation from DialAFlight.com dated 1 May 2007. The first quotation was headed "Travel Quotation Prepared for Miss Zakia Sharif" and gave details of flights and accommodation for Mr MK and Mr CC who were members of the firm. The second version of that quotation was identical save that the words "Travel Quotation Prepared for Miss Zakia Sharif" had been removed. In a letter dated 25 February 2008 from the Second Respondent to Fox Williams the Second Respondent stated in relation to this particular transaction "This was clearly wrong and a huge error of judgement on my part and done at a time when I was under a lot of stress. I shall repay the full amount."

109.2 In a Formal Response attached to a letter dated 11 June 2008 from the Second Respondent to the SRA investigation, the Second Respondent stated at paragraph 9.1:-

> "ZS accepts that as head of administration she had a responsibility in respect of her financial dealings with the firm and that she authorised electronic payment from F&J's account in respect of an invoice for £10,000 odd for the said air fare. She accepted this straightaway by her solicitor's letter dated 18 March 2008 drafted on her instructions in response to F&J's letters dated 21 February 2008 and 26 February 2008. In that letter, on her instructions, her solicitors described it as a gross error of judgment. ZS offered to repay the same in full. However, she also stated that she was doing no more and no less than was the norm in this firm."

Given the Second Respondent's admission and based on the documents provided, the Tribunal was satisfied this allegation was proved. The Second Respondent had authorised expenditure by the firm for expenses described as incurred by MK and CCD when clearly those expenses had been incurred by the First and Second Respondents.

109.3 In relation to the question of dishonesty the Tribunal considered the test set down in Twinsectra Ltd v Yardley and Others. The Tribunal was satisfied that by the ordinary standards of reasonable and honest people claiming for expenses and deliberately describing them as incurred by someone else when they were not, would be regarded as dishonest. The Tribunal was also satisfied that in removing the heading on the quotation "Travel Quotation Prepared for Miss Zakia Sharif", the Second Respondent had deliberately disguised the purpose behind the quotation and therefore herself must have realised that by those standards her conduct was dishonest. The Tribunal was satisfied the Second Respondent had been dishonest.

Allegation 5

109.4 **(c) The Second Respondent created false invoices on the firm's information technology system purporting to be addressed to the firm by RS and AS Recruitment Services for the provision by them of recruitment services, when no such invoices were in fact submitted and no legitimate recruitment services provided to the firm, which it did not in any event authorise. It was alleged the Second Respondent had been dishonest.**

(d) The Second Respondent forged the signature of Stephen Vogel (the former Managing Partner of the firm's London office) on Cheque Requisition/ Expense Reimbursement forms in order to obtain payment of the invoices referred to in (c) above in the sum of £59,425. It was alleged the Second Respondent had been dishonest.

(e) The Second Respondent paid monies purporting to be due to RS and AS Recruitment Services pursuant to such false invoices into her personal account, and in so doing misappropriated the firm's money. She paid other sums to Mr RS, who was a personal friend, thereby misappropriating the firm's money. Mr RS subsequently paid the Respondent some of the money. It was alleged the Second Respondent had been dishonest.

109.5 These three allegations related to payments that had been made to Mr RKS and AS Recruitment Services. Mr Vogel in his witness statement dated 5 March 2010 had stated:-

> "...I was not aware of any outside specialist employment consultants being instructed or paid to vet any personnel, either at the partner or the employee level. I never had a conversation with Zakia Sharif about the use of any outside consultants for this purpose and Zakia never proposed the use of outside consultants to vet potential hires."

Mr Vogel went on to say:-

> "I never authorised Zakia to engage a Mr or a Mrs [RS] for any purpose. Zakia never proposed that they be so engaged. She never mentioned their names to me. She would have been required to seek my authorisation to engage a consultant to vet candidates for employment. The first time I heard of the [RSs] was in February 2008 when I was presented with four payment authorisations which bear what appears to be a photocopy of my signature...I can say with certainty that I never saw any of the payment authorisations or the invoices until copies were emailed to me at the request of the firm's chairman, [SP] in February 2008. The signatures applied to the authorisation forms appear to be photocopies of my signature. I did not sign any of those authorisations nor did I ever authorise any payment to Mr or Mrs [RS]. I told [SP] when the purported authorisations were first presented to me that the signatures were forgeries"

109.6 The Second Respondent in the Formal Response attached to her letter of 11 June 2008 to the SRA stated she: "....was charged with recruitment and was entitled to employ reasonable methods in ensuring successful recruitment. The use of Numerology was in the circumstances perfectly reasonable."

109.7 In a letter dated 18 March 2008 sent by the Second Respondent's solicitors to Fox Williams, they stated in relation to these allegations:-

> "Whilst our client accepts that she represented Steve Vogel's signature on invoices on 19th and 29th March 2007 in the sum of £59,425 and now accepts

> this may not be construed as appropriate conduct, our client had authority, in the normal course of business, to incur and authorise payment of recruitment consultancy fees. Indeed, our client was authorised to sign off payments and consistently did so during her tenure with your client."

The letter went on to state:

> "Whilst it is accepted that monies paid under various ["RS"] invoices were on 19th and 30th March 2007 and 31st May 2007, paid into our client's personal bank account and that this arrangement may, if viewed without explanation, appear to be an unusual business practice, the payment is held by our client for the benefit of Mr [RS] and the payment made against legitimate invoices rendered by Mr [RS] in respect of legitimate recruitment services provided to FJI. Our client holds this money for Mr [RS] on specific request from him due to personal circumstances..."

109.8 The Second Respondent in her letter dated 25 February 2008 to Fox Williams stated:

> "I should not have shown the approval nor made the payment in the manner I did and I truly regret that".

In the Formal Response attached to her letter of 11 June 2008 the Second Respondent stated "ZS accepts in [BC's] letter to F&J of 18 March 2008 [appendix 1], that the said monies were paid into her personal bank account. Of course she accepts that this is not best practice, but the payment is held by ZS for the benefit of Mr [RS]". In relation to the invoices she stated "the invoices are not false invoices".

109.9 The Tribunal's attention had also been drawn to a memorandum from JC to Ms Cannon dated 2 May 2008 which gave a history in relation to the production of the Word document relating to the invoices for Mr and Mrs RS. The memorandum confirmed that a document had been created on the Second Respondent's computer, which was a ten page Word document that appeared to be ten separate one page invoices addressed for the Second Respondent's attention. That document had been accessed and modified on various dates throughout 2007 and early 2008. The memorandum confirmed that the Second Respondent was the only user account who had contact with that document, apart from another staff member who had retrieved the document as part of the review process in February 2008.

109.10 The Tribunal was provided with copies of the bank statements of Mr RS which confirmed £20,000 was paid into his account from the firm's office account on 27 December 2007, and then on 3 January 2008 a payment out was made of £20,000 to the Second Respondent by Mr RS from the same bank account. In a letter dated 18 August 2008 from Mr RS's solicitors to Fox Williams it was stated:-

> "Ms Sharif is lying, if she is saying, that £20,000 is in consideration of any services rendered, we note that she cleverly tried to use our client's family and personal circumstances. He was not at all aware about any invoices with regard to this £20,000."

109.11 The Second Respondent in a letter dated 25 February 2008 to Fox Williams had stated:-

> "[RS] told me the entity he wanted me to pay. The invoices I paid to my bank account arose when he asked me not to pay all of the monies into his account owing to his separation from his wife [A] and a pending divorce".

However, Mr RS's solicitors in their letter of 18 August 2008 stated:-

> "...our client has no knowledge regarding the payment made of £63,425 as he has not received payment or in kind. Our client had not issued any invoice and had not received any payment with regard to the above mentioned amount. He is not aware of any such transaction as he had no knowledge of such invoices. Our client did not ask Ms Sharif to put any money in her account in an attempt to conceal his financial position in divorce proceedings."

109.12 The Tribunal was satisfied that all three of these allegations were proved. In relation to allegation (c), the Second Respondent had not addressed the issue of the invoices being found on her computer and that they appeared to have been created, accessed and amended by her a number of times over a lengthy period of time. In relation to allegation (d) the Second Respondent had admitted she had represented Mr Vogel's signature on two invoices dated 19 and 20 March 2007. Mr Vogel confirmed he had not authorised or signed those payments. Lastly on allegation (e) the Second Respondent had accepted monies due to RS had been paid into her personal bank account although alleged this was with Mr RS's consent. This was denied by Mr RS who said he had no knowledge of this. The Tribunal rejected the Second Respondent's version as set out in her written responses and found all 3 allegations proved.

109.13 The Tribunal considered the question of dishonesty and the test in Twinsectra v Yardley. The Tribunal was satisfied that in respect of each allegation the Second Respondent had been dishonest. The Tribunal was satisfied that by creating false invoices on the firm's computer and forging the signature of Mr Vogel on the Cheque Requisition/Expense Reimbursement forms, and by paying monies purporting to be due to third parties pursuant to such false invoices into her personal account would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal further considered that in creating those false invoices, forging the signature of Mr Vogel and arranging for monies to be paid into her personal account pursuant to such false invoices the Second Respondent was receiving monies that she knew did not belong to her and had engaged in deliberate and planned conduct. As such she must have realised that by those standards her conduct was dishonest.

Allegation 5

109.14 **(f) The Second Respondent improperly and in breach of her duty of confidentiality disclosed information about candidates, employees, partners and client matters to a third party;**

109.15 The Tribunal had been provided with copies of an email dated 13 March 2006 that had passed between the Second Respondent and a third party which gave detailed

personal information about various partners in the practice. The Tribunal was also provided with copies of a number of emails dated between 8 May 2007 and 27 October 2007 from the Second Respondent to Mr RS which disclosed personal information about potential staff candidates. The Second Respondent in her formal response to the SRA investigation had stated it was necessary for her to disclose such information to Mr RS and that she was explicitly authorised to do so as a result of her position within the company. Mr Vogel in his witness statement of 5 March 2010 confirmed no such authorisation had been given.

109.16 The Tribunal having considered the content of the various emails was satisfied that those emails did not contain information that appeared to be evidence of legitimate recruitment services. The information disclosed was of such a nature that it was in breach of the Second Respondent's duty of confidentiality to send information of that nature to a third party. The Tribunal found this allegation proved.

Allegation 5

109.17 **(g) The Second Respondent paid £2,000 of the firm's money to Mr RS when she had no authority to do so. The money was paid to him, in part, for the purchase by him of duty free items for her whilst he was abroad.**

109.18 The Tribunal's attention had been drawn to an email dated 20 November 2007 from the Second Respondent to Mr RS which stated:-

> "...apparently there was problem putting electronic payment to you so paid from my Fulbright account today: £2,000 – they will deduct from my salary. £1,000 loan to you, £1,000 I need you to buy xmas presents (duty free) gifts for me."

109.19 The Tribunal had also been provided with a copy of Mr RS's bank statement which showed a credit made to his account in the sum of £2,000 on 22 November 2007 from the firm's office account. In the Formal Response attached to the Second Respondent's letter dated 11 June 2008 to the SRA, the Second Respondent had stated:-

> "ZS authorised the sum of £2,000 to be paid by F & J to Mr [RS] on account of monies owed to Mr [RS] in respect of recruitment services rendered."

In her letter dated 25 February 2008 to Fox Williams the Second Respondent stated:-

> "The emails concerning a loan to [RS] I received a call from [RS] asking if I could pay some of the money due to him as he needed £1,000... Following his request I tried to send him a wire transfer from my personal bank account but when I received my statement I saw that the transfer had not gone through. I then thought I would make the payment from payroll by a deduction from my salary (paid direct to him). However, I realised that Celegro (Payroll) do not make an out of sequence payment and the next payroll was not until 15 December. I therefore paid an invoice to him for £2,000 from the firm's account."

In the letter dated 18 March 2008 from the Second Respondent's solicitors to Fox Williams, they stated:-

> "Our client authorised the sum of £2,000 to be paid by your client to Mr [RS] on account of monies owed to Mr [RS] in respect of recruitment services rendered."

109.20 However, the Tribunal noted from the letter dated 18 August 2008 to Fox Williams from Mr RS's solicitors they stated:-

> "...our client clarifies that Ms Sharif is lying; our client has never used £1000.00 for buying Christmas gifts for his kids. Our client has purely used that £2000 for making the payment to his lawyer."

109.21 The Tribunal had not been provided with any evidence that the sum of £2,000 had been deducted from the Second Respondent's salary as she had alleged. However, the Tribunal noted Mr RS had responded to the Second Respondent's email of 21 November 2007 on the same day stating:-

> "Thx for transferring funds. Do let me know whatever you need from here"

In the circumstances, the Tribunal was satisfied in view of the contents of the emails on 21 November 2007 that the Second Respondent did not have any authority to pay £2,000 from the firm's office account to Mr [RS]. The Tribunal found this allegation proved.

110. **Allegation 6. In a curriculum vitae presented to the firm the Second Respondent falsely stated that she had graduated from King's College London with a degree in Law (LLB (Hons) 2:1);**

Allegation 7. In the same curriculum vitae the Second Respondent falsely stated she had a Masters Degree in Law;

110.1 The Tribunal had been provided with a copy of the Second Respondent's curriculum vitae and noted from that CV the Respondent had stated she had attended Kings College, London and had obtained a Law Degree (LLB (Hons) 2:1) and a Masters Degree in Law as a result. The Tribunal's attention had also been drawn to a number of emails dated 3 September and 15 September 2008 from Kings College London confirming they were unable to locate any details of any such degrees being taken by the Second Respondent. The Tribunal was satisfied these allegations were both proved.

111. **Allegation 8. In the same curriculum vitae the Second Respondent falsely stated she had undertaken a solicitor's training contract with WF and W Solicitors.**

111.1 The Tribunal having considered the Second Respondent's curriculum vitae provided noted that there was no reference to the Second Respondent undertaking a solicitor's training contract with WF and W Solicitors. The CV simply stated in reference to her employment with that firm:-

> "...whilst waiting for my training contract to start with the firm..."

Accordingly the Tribunal found this allegation was not proved.

112. **Allegation 9. The Second Respondent falsely represented to the firm that her salary from RB Solicitors on leaving was £85,000 whereas it was £56,300. The figure was used to negotiate a higher starting salary from the firm.**

112.1 The Tribunal had been referred to the witness statement of Stephen Vogel dated 5 March 2010. In that statement Mr Vogel had stated:-

> "...Graham Simkin had told me that her salary at [RB] was £85,000 p.a... I have since been shown a copy of Zakia Sharif's P45 from her previous employer, [RB]... this shows her earnings between 6 April and 10 June 2005 to have been £9,382.87 (the equivalent of about £56,300 p.a.)

The Tribunal had not been provided with any evidence that the Second Respondent had made any representation to the firm that her salary from [RB] solicitors on leaving was £85,000. The Tribunal therefore found this allegation was not proved.

113. **Allegation 10. On 4 October 2005 the Second Respondent approved an expenses claim submitted to her by the First Respondent (with whom she was conducting a relationship) claiming as business expenses the sum of £4,229.20 being the cost of flights for them both to New York on 29 August 2005. The Second Respondent did not travel for business purposes.**

113.1 The Tribunal had been provided with a copy of the expenses claim form dated 4 October 2005 in the sum of £4,229.20 together with the attached receipts. This showed the Second Respondent had travelled with the First Respondent to New York. Ms Cannon in her report of 12 March 2008 to the SRA had confirmed there was no legitimate reason for the Second Respondent to have accompanied the First Respondent on this business trip to New York. Furthermore, the expense claim form showed that the payment had been authorised by the Second Respondent. The Tribunal found this allegation proved.

114. **Allegation 11. On 24 November 2005 the Second Respondent approved an expenses claim submitted by the First Respondent claiming the sum of £1,111.27 being the cost of hotel accommodation at the Omni Berkshire Place Hotel, New York for them both. The hotel bill accompanying the claim form had been amended to remove her name as occupant of the room. The Second Respondent did not stay there for business purposes. Her presence in New York was unknown and unauthorised by the firm.**

114.1 The Tribunal had been provided with a copy of the expenses claim form from the First Respondent dated 24 November 2005 in the sum of £1,111.27 together with the attached invoices and receipts. The Tribunal had been provided with two copies of an invoice from Omni Hotels. One copy of the invoice confirmed two guests had stayed at the hotel between 27 October 2005 and 30 October 2005 and had various entries confirming a room charge for Zakia Sharif. However, the second copy of the same

invoice appeared to have been altered so as to remove any reference to the number of guests and particularly to remove any reference to Zakia Sharif from that invoice.

114.2 The report made by Ms Cannon to the SRA dated 12 March 2008 stated the Second Respondent's presence on that trip was unknown and unauthorised by the firm as legitimate business expenditure. The expenses claim had been approved by the Second Respondent. In the circumstances, the Tribunal found this allegation proved.

115. **Allegation 12. On 13 March 2006 the Second Respondent approved an expenses claim submitted by the First Respondent claiming the sum of £6,804.00 said to have been wholly incurred in connection with a business trip to Phoenix, Arizona. The Second Respondent approved the reimbursement by signing off the expenses form and approved the repayment to the First Respondent of additional expenses unknown to the firm of £3,117.09.**

115.1 Ms Cannon in her report to the SRA dated 4 September 2008 had stated the firm had not been provided with an adequate explanation regarding the increase in the booking charge or the apparent duplication of hotel fees in relation to these expenses claims. She stated that only the final page of the amended invoice showing the total charge of £6,804 had been submitted in support of the claim, the first two pages of the invoice having been removed. The expenses claim had been approved by the Second Respondent. The Second Respondent as Director of Administration for the firm should have enquired into and verified the nature of the unknown expenses before approving the claim. Accordingly, the Tribunal found this allegation proved.

116. **Allegation 13. On 7 November 2007 the Second Respondent approved a false expenses claim by signing the form to show approval utilising the Attorney ID of Lista Cannon. An email exchange between the Second Respondent and her husband, the First Respondent, demonstrated the dinner claimed was not a business expense but a private dining function she attended.**

116.1 The Tribunal had been provided with a number of email messages that had passed between the First Respondent and Second Respondent on 6 November 2007 which clearly indicated that the meal was not a business expense but a private dinner they were attending. It appeared from the First Respondent's diary entry that his daughter had also attended that meal. The Tribunal had been provided with a copy of the expenses claim form dated 7 November 2007 which made reference to dinner with AB and TM. The expenses form had been authorised by the Second Respondent and appeared to have been approved by Ms Cannon. However, Ms Cannon in her report to the SRA dated 8 December 2009 confirmed the form had never been presented to her for signature and the signature approving it was not hers.

116.2 The exchange of emails clearly showed that the Respondents had arranged to attend a dinner together on 6 November 2007 which the First Respondent's daughter would also attend. Yet the expenses claim form stated AB and TM had attended when this did not appear to be the case. In the circumstances, the Tribunal was satisfied this allegation was proved.

117. **Allegation 14. On 25 August 2006 the Second Respondent approved a false expenses claim in relation to a dinner she attended said also to include AM, who**

did not in fact attend. The Second Respondent, having herself been present, would have known AM was not at that dinner.

117.1 The Tribunal had been provided with a copy of an expenses claim form dated 25 August 2006 which had been approved by the Second Respondent in the sum of £173.00. Attached to that expenses claim form were two receipts from a restaurant with a handwritten note stating "interview [AM]..." Ms Cannon in her report to the SRA dated 8 December 2009 had stated it was her understanding that AM did not attend the interview with the firm and was not present at the dinner. However, the Tribunal had been provided with no evidence categorically confirming AM had not attended and therefore found this allegation was not proved to the requisite standard.

118. **Allegation 15. On 27 September 2006 the Second Respondent approved an expense claim which was false.**

118.1 The Tribunal had been provided with a copy of an expenses claim form dated 27 September 2006 submitted by the First Respondent in the sum of £3,109.31. The form had been approved by the Second Respondent and related to business travel. Ms Cannon in her report to the SRA dated 8 December 2009 had stated this claim related to a trip abroad for business travel the Respondents had undertaken together but included a personal trip to Mexico that was not authorised. Payment for the trip had been made partly on the First Respondent's credit card and partly on the Second Respondent's credit card. The Tribunal had been provided with two copies of an invoice dated 8 September 2006 from DialAFlight.com. One copy of the invoice showed the payment made by the First Respondent only whereas the second copy of the invoice showed payments had been made by both the First and the Second Respondents. Ms Cannon in her report to the SRA dated 8 December 2009 confirmed the Respondents had wrongly claimed payment from the firm for the entire cost of the trip which, whilst including business travel on behalf of the firm, also included a personal trip to Mexico. The Second Respondent would have known this as she attended the trip and therefore she should not have approved the claim. The Tribunal found this allegation proved.

Previous Disciplinary Matters

119. None.

Mitigation of the First Respondent

120. The Tribunal had not received any specific mitigation from the First Respondent although noted the contents of a medical report from Dr AJ Wilkins (Consultant Psychiatrist) dated 30 June. In that report Dr Wilkins had made reference to the First Respondent suffering from episodes of stress related symptoms over the years although these had not led to any medical intervention, symptoms of panic disorder, generalised anxiety and depression. The First Respondent at that time was being treated with anti-depressants. Dr Wilkins had stated it was likely the First Respondent's mental state influenced some of his decision making in relation to the false claims and the First Respondent's judgment was likely to have been distorted by his depressive symptoms thereby making ill advised judgments more likely.

121. The First Respondent's representative in his letter dated 25 July 2008 to the SRA had made reference to the pressures on the First Respondent in terms of client workload, hours worked, administrative burdens and had stated that these pressures "were ferocious". It was also emphasised that no clients had been affected by any of the claims made.

122. In his written submissions dated 29 June 2011, the First Respondent stated he fully accepted it was open to the Tribunal to strike him off the Roll of Solicitors for the admissions he had made and that he would not oppose that. He stated he was very sorry for his misjudgements and folly.

Mitigation of the Second Respondent

123. There was no mitigation from the Second Respondent however in her letter of 25 February 2008 to Fox Williams, the Second Respondent made reference to being under a lot of stress at the time. In the Formal Response attached to her letter of 11 June 2008 to the SRA the Second Respondent stated she had enjoyed a good career with an unblemished reputation and it was "a matter of deep regret and misfortune". She submitted the imposition of a Section 43 Order, even for a limited period of time, would have serious consequences for her. She would almost certainly lose her present job and would have real difficulty finding new employment in a different industry as her administration skills lay specifically in the legal sector. She submitted a Section 43 Order was unnecessary and inappropriate.

Sanction

124. In relation to the First Respondent, the Tribunal had found a number of extremely serious allegations had been proved, including an allegation of dishonesty. The First Respondent had been placed in a position of trust by his fellow partners and had abused that trust by submitting false claims for reimbursement of expenses, and by undertaking work for individuals and organisations which he did not disclose to the firm. In doing such work he had not ensured he had in place professional indemnity insurance and had thereby exposed clients to risk, which professional indemnity insurance was designed to alleviate. His behaviour had brought the profession into serious disrepute.

125. The Tribunal had given careful consideration to the case of the Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). In that case Coulson J had stated that where the Tribunal had found an allegation of dishonesty proved, only an exceptional case would justify a sentence of anything other than striking off the Roll. The Tribunal was satisfied that the First Respondent's circumstances were not exceptional. Accordingly, the Tribunal Ordered the First Respondent be struck off the Roll of Solicitors.

126. In relation to the Second Respondent, again the Tribunal had found very serious allegations to have been proved against her, including a number of instances of dishonesty. The Second Respondent had clearly abused her position as a Director of Administration with the firm and had taken advantage of the trust placed in her by the partners of the practice. The Tribunal was satisfied that the Second Respondent should not be permitted to work within a legal practice without the prior written

consent of the Authority and that any such employment should be properly regulated and monitored by the Authority. The Tribunal granted the Section 43 Order sought by the Applicant.

Costs

127. The Applicant requested an Order for his costs. He provided the Tribunal with two Schedules. One Schedule of Costs related to the First Respondent and was for the total sum of £25,047.75. The second Schedule related to the costs of the Second Respondent and the costs were a total of £14,803.25. The Applicant confirmed neither Respondent was currently working or had access to any money. He invited the Tribunal to make an unqualified costs order. This would allow the Authority to deal with costs as and when it was appropriate to do so. It may be that the Authority would wait until the criminal trial was concluded. The Applicant submitted that it was simply an issue of the practicality of enforcing an Order for costs that was at issue, rather than the Respondents ability to pay those costs. The First Respondent had confirmed in his email of 6 July 2011 that he was subject to a Restraint Order. The Applicant understood that the Second Respondent's assets were subject to a Freezing Order.

128. The Tribunal had before it an email dated 6 July 2011 from the First Respondent which confirmed he was subject to a Restraint Order and gave details of his weekly allowance. He also indicated that his lawyers were applying for a variation of the Restraint Order to restrict the order thereby releasing some of the First Respondent's assets. He had requested that any Order for costs made against him should not be enforceable whilst the Restraint Order was in place. In relation to the amount of costs, the First Respondent made a number of observations regarding the costs schedule and itemisation of the time claimed, but did not insist on a detailed breakdown as that would incur further costs.

129. The Tribunal considered the costs were high and assessed the costs to be paid by the First Respondent at £22,000 and the costs to be paid by the Second Respondent at £12,000.

130. The Tribunal having considered carefully the costs schedules and the various documents provided noted the First Respondent was subject to a Restraint Order and the Second Respondent appeared to be subject to a Freezing Order. The Tribunal also took into account the judgments given in the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondents' ability to pay any Order for costs, particularly in circumstances where they had been deprived of their livelihood. However the Tribunal was satisfied that these particular Respondents did have the means to pay an Order for costs and the particular feature was that the Respondents' assets were subject to court control. The Tribunal took the view that the Authority would have to adopt a practical approach to this situation and made no order regarding enforceability of the costs order.

Statement of Full Order

131. The Tribunal Ordered that the Respondent, Richard Graham Simkin, solicitor, be

Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,000.00.

132. The Tribunal Ordered that as from 6th day of July 2011 except in accordance with Law Society permission:-

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

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

(iii) no recognised body shall employ or remunerate the said Zakia Naseem Sharif;

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

(v) no recognised body or manager or employee of such a body shall permit the said Zakia Naseem Sharif to be a manager of the body;

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

And the Tribunal further Ordered that the said Zakia Naseem Sharif do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00.

Dated this 12th day of September 2011
On behalf of the Tribunal

J C Chesterton
Chairman