SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10517-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTONIA KYRIACOU First Respondent

and

YOUNUS MOHAMMED Second Respondent

Before:

Mr E. Nally (in the chair)
Mr D. Glass
Mr M.G. Taylor CBE DL

Date of Hearing: 15th and 16th April 2013

Appearances

Patrick Matthew Bosworth, Solicitor Advocate of Russell-Cooke LLP, 8 Bedford Row, London WC1R 4BX for the Applicant

The First Respondent appeared and represented herself

Mrs Melissa Millin, Counsel of Goldsmith Chambers, Goldsmith Building, Temple, London EC4Y 7BL instructed by Rafina Solicitors of 795 Harrow Road, Sudbury Town, Middlesex HA0 2LP for the Second Respondent who appeared

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JUDGMENT

Allegations

The allegations against the First Respondent Antonia Kyriacou and the Second Respondent Younus Mohammed as amended with the consent of the Tribunal were:

In a Rule 5 Statement dated 30 April 2010:

1. The allegations against the First Respondent on behalf of the Solicitors Regulation Authority were that:

1.1 The First Respondent dishonestly misled the Central London County Court by stating in her defence for case number 8CL00693 that Mr SA was an independent contractor when he had been reported to the Solicitors Regulation Authority ("SRA") as an employee and Practice Manager of Antonia Law Partnership, thereby acting in breach of Rules 1.02, 1.06 of the Solicitors Code of Conduct 2007 ("the Code").

1.2 The First Respondent dishonestly misled or attempted to mislead the SRA on 23 December 2008 by stating that Mr SA was not a member of staff of Antonia Law Partnership when he had in fact been reported to the SRA as an employee or Practice Manager of that firm, thereby acting in breach of Rules 1.02 and 1.06 of the Code.

1.3 The First Respondent dishonestly misled or attempted to mislead the SRA on 23 December 2008 by stating that she was unaware of the loan made to her in March 2005 when money was paid into her firm's then office account, thereby acting in breach of Rules 1.02 and 1.06 of the Code.

1.4 The First Respondent acted for Mr C when her own interests conflicted with those of Mr C in relation to the borrowing of money from him and without ensuring that he obtained independent legal advice, thereby acting in breach of Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition) ("the Guide") and Rule 16D(2)(b)(ii) of the Solicitors Practice (Conflict) Amendment Rule 2004.

1.5 The First Respondent failed to comply with an undertaking given by Mr SA, a member of her staff, in a Memorandum of Agreement dated 20 October 2005 to execute a charge over 8 W Gardens when a loan period for such an agreement exceeded six months thereby acting in breach of Principle 18.11 of the Guide.

1.6 The First Respondent was in breach of Rule 5 of the Code in that she failed to properly supervise and manage the responsibilities of her practice.

In a Rule 7 Statement dated 14 January 2011:

2. The supplementary allegations against the First Respondent were that:

2.1 That the First Respondent entered into practising arrangements between herself and an unadmitted person that were not permitted between 30 June 2004 to 19 December 2006 under the style of "Antonia Law Partnership" and from 20 November 2006 to 28 February 2009 under the style of "Imanuel Law Practice Ltd" contrary to Principle 3.02 of the Guide, prior to 1 July 2007 and contrary to Rule 1 and Rule 7 of the Code.

2.2 That the firms of "Antonia Law Partnership" and "Imanuel Law Practice Ltd" were improperly described as solicitor partnerships or sole practices when in fact they were businesses carried on by the First Respondent and other unadmitted persons. The First Respondent had no control over those businesses.

2.3 That the First Respondent was in breach of Rule 1, Rule 6, Rule 7, Rules 22(1) and 22(3) and Rule 32 of the Solicitors Accounts Rules 1998 as amended.

2.4 That the First Respondent created false documentation in relation to transfers in connection with the sale of a property of a client of Imanuel Law Practice Ltd.

2.5 That the First Respondent failed to deliver finalised accountant's reports for Imanuel Law Practice Ltd for the year ending 31 December 2008 (due by 30 June 2009) and 31 December 2009 (due by 30 June 2010) in breach of Section 34 of the Solicitors Act 1974 (as amended) and Rule 35 of the Solicitors Accounts Rules 1998 (as amended).

3. The allegations against the Second Respondent on behalf of the SRA were:

3.1 That the Second Respondent dishonestly created false documentation in relation to transfers in connection with the sale of a property of a client of Imanuel Law Practice Ltd and was party to an act or default which involved conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice.

3.2 That the Second Respondent misled clients of Imanuel Law Practice Ltd as to the conduct of their conveyancing matter and was party to an act or default which involved conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice.

<u>In a Rule 7 Statement dated 31 August 2012</u>

4. The further allegations against the Second Respondent on behalf of the SRA were:

4.1 That the Second Respondent pleaded guilty to Indictment/Case number T20110290 at the Central Criminal Court on 16 April 2012 to a single charge of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 in that he admitted the fraudulent use of approximately £150,000 of a Miss O'D, a client of the Imanuel Law Practice Ltd.

4.2 That the Second Respondent was sentenced on 11 May 2012 to 12 months imprisonment suspended for 24 months on suspended sentence and ordered to carry out unpaid work for 80 hours on or before 10 May 2013. The suspended sentence supervision was to last for a nine month period.

4.3 That by admitting to a single charge of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 the Second Respondent had been involved in conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice and that an Order be made to this effect as set out in Section 43(2) of the Solicitors Act 1974 (as amended).

Documents

5. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 30 April 2010 with exhibit PMB 1
- Rule 7 Statement dated 14 January 2011 with exhibit PMB 2
- Rule 7 Statement dated 31 August 2012 with exhibits PMB 3, 4 and 5
- Judgment in Gregory v The Law Society [2007] EWHC 1724 (Admin)
- Judgment in The Law Society v Brendan John Salsbury [2008] EWCA Civ 1285
- Judgment in Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin)
- Section 4 of the Fraud Act 2006
- Schedule of costs
- Letter from Mr Ken Robinson, Head of Forensic Investigation at the Applicant to Mr M Gibson Legal Advisor dated 15 April 2013.

First Respondent

- Answer to the allegations made against the First Respondent in Rule 5 Statement of the Applicant dated 30 April 2010
- Counter notice dated 16 June 2010 to the Applicant's Rule 5 Statement to rely under the terms of the Civil Evidence Acts upon the statements made within the documents exhibited in PMB1 of the Applicant's Rule 5 Statement dated 30 April 2010
- Letter from the First Respondent to Mr Bosworth dated 26 June 2012.

Second Respondent

- Statement of the Second Respondent admitting misconduct but placing the allegations in proper context and submitting this statement in mitigation
- Email from the Second Respondent to the Tribunal dated 4 April 3013
- Statement of assets and liabilities of the Second Respondent
- Bundle of three testimonials of which two were in the form of witness statements.

Preliminary matters

6. For the Applicant, Mr Bosworth asked the Tribunal to approve the correction of typographical errors in allegation 2.1 to amend the word 'admitted' to 'unadmitted' and in allegation 2.3 to amend 'Solicitors Accounts Rules 1988' to 'Solicitors Accounts Rules 1998'. He also asked the Tribunal to note that references throughout the Applicant's documents to "Antonia Law Practice" and "Imanuel Law Partnership" should instead read "Antonia Law Partnership" and "Imanuel Law Practice Ltd" respectively. The Tribunal approved all these changes. It was also agreed during the course of the hearing that the reference in allegation 1.2 to the letter of "23 September 2008" should be corrected to "23 December 2008".

7. Mr Bosworth also informed the Tribunal that the First Respondent admitted allegations 1.6, 2.2, 2.3 and 2.5.

8. Mrs Millin informed the Tribunal that the Second Respondent admitted all the allegations against him i.e. allegations 3.1, 3.2, 4.1, 4.2 and 4.3 but wished her to submit a plea in mitigation on his behalf. It was initially suggested that she might be instructed to ask the Tribunal to make a suspended order under section 43. For the Applicant, Mr Bosworth submitted that this was not open to the Tribunal. Before the question fell to be decided, Mrs Millin informed the Tribunal that she was instructed not to proceed with that application.

9. Mr Bosworth also informed the Tribunal that at the last case management hearing, the First and Second Respondents agreed the evidence for the Applicant and as a result he did not propose to call any witnesses.

Factual Background

10. The First Respondent was born in 1966 and admitted as a solicitor in 1998 and her name remained on the Roll of Solicitors. She did not hold a practising certificate.

11. At all material times the First Respondent practised on her own account at first as Antonia Law Partnership ("the firm" or "ALP") and subsequently as Imanuel Law Practice Ltd ("the firm" or "ILPL") of Covent Garden, London.

12. The Second Respondent was an unadmitted person.

13. On 5 August 2008 and subsequently by a more detailed complaint made to the Legal Complaints Service ("LCS") dated 22 September 2008, Mr C made a formal complaint that he had entered into an agreement to loan a partner of the First Respondent, Mr SA £40,000 on 7 March 2005 and subsequently that the First Respondent being the principal of ALP paid him only £20,000 on 19 September 2005 and that to the date of his complaint the firm had refused to "pay me saying that I should take them to Court citing that there is a partnership problem". On 15 October 2008, the First Respondent was informed that the LCS had referred the matter to the Applicant and this was followed up by a letter from the Applicant dated 23 October 2008 confirming the details of the caseworker from the Conduct and Investigation Unit of the Applicant who was handling the matter.

14. On 2 December 2008, the Applicant wrote to the First Respondent requesting a full response within 14 days of receipt of the letter, including documentation that supported the explanation given by the First Respondent to the following:

    - That on 7 March 2005, SA, a member of staff, entered into an agreement with C, a client, for the loan of £40,000 in breach of Principle 15.04 of the Guide

    - On 20 October 2005, SA, a member of staff entered into an agreement with C, a client for the loan of £20,000 in breach of Principle 15.04 of the Guide

- On 21 June 2006, the First Respondent and SA, a member of staff, entered into an agreement with C, a client for the loan of £10,000 in breach of Rule 16 (D)(2)(b)(ii) of the Solicitors Practice (Conflict) Amendment Rule 2004

- Confirmation that SA worked for the First Respondent and in what capacity.

15. The Applicant received a letter dated 23 December 2008 signed in the name of the First Respondent denying that she had breached any principle or rule in respect of the regulation of the profession. She went on to state that "The complaint that has been received from [C] appears to be more relevant to a civil dispute between Mr [C] and Mr [SA]" rather than "…a matter of professional misconduct." The letter included, omitting the paragraph numbering:

> "MR [SA]
>
> Mr [SA] was not a member of staff of either ALP or of the successor practice ILPL. ILPL was established in November 2006 and since this time I have had no further involvement with Mr [SA].
>
> In terms of Mr [SA's] relationship with ALP I can confirm that his role was very limited. At no point was Mr [SA] on the payroll of ALP. His main occupation was as an estate agent working for [K] Estate Agency. As far as I am aware this was Mr [SA's] own business. He would work at the business offices in Purley as well as the office at… Covent Garden… Mr SA was the lessee of the premises at [Covent Garden]. This was the premises where ALP used to practise from at the time as the firm had a licence to occupy the second and third floor of this building, whilst Mr [SA] was based on the ground floor in the estate agency business.
>
> Mr [SA] was not a solicitor, and was never engaged in the business of providing any professional services within the meaning of the Solicitors Act 1972. Mr [C] was the client of Ms [JT]. Mr [C] was both a client and friend of Ms [JT], who had acted for him in respect of certain conveyancing transactions whilst at ALP and beforehand at the firm where Ms [JT] had been employed, namely [T & Co].
>
> Mr [SA's] limited involvement with the firm of ALP was that he would, from time to time, provide referrals to the firm for which he would be paid a commission depending on the outcome of the case. In this regard, and to these purposes did at some at some stage style himself as a practice manager of ALP, but in reality did not perform those functions at ALP. Mr [SA] was, however, an investor in the firm of ALP.
>
> It follows that it is quite wrong for Mr [C] to assert in his letter of complaint dated 5 August 2008 that Mr [SA] was a partner of the firm, he was not. The only partners of ALP were myself and [Ms SSA] who was a salaried partner.
>
> THE LOANS FROM MR [C] TO MR [SA]

I was unaware of the loan that appears to have been entered into between Mr [C] and Mr [SA] in March 2005, and by reason of the fact that Mr [SA] was not a member of staff of ALP I cannot see how it can be said that I should have been aware of the existence of this loan. This was a private arrangement between Mr [C] and Mr [SA] and ALP were not involved, directly or indirectly.

In September 2005 Mr [SA] paid £20,000 back to Mr [C]. So far as I am aware this was paid back by Mr [SA] from his personal funds. It was not paid back by ALP, but by Mr [SA] as the debt was a personal one owed by him.

I was involved in witnessing the Memorandum of Agreement dated 20 October 2005. As Mr [C] does not speak English, I spoke with Ms [JT] who informed me that Mr [C] had received independent legal advice prior to agreeing to the terms of the Memorandum of Agreement forms. I was assured by Ms JT that Mr [C] was fully aware of the implications of the loan and it was understood that it was a loan to Mr [SA]. I was assured by Ms [JT] that this was the case. As Mr [C] did not speak English, Ms [JT] communicated with him at all times. I checked Mr [C's] understanding of these points prior to witnessing the other signatures on the Memorandum of Agreement.

I also noted that part of the agreement that Mr [SA] was entering into provided for a generous element of interest payments on the loan, and so I felt that Mr [C] was more than adequately protected. With respect to interest I did undertake to pay Mr [C] the interest on behalf of Mr [SA] from monies that were due to Mr [SA] from commission payments etc as per the arrangement that ALP had with Mr [SA], as described above.

The Memorandum of Agreement also provided for a security to be entered on Mr [SA's] personal property at 8 [W Gardens]. I attach a copy of an extract from the Land Registry which shows that on 30 May 2007 a unilateral notice was entered against this property by Mr [C] based on the Memorandum of Agreement dated 20 October 2005. This again goes to show that the debt was a personal one owed by Mr [SA] to Mr [C] and not a debt owed by the firm of ALP.

In June 2006 I was aware that a further £10,000 had been lent by Mr [C] to Mr [SA]. As I understand it Mr [C's] girlfriend [MM] sold her property at 46 [E] Crescent and gave an irrevocable authority to ALP to pay Mr [C] £10,000 that was owed to him. When the transaction was completed, Mr [C] called at the offices and said that he was lending this money to Mr [SA] as Mr [SA] had assisted him. This money was again a loan to Mr [SA], which has since been paid back to Mr [C] in September 2006.

With regard to the agreement of 21 June 2006 Mr [C] requested a holding cheque from me, which he agreed not to deposit, but wished to have as some form of comfort in respect of his loan to Mr [SA]. Because there was some money owed to Mr [SA] I agreed to provide a cheque, but this was never deposited by Mr [C]. I explained to Mr [C] that the cheque was not to be deposited as the loan was between Mr [SA] and Mr [C] and that if any

payments were to be made by me to Mr [C] then these would be on behalf of Mr [SA] and from funds due to Mr [SA] from ALP. Subsequently, the payment on the holding cheque was stopped with the consent of Mr [C] and I paid Mr [C] in instalments from the money due and owing to Mr [SA] until the whole £10,000 was repaid.

NO CONFLICT OF INTEREST

I do not accept that the private arrangements entered into between Mr [SA] and Mr [C] have in any way placed the firm of ALP or ILPL in a position where the firms' interests have been in conflict with the interests of Mr [C]. Neither ALP or ILPL were involved in borrowing money from Mr [C]. On the occasion of each loan, it was a private transaction between Mr [SA] and Mr [C].

Moreover, as Mr [SA] was not a solicitor providing any professional services of a solicitor, I cannot see how a conflict of interest situation would arise, in any event, such that I might be alleged to have breached either of the Rules or Principles mentioned in your letter. As Principle 15.04 makes clear, it is a condition that for this Principle to be applicable that (amongst other things) the money must be borrowed by a solicitor from his client. That is not what happened in this case.

Further, I cannot see how the provisions of Principle 15.04, paragraph 7, of any application to this case as Mr [SA] was not a member of staff of ALP. As previously explained in paragraph 2 herein above Mr [SA] was not an employee of ALP, and his involvement with the firm was limited to the relationship that I have previously mentioned.

In considering the Solicitors Practice (Conflict) Amendment Rule 2004 I cannot see how this has any application to this case. According to the Rule the duty only arises where there was a conflict between the best interests of a client and a solicitor in a related matter. Further explanation is given as to what this means in subparagraph (c) where it states that for the purposes of paragraph 2(b) above a related matter will always include any other matter which involves the same asset or liability. I do think this applies in the circumstances of this case, irrespective of the more general defence that there has been no conflict of interest arising anyway. ”

16. Following a further request from the Applicant, the complainant C, wrote to the Applicant on 10 February 2009 in respect of the First Respondent’s letter. He stated inter alia:

> “[The First Respondent’s] response surprises me as I have known Mr [SA] to be a Practice Manager at the Firm from the business cards he has given me on various occasions when I visited the Firm. I have enclosed one of the business cards for your reference. I have also seen Mr [SA] actively involved in the Firm's day to day business every time I visited the premises at [Covent Garden].

Mr [SA] has been known to me since 2001 when I was a client of [JT] in [T] & Co at [adjacent premises]. He used to work with Ms [JT] as Legal Assistant and assisted in my matters when she was away at times. These matters involve conveyancing work on sale and purchase of my various premises.

They later moved to [the next door premises] just before [ALP] was formed and all my files were transferred to the new Firm. I have always seen [ALP] being operated from whole of the premises as I was always asked to wait downstairs in the reception area when I visited. I am surprised at [the First Respondent's] statement that she was operating from second and third floors only when the Memorandum of Agreement dated 20th October 2005 was signed and witnessed on the first floor in presence of herself, [the Second Respondent], [JT], Mr [SA] and myself.

Mr [SA] was the leaseholder of the premises although [the First Respondent] was responsible for paying the rent to the landlords by way of a license agreement between them. I know this as one of the reasons for borrowing money was to pay the rent to the landlords as it had been in arrears. Mr [SA] had also complained at the times (sic) that he was not being paid for his fee earning by the Firm and therefore borrowed the further £20,000 in March 2005 which was paid back in September 2005 as promised. He had given me a post-dated cheque for the same amount which was cancelled on repayment of his loan in full. I was told that the other £20,000 was the responsibility of [ALP].

I do not believe that [the First Respondent] was unaware of this loan arrangement as major part of that money was deposited into the Firm's bank account on the same day. I am not aware of the reason for the charge on Mr [SA's] property as it was their own mutual arrangement and I was simply relying on the Firm to repay their part of the loan as Mr [SA's] £20,000 had already been paid to me directly from himself. A number of payments had been made by the Firm's cheques and I was relying on the Firm to clear the balance of the loan outstanding in due course.

No further monies were lent to Mr [SA] in either June 2006 or September 2006 as stated by [the First Respondent]. I was paid £10,000 in September 2006 on sale 46 [E] Crescent belonging to my girlfriend [MM]. This sum had nothing to do with the loan or Mr [SA]. It was paid to me as [MM] owed money to me and she had requested the Firm to make a cheque payable to me for that amount directly. There is some kind of discrepancy in [the First Respondent's] statement in that on one hand she claims that the £10,000 was lent to Mr [SA] in June 2006 and on the other hand she has stated the money paid to me in September 2006 was used to pay Mr [SA]. Clearly, she needs to explain this further…"

17. Following a further letter from the Applicant, C wrote a letter dated 10 March 2009, in which he stated inter alia:

"Mr [SA] was working at [ALP]. It is not true that he had nothing to do with ALP. I knew Mr [SA] in the course of my dealing with ALP. I have known him since he was in [T] Solicitors.

[T] Solicitors were solicitors acting for me before ALP began to act for me. When [T] closed, everyone in [T] moved to next door from [T]. The only difference was that the bosses changed. It was [RT] before, but in ALP it (sic) [the First Respondent] became the boss. ALP continued to act for me after [T] Solicitors closed. They had acted for me prior to that time that I lent them the money and even after the lending. I trusted them.

Mr [SA] approached me on behalf of ALP in 2005, he asked me if I could loan [ALP] £40,000.00 to pay their rent of the premises they practice (sic) from. I agreed to loan the money.

I gave the money twice. The first was £20,000.00, which I paid to them. It was made to ALP in their premises and in the presence of [the First Respondent], [the Second Respondent], [SA], and [JT]. At the time, I was given the impression that they were all business partners and [the First Respondent] was the senior partner (the boss).

Also, I further transferred the balance of £20,000.00 from my NatWest Account… to [ALP] Office Account. This is also a proof that the money was loaned to ALP and [SA] had contacted me on behalf of ALP

It is therefore not true that Mr [SA] was not working for ALP. I did not know whether Mr [SA] was a solicitor or not. All I know is that he was working for ALP at the time and the loan was requested on behalf of ALP. It is not true that Mr [SA's] business occupied the ground floor. The reception of ALP was at the ground floor and there was no demarcation between the ground floor and other offices and you can only access the top office from the ground floor.

… there was no separate business downstairs. The only access to the entire office was only through the ground floor where the receptionist was. I do not dispute that [T] Solicitors were practising from the property next door before ALP took over. In actual fact only the bosses changed when [T] Solicitors closed and ALP took over. [The First Respondent] is only telling the truth half way that Mr [SA] is only an investor. How could I know he was an investor, all I knew is that he worked there and he was one of them.

It is also not true that [the First Respondent] was not aware of the loan. The second part of the £40,000.00 which was the balance of £20,000.00 was paid into her office account. This all gave me the impression that the loan was for ALP. [Mr SA] and [Ms JT] can confirm how the first instalment of £20,000.00 was paid. It is also not correct that I was advised to seek independent advice. This was never done and why was it not put in writing as honest solicitors do. Ms [JT] was not even around in September 2005 and she could not have advised me that I should have an independent advice.

I attach a copy of the memorandum. You will see that the parties are [SA] of [ALP]. You will also see that clause 2 says that "[ALP] will pay interest of £580.00 per month to the second party on behalf of the first party." Also, this memorandum was witnessed by [the First Respondent] herself. I was only paid the interest twice. If she had undertaken to pay the interest why has she not been paying and why would she allow [SA] to describe himself as [ALP] in the parties paragraph. The Land Registry Notice was not even considered at the time of the agreement in 2005. It was when I chased everyone concerned and no one assisted and in order to pacify me sometime, [the Second Respondent] put the Notice on my behalf. [The Second Respondent] too is part of [ALP].

In regard to a further £10,000.00 in June 2006. I did not lend any further £10,000.00 to ALP. My girlfriend [MM], sold the property concerned. ALP retained £10,000.00 of the proceeds and they approached her to lend the money to ALP. She felt obliged like I did and they told her that the money was going to be repaid back and in order to secure the money the Agreement of 21 June 2006 was made. It is not correct that I gave the money to [SA], it was proceeds they already held in their client account and wish to use for the rent payment. This was repaid to me in instalments at about 8 times by ALP's cheques and I enclose copy of the cheque. The £10,000 is therefore not owing and the present claim does not relate at all.

Notwithstanding the fact that the £10,000 loan had been repaid, [the First Respondent] knew about it. Otherwise, why would she give me the "comfort" cheque from the office account. It was not a question of agreeing to any arrangement as she said, she knew all along that the £10,000.00 being used for the rent for the premises where she practices from just like the initial £40,000.00.

In response to your other information:

I became a client of ALP with the following transactions:

In 2004 I instructed ALP to purchase freehold property at 11 [B] Road.

In 2006 I again instructed ALP to deal with my freehold property at 810 [A] Road South

In 2005, I purchased a business leasehold premises known as [O Takeaway]. ALP acted for me…".

C also attached Particulars of Claim prepared by solicitors and a letter dated 9 June 2008 from ILPL stating that the First Respondent had been present with the Second Respondent, SA and JT where proposals to settle the matter were discussed.

18. On 25 March 2009, the person with the conduct of the matter on behalf of the Applicant was provided with two screenshots from the Applicant's records department at Redditch stating that SA was practice manager of ALP from 31 October 2005 to 19 November 2006.

19. On 6 April 2009, the records department of the Applicant provided screenshots confirming that Ms SSA was a partner of ALP from May 2005 to September 2006.

20. By letter dated 22 April 2009, C wrote to the Applicant enclosing a copy of the draft Consent Order, the Particulars of Claim and the defence to the Particulars of Claim. The defence statement set out that SA and JT entered a fee sharing agreement with the First Respondent in accordance with Rule 7(1)(A) of the Solicitors Practice Rules 1990 (as amended) under which each would introduce capital of £20,000 into the firm ALP. They were independent contractors and were paid commission by the firm upon work introduced and/or carried out by them. The defence also stated that SA and JT were neither partners in the firm nor employees thereof. It was admitted that £20,000 was handed by C to JT in cash but that it was "immediately handed over to Mr [SA] in the presence of the Claimant." The Respondent denied that £20,000 was transferred to the firm's office account by the Claimant at any time. The document stated that the sum of £20,000 was paid into the firm's office account on 25 February 2005 but that this was credited to SA's account in the firm's ledger in "satisfaction of his aforesaid obligation to introduce capital into the firm." The defence also made reference to the Memorandum of Agreement dated 20 October 2005 stating that it was entered into by the Claimant and SA and did not impose any obligations upon the First Respondent or the firm.

21. By letter dated 27 April 2009, C supplied to the Applicant a copy of accounts provided by SA which showed various payments coming from ALP to C in relation to the loan.

22. By letter dated 7 May 2009, the Applicant wrote to the First Respondent detailing the further information that had been provided by C and putting further allegations of professional misconduct to her and requesting a full answer and relevant documentation.

23. On 15 May 2009, the Applicant received the report of the Practice Standards Unit ("PSU") visit showing the staff list of ALP and a document headed "Full Staff List" on which SA was listed as Practice Manager and his areas of work were shown as "Office & General Administration".

24. By letter dated 3 July 2009, C wrote to the Applicant enclosing a copy of a client care letter that he had received from ALP dated 28 October 2005 in which it was stated under the terms of business that SA was the Practice Manager of the firm.

25. By letter dated 1 October 2009, the Applicant wrote to the First Respondent asking her to respond in full within 21 days to the matters that had been raised including that she had failed to honour an undertaking given by SA, a member of staff in breach of principle 18.11 of the Guide.

26. The First Respondent replied in a six page letter dated 15 October 2009 stating that she was in reality not in control of ALP and that she wanted to:

> "… give the truth and believe it will release me to go forward in my life and what ever decision you reach it cannot possibly be any worst (sic) than what I

have already gone through. I need to tell the truth to close this nightmare of a chapter in my life…"

27. The First Respondent stated inter alia that:

- She had always wanted to run her own law firm but that she had just become "a tool for exploitation" in that she had trusted the Second Respondent who introduced her to SA and JT and that they and the Second Respondent had all worked for an individual RT at a firm T & Co. SA had become a nightmare to deal with and she felt that she had been used as a sham figurehead as she was the only qualified solicitor involved in the firm. She felt that she was used by both SA and the Second Respondent and that she had inherited a lot of problems from T & Co.

- The bookkeeper came from T & Co; he did the accounts and she "didn't really understand them".

- SA was supposed to be the office manager of ALP but did not fulfil the role. She could not control him or the situation. There was "quite a war zone" in the office.

- ALP had a receptionist on the ground floor of the premises who sent clients upstairs.

- The £40,000 was lent to SA from C as a personal arrangement and that C was a contact of JT and could not speak, or write English and the First Respondent's contact with him was always through the others.

- An amount of £20,000 (of the £40,000) was deposited in the ALP office account on 25 February 2005 but she thought that this was SA's contribution to the capital of the business in accordance with a Memorandum of Agreement signed on 1 July 2004 by the two Respondents and others which she enclosed with her letter. She stated that she signed a Memorandum of Agreement in relation to the £40,000 dated 20 October 2005 but that she did so under duress because the Second Respondent had said that if she did not, he was going to "walk out and leave me to deal with everything on my own".

- She believed that C was pursuing her because he had been advised that he could recover his £20,000 through her insurance.

- C loaned a further £10,000 or £9,822.50 to SA for rent via the proceeds of sale of his girlfriend's property. It was paid back in instalments.

28. The First Respondent concluded her letter of 15 October 2009 by stating that she was no longer practising and awaited confirmation from the Applicant as to her future. She attached to the letter a statement under her name detailing the history of both practices. In it she set out that the Second Respondent had contacted her and informed her of a once in a lifetime opportunity to run a law firm. He introduced her to SA. They were both successful business men with lots of ideas about the practice. She also stated that she was completely confused by what was going on and retreated into her

home and away from the office and that in effect the Second Respondent ran the firm. She stated that JT went to prison for immigration fraud in another business in May 2005 and that after that SA brought in other individuals that she believed were committing fraud in relation to conveyancing matters and one of whom she alleged behaved inappropriately towards her. In respect of ILPL, the First Respondent stated that she was told by the Second Respondent that if she did not enter into an agreement to continue she would be bankrupted and would not be able to practice in future and that ILPL had in essence been closed after the Second Respondent had a heart attack in 2008 when she was able to come into the office and assess the situation, although she went on to state that he continued to draft most of the letters from ILPL and that her role became more of a "residential conveyancer, office manager, administrator".

29. There was further correspondence in March 2010 between the Applicant and the First and Second Respondents during which the First Respondent denied the allegations brought at that stage.

30. The Second Respondent wrote to the Applicant on 24 March 2010 requesting further computer information and also an extension of time so that he could have sight of information held by ALP. In further correspondence he stated that he was hindered by not having access to the ALP and ILPL computer records and went on to state that the client care letter was what was normally read by clients and that it was not stated anywhere that he was a solicitor and further that the terms of business were more often than not, not read by the clients. He included that he had previously been subject to an investigation by The Law Society and that no findings had been made against him. He also stated that his professional role was as an "unadmitted solicitor foreign qualified". He also refuted ever being part of a sham partnership and requested that the section 43 allegations be withdrawn.

31. The Applicant completed a Forensic Investigation ("FI") Report dated 12 May 2010 which was before the Tribunal. The Investigation Officer ("IO") was Mr M. Dhanda.

32. During the investigation, the First Respondent supplied a handwritten document signed by the Second Respondent that was only to be opened in the event of his death or on a prosecution being brought by The Law Society against the First Respondent. It set out steps to take on the winding up of ILPL and pointed out that the monies could still be kept on client account after closing the practice – the advantage being that the final client account certificate was only required within two months of the client account closing. The document identified conveyancing issues in relation to the sale of a client Miss O'D's property and stated that the Second Respondent would try his best to delay things and that he did not know what would happen so that he could not promise anything to the First Respondent.

33. Attached to the FI Report was a further handwritten document from the Second Respondent dated 17 February 2009 which included that he was carrying the other fee earners and that he had to find fees every day to meet the office account requirements. He stated, omitting the paragraph numbering:

> "To summarise - Due to pressure and failure or reluctance by other fee earners to earn fees - I because of my inability to say no, instructed overtransfers to be made from client account to office Bank account to meet all expenses.

> [The First Respondent] was unaware of this. However, she did put pressure on me to find monies and I should have been strong enough to say no. But I failed to do so."

And

> "I once again clarify that [the First Respondent] was not aware of the client account deficit brought about by overtransfers and I did not tell her. One of the client account deficits was as a result of my making a payment on behalf of a client which I have not recovered."

In respect of ILPL, the Second Respondent stated that the First Respondent failed to attend the office regularly or to earn the fees that she said she would do. The document stated that again the Second Respondent over transferred monies into ILPL's office bank account but that none of the First Respondent's accounts were touched. He stated that:

> "I overtransferred to pay off:
> (i) ALP debts
> (ii) ILP client deficits
> (iii) ILP office expenses and drawings…"

And

> "[the First Respondent] has not been aware of the overtransfers but is aware that I had complained that she is putting me under pressure to find monies.…"

34. On 16 June 2010, a case worker of the Applicant wrote to the First and Second Respondents setting out the findings of the FI Report and attaching a copy of the Report to the letter.

35. On 26 July 2010, the Second Respondent wrote to the Applicant with a full response to the letter of 16 June 2010. His response included:

- He was never in control of the business.
- The fee earners failed to earn the fees that they said they would. The firm was running at a loss. At the time of its closure an office debt in the sum of £140,000 had been run up. He admitted that albeit under pressure from the First Respondent he had made over transfers on some of his matters.
- The only consideration he had in forming ILPL was preventing the First Respondent from going bankrupt.
- His role was limited to that of assistant to the principal and he set out his role as an employee of the firm. He had no control over monies and how they were to be spent. He stated that he was self-employed and that at the end of the year, his account would be adjusted to reflect a 50% share of the net fees that he had earned and that he would be in receipt of a bonus which would come out the earnings of other fee learners and the bonus was to be entirely at the discretion of the First Respondent.

- He blamed the cash shortage on the First Respondent drawing a salary of £4,000 gross instead of a normal sum of £1,000 gross because she wanted to buy a property in Cyprus.

- He stated that the First Respondent was aware of the cash shortages but did not know the specific details of the amounts involved.

- He stated that he was "robbing Peter to pay Paul" and that he was doing this as a result of pressure put on him at the end of each month by the First Respondent.

- He made accusations that the First Respondent forced him to continue making transfers to "rob Peter to pay Paul" even after he had suffered a heart attack and was in hospital and that this continued after his discharge from hospital.

- He stated that he made the handwritten documents attached to the FI Report but only in the mistaken belief that Law Society sanctions could only apply to the First Respondent and not against him. He stated that there was a falling out between himself and the First Respondent and that she took files without his knowledge.

- He dealt with the issues raised by Miss O'D's sale; he felt that he had her permission to invest the money provided it was protected but denied saying to the First Respondent that as Miss O'D was out of the country he could "fob her off". He put it in context by saying that the First Respondent needed the money to buy a "dream car" and that he arranged for the car to be paid for from Miss O'D's proceeds of sale.

- He said that the over transfers and other payments made from Miss O'D's accounts were issued in his writing because he believed that The Law Society would not impose any sanctions upon him.

- He stated that a letter he gave to Miss O'D about raising funds to pay her back was true; he genuinely expected money and was not trying to mislead her. He owed her a "moral obligation" "even though the money and the benefit was received by [ILPL]…"

36. By letter dated 29 June 2010, the First Respondent replied to the Applicant. She continued to blame the Second Respondent for a shortfall at both firms. She stated that the Second Respondent may not have physically signed the cheques but she was simply "a tool in his hand". She did not know what she was doing.

Allegation 2.5 against the First Respondent

37. On 13 October 2010, the case worker at the Applicant's regulatory investigations department wrote to the First Respondent in respect of a request for waivers for the accountant's report for the year ending 31 December 2008 and the requirement to deliver the report for the year ended 31 December 2009 requesting an explanation within 14 days of the reason why she had failed to deliver those reports.

38. On 21 October 2010, the First Respondent wrote to the caseworker stating that especially after the IO's investigation, the ILPL accounts made no sense and stated inter alia:

> "I don't believe that the accounts would reflect the true position of the client ledgers, and even if the Accountant's Report's (sic) was submitted it would not have been correct (this also applies to the period ending 31st December 2009)."

And

> "The reason why I failed to deliver the Accountant's Report for the above period, including the year ending 31 December 2009, is that [the Second Respondent] always dealt with the Accountant's Report in the practice and after I discovered the client shortfall I closed the business…"

Allegations 4.1, 4.2 and 4.3 against the Second Respondent

39. In the prosecution's "Opening of facts" at the Central Criminal Court on 11 May 2012 the facts of the case were described as follows.:

> "…It involves the fraudulent use of approximately £150,000 by this defendant [the Second Respondent] over a period of about a year, more than a year, back in 2008. The circumstances arise out of a friendship between [Miss O'D] and this development.
>
> The defendant is now aged 64 and they first met sometime in the late 1990s and had a brief relationship, which she broke off. They did remain friends, however. When Miss O'D came to sell her house… in 2008, with a view to moving to the Gambia for a number of years, and the solicitor that she usually relied upon had ceased to practice, she contacted [the Second Respondent] with a view to his having conduct of not only the sale of her house but also some personal matters to which she could not attend whilst being outside the United Kingdom. [The Second Respondent] by then was working with [ILPL] a firm of solicitors based in Covent Garden, of whom the principal solicitor was [the First Respondent], the erstwhile second defendant.
>
> [The Second Respondent] qualified as a solicitor in South Africa but was not qualified to practise in the United Kingdom without taking further examinations. Accordingly, despite his considerable experience, he was working as an assistant to the principal and in that position he and his principal were bound by the ordinary rules of professional practice, including the well-known bar to solicitors handling client's money.
>
> …[The Second Respondent], in breach of this bar preventing the handling of clients money.], took approximately £150,000, the Crown says, in the course of this fraud. She gave him, in total, the proceeds of the sale of her house, £415,000. The Crown points to the evidence of [Miss O'D], who sets out the payments which she authorised the solicitors to make on her behalf and those

which she did not, and she can clearly state that she did not give anybody carte blanche to do what they liked with her money nor, as was claimed originally by [the Second Respondent], did she allow him to invest her money as he thought fit.

She provided two statements to the police or 5 November 2010 and 5 March 2012 and in those statements she refers to a number of documents which have been provided to her, which she adopts as her own, about which she makes the following comments, and your Lordship will know that there is a client ledger card in this case and a Barclays bank account. In the Barclays bank account statement she can identify payments which correspond with payments made by her to [ILPL's] professional client account, and that client ledger card purports to be a complete history of the financial dealings that [Miss O'D] and her solicitors entered into between themselves and various third parties. An interesting feature is the absence at the very outset of the 10% deposit paid to [Miss O'D] by the buyers of her house… being £41,500. One would expect the account to open with that figure but it does not and that is a mystery.

The first payment out, paid out of the solicitor's own pockets initially, is a sum of £528.75 in respect of a… survey, without which the sale would have fallen through. The sale did go through, as we know, and we can see, on 7 March 2008, a credit of £373,950 enters that account. That amount is the 90% balancing payment for the purchase of the house. There is at one stage an interesting error which credits her account with something like £721,000 which is immediately amended and corrected. So the highpoint of the account is £415,000, or would have been if the original 10% had gone in and £373,950 was the real figure.

At the time, [Miss O'D] was living in Africa. She rented a house in The Gambia and was waiting for a favourable market before buying another house in this country. In the meantime, large quantities of money were moved, upon her instructions, at various times, some of which were designed to protect her position with the banking crisis, and your lordship will remember that there was a potential run on the banks and there was a guarantee of only £35,000 per account at that stage and, therefore, she decided that it would be safer to leave a large amount of money in the private client's account and she was assured by [the Second Respondent], the defendant, that it was insured and that, of course, it was safe.

[The Second Respondent] agreed to pay [Miss O'D's] interest payments on that sum of money deposited with his firm, and accordingly, we can see regular payments of £1,200 going into [Miss O'D's] Barclays account. However, the corresponding amount can be seen leaving the solicitor's client's account, and what she did not know, but what is painfully obvious from the paperwork, is that the interest being paid to her was being paid out of her own money.

Between 7 March 2008 and 27 February 2009, £103,928 of [Miss O'D's] money was paid out of the solicitors account without her knowledge. She would not have allowed any unauthorised payments to be made out of her

account of these, or of any kind. She was not provided with a statement showing the state of her account. Instead, she received a letter from [the Second Respondent] assuring her that the balance was in the region of approximately £150,000.

With the property market looking to improve in the United Kingdom, [Miss O'D] told [the Second Respondent] in February 2009 that she would probably want to get the balance of her money, £150,000, in May or June of that year. He said it would not be a problem. He paid her a cheque for £8,500 saying that it was interest owing to her. Again, that sum came from her own money and that was the last of the money in that account.

[The First Respondent], who had wanted to buy a new car for some time, accepted some money to buy one when she was offered it by [the Second Respondent] in July 2008. That money had come from [Miss O'D's] account and, according to [the First Respondent], it was her concerns that she had regarding the source of the money that led to her asking [the Second Respondent] about the matter, and concerned, she sold the car and paid £8,500 back into the client account at the end of February 2009, that being the £8,500 that was then paid by [the Second Respondent] back to [Miss O'D]. The payment of £8,500 was the closing payment and the account ceased to operate.

The following month, [the First Respondent] telephoned [Miss O'D] and told her about the closure of the account. Concerned, [Miss O'D] returned to this country on 19 June 2009 and visited [the Second Respondent]. She asked for the return of her money. [The Second Respondent] then posted her a copy of the client ledger which showed the unauthorised payments and the nil balance. Thereafter, there followed a series of meetings and promises by [the Second Respondent], including a letter dated 20 July 2009, in which he promised to repay the amount but none of those promises have been kept and the amount is still outstanding. The police became involved and on 9 December… they visited [the Second Respondent] at his home address… when he was arrested on suspicion of fraud and money-laundering… He was interviewed under caution… at …police station and in that interview he gave the background to his work with [the First Respondent], explained his relationship with [Miss O'D] and how it was that she had come to use his services for her conveyancing and other business.

He stated that the residue of the account would not be required by her for two years and that as a result they agreed for him to invest her money, save it was a verbal agreement and not recorded anywhere on paper, and he agreed to pay her interest out of the invested funds. He said that none of the money taken by him went into his account but went to pay creditors of [ILPL] instead. He did not explain the details to [Miss O'D] but stated that he believed that she would have consented so long as the investment was safe.

He was interviewed again on 16 March 2011, in which he reiterated what he had said before. However, he went further and accepted that he had not informed [Miss OD] that he would be investing her money in [ILPL]. He continued by saying that he would be prepared to remortgage his house to

repay [Miss OD] some of the money. Again, none of the money has been repaid."

Witnesses

40. The First Respondent gave evidence and save as recorded below, it is set out under the appropriate allegation. She referred the Tribunal to her evidence particularly her statement of 28 February 2011. The First Respondent testified that:

- She could have continued her practice and given in to the Second Respondent who did everything he could to stop her from closing it. In support of her assertion the First Respondent referred the Tribunal to the first of two handwritten documents which were before the Tribunal. She had labelled the document "This was given to me by [the Second Respondent] in January 2009" signed and dated "29/05/09"; she submitted that by giving her this document, the Second Respondent sought to instil fear in her of sanctions from the Applicant. (It set out the Second Respondent's views of the implications of closing the firm.) The second hand written document was in an envelope, endorsed:

  > "Private & Confidential (Not to be opened) unless condition at back of envelope comes about."

  The reverse of the envelope bore the words:

  > "Not to be opened unless [the Second Respondent] is gravely ill or no longer alive or in the event of a prosecution being brought against Antonia or by the Law Society"

  It was labelled:

  > "This was given in an envelope, so photocopy front and back accordingly, From [the Second Respondent] on 17/2/09."

- As to her contribution to the firms and a statement in the Second Respondent's letter dated 26 July 2010:

  > "A synopsis of the following figures will illustrate what assisted to bring about the deficit:
  >
  > Drawn by [the First Respondent] £112,000
  >
  > Paid ALP debts £110,000
  >
  > Total Fees earned by [the First Respondent during this period £24,500 approximately…"

  She did not know how the firm ALP was faring in the period 2004 to 2006; this was dealt with by the bookkeeper DS but she knew there were debts and that was why she depleted the equity in her flat by taking an additional

£50,000 to £60,000 by way of draw down on her mortgage. She could not dispute the Second Respondent's statement in the letter that during the same period that is from the first day of the commencement of the firm to the cessation of ILPL, he only drew £47,000 from the firm. The figures were his. She accepted that he worked very hard and while he had other job opportunities elsewhere he did not take them. (In his letter, the Second Respondent stated that before ILPL was set up he had approached four other firms of solicitors and based on the work he could attract and his average monthly fees they were all more than willing to employ him and pay for the files he brought from ALP.) The First Respondent disputed the suggestion that she had concentrated on her high standing in the Greek community and fast cars; she was now living with her parents and had to sell her car to pay debts.

- She did not know why the Second Respondent had behaved as he had; he said he had loved her as his sister but now she thought that was the way he worked.

- SA was not a part of the new firm and the whole point of continuing was so that he would not be in the firm and not able to threaten her but he still did so because he wanted money paid to him under the original agreement of 1 July 2004.

- In respect of her drawing £4,000 per month gross and then wanting £8,500 for the car, she thought this was some sort of recompense for what she had been through. She had never had a car and wanted one and thought that the Second Respondent felt sorry for her; she did not demand the money. In terms of whether she thought that the firm could afford her drawings, from the figures before the Tribunal it did not look as if the new firm did very well but the Second Respondent was doing very well in terms of his fees and she thought that the money for the car came from a legitimate bill; she apologised, this was due to her mental state at the time. She had subsequently purchased a small car which she sold and put the money into the business.

41. The Second Respondent gave evidence and save as recorded below, it is set out under the appropriate allegation. In respect of the complaint from C, its present status was that C sued SA, went to the bankruptcy court and presently there was an arrangement that SA would make a monthly payment. The Second Respondent was still in contact with SA and used fax and other facilities at his estate agency from time to time. Until around September 2008 the relationship between the First and Second Respondents was that of brother and sister or father and daughter; they shared secrets and spoke regularly and were there for each other. He had only obtained representation late on the previous Friday and his statement had been prepared without counsel's advice.

Findings of fact and law

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

(The submissions recorded below include those made orally at the hearing and those in the documents.)

43. Allegation 1.1 The First Respondent dishonestly misled the Central London County Court by stating in her defence for case number 8CL00693 that Mr SA was an independent contractor when he had been reported to the Solicitors Regulation Authority ("SRA") as an employee and Practice Manager of Antonia Law Partnership, thereby acting in breach of Rules 1.02, 1.06 of the Solicitors Code of Conduct 2007 ("the Code").

Allegation 1.2 The First Respondent dishonestly misled or attempted to mislead the SRA on 23 December 2008 by stating that Mr SA was not a member of staff of Antonia Law Partnership when he had in fact been reported to the SRA as an employee or Practice Manager of that firm, thereby acting in breach of Rules 1.02 and 1.06 of the Code.

These allegations were dealt with together as they arose out of related facts.

Submissions for the Applicant

43.1 For the Applicant, Mr Bosworth submitted that from June 2004 the First Respondent practised as ALP effectively as a sole practitioner or that was what she purported to be. He referred the Tribunal to the Memorandum of Agreement dated 1 July 2004 between the First Respondent (first party), JT (second party), SA (third party) and the Second Respondent (fourth party) which recited that the First Respondent had opened an estate agents and solicitor's practice under the title ALP, which commenced on 28 June 2004. It continued:

> "AND WHEREAS the second, third and fourth parties are desirous of entering into an employment agreement with the first party in respect of ALP
>
> AND WHEREAS the first, second, third and fourth parties are desirous of reducing the employment agreement in respect of ALP to writing"

All seemed to go well until C complained. The First Respondent's initial response to the Applicant dated 23 December 2008 sent from ILPL denied that she had breached any principle or rule and referred to the matter as a civil dispute between Messrs C and SA and not professional misconduct. Mr Bosworth referred the Tribunal to the detail of the First Respondent's response regarding the status of SA and the defence filed to the proceedings brought in the Central London County Court by C against the First Respondent trading as ALP. It included that "Mr [SA] and Mrs [JT] were neither partners in the Firm nor employees thereof." The defence was signed by the First Respondent and bore a statement of truth. Mr Bosworth also referred the Tribunal to the screenshots produced by the Applicant which respectively recorded SA's status within the firm as that of employee from 31 October 2005 to 19 November 2006 and as its practice manager from 1 November 2005 to 23 October 2006. The screen shots were undated but the First Respondent accepted them. The Memorandum of 1 July 2004 stated:

> "The third party is to be employed as a fee earner as well as a Practice Manager."

Mr Bosworth also relied on the client care letter signed by the Second Respondent and sent to C dated 28 October 2005 in respect of a property transaction for 810 A Road, Birmingham. The Terms of Business attached included under "Complaints Procedure":

> "If you feel the matter has not been resolved by me, then you should follow it up with [SA], the Practice Manager of this firm…"

Mr Bosworth submitted that the First Respondent's defence submitted to the Court and her letter to the Applicant of 31 December 2008 were wholly misleading and dishonest. The First Respondent had been in practice since 1998 and at the time of the events in question she had been qualified for six and a half or seven years. From the setting up of ALP and its transformation into ILPL, the First Respondent had to have realised what was going on. She was completely out of her depth but rather than do the right thing she allowed the situation to continue and continued to draw monies from ALP and subsequently from ILPL and derive a living from them until the investigation brought matters to light. Even according to her own letters and witness statements she said that she abrogated all responsibility and hid behind the fact that everything had been done by others. Mr Bosworth submitted that the First Respondent presented a real danger to the public. Miss O'D's funds had been taken and used by the firm contrary to the client's instructions; this lowered the reputation of the profession as a whole. More concerning than the other facts, was the lack of insight shown by the First Respondent. If the Tribunal did not find dishonesty proved to the required standard Mr Bosworth asked that it also looked at the case of Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin). In that case it was said, omitting the paragraph numbers:

> "It is not necessary to set out statements as to the position and esteem in which the profession is held and the importance of the highest professional standards. Those are set out in the judgments of Sir Thomas Bingham MR, as he then was, in the well-known case of Bolton v The Law Society [1994] 1 WLR 512 and again in his decision in Weston v The Law Society reported in the Times, 15 July 1998, when Sir Thomas Bingham spoke of standards of integrity, probity and trustworthiness. In Weston he made clear that trustworthiness did not merely refer to honesty, but also the duty arising from holding someone else's money.
>
> It seems to me that trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the roll. It must

> be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence.
>
> It seems to me, therefore, in this case, putting aside the view, which I fear inadvertently the Tribunal did, of returning to the issue of honesty, that the degree of incompetence exhibited by the appellant in relation to so serious matters as to who his partners were, is such that the only possible sanction was striking off the roll."

Mr Bosworth submitted that the First Respondent fell into the category of incompetence described in Iqbal. Her conduct started as recklessness and became dishonest and incompetent leading to a really shocking state of affairs. Mr Bosworth also drew the Tribunal's attention to the case of The Law Society v Brendan John Salsbury [2008] EWCA Civ 1285. Referring to the reasons why Tribunals made orders which might otherwise seem harsh and one purpose of Tribunal orders being to ensure that an offence was not repeated, the Court went on to say:

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

Mr Bosworth submitted that if the Tribunal was not satisfied that there had been dishonesty then it could find recklessness and manifest incompetence in allegations 1.1, 1.2, 1.3 and 2.4.

Submission by and evidence of the First Respondent

43.2 In respect of allegations 1.1, 1.2, 1.3 and 2.4, the First Respondent referred the Tribunal to her letter to Mr Bosworth of 26 June 2012 setting out what she admitted and denied and her state of mind at the material times. The First Respondent admitted that she had signed a statement of truth in the defence lodged in the County Court proceedings. She denied that the statement about the status of SA and JT in the firm was untrue and explained that at the inception of ALP, overwhelmed by the opportunity and trusting the Second Respondent when she should not have done, she had signed a document which she believed to be a fee sharing agreement (the Memorandum of Agreement dated 1 July 2004). It was her dream to own her own practice, not to be partners with other people. She did not take legal advice and so did not know the legal status of SA and whoever he was in practice with; she believed he was an independent contractor and investor. SA had been "resilient" in blackmail and threats to report her; she had been too petrified and too ill to take advice and it all

happened too quickly. The Second Respondent said that he would deal with the blackmail situation. The First Respondent stated that she was confused. She said that she was not "petrified" when she signed the agreement of 1 July 2004 but she did not know what she was signing. She accepted that in several places it referred to the other parties to the agreement in terms of employment but she had not read it before she signed it. Similarly when she signed the defence statement for the County Court, she had no idea what it was about; she believed the Second Respondent had instructed Counsel to draft it and he knew better than she did. She had signed the defence statement blindly but rejected the suggestion that she had been reckless in signing the statement of truth and did not think anyone in her position would have done anything different. This also applied to the letter to the Applicant of 23 December 2008. She had just discovered what the Second Respondent had done to Miss O'D and was devastated and did not know what else to do but sign.

43.3 The First Respondent testified that after she had entered what she thought was a fee sharing agreement in July 2004 the other parties wanted to be partners. She had nothing to do with the setup of the firm. She just had to join what was supposed to be her firm. She signed The Law Society papers because she trusted the Second Respondent. Her statement showed how much she trusted him and was indebted to him during her training at the firm TD (a predecessor of T & Co). She had found out from RT (of T & Co) that there had been a shortfall in his client account too. The First Respondent testified that SA devised the client care letter and his brother printed it (and she said in her October 2009 letter, his business cards with his job title); she had not used his version of the letter. The First Respondent agreed that she had not reported the situation to the Applicant or any other parties or authorities or to a friend because SA knew where she and her family lived. As to why there was no evidence of intimidation, the First Respondent responded "How would there be?" The First Respondent rejected the suggestion that all the issues had come to light because of C's complaint. She maintained that that had nothing to do with it; she had gone to the Applicant. The Second Respondent had dealt with the complaints as she had given the reins to him in ALP. It had happened when she was ill.

43.4 The First Respondent submitted that she was not dishonest or incompetent. Her error had been one of trust and naiveté in respect of people who deceived her to the highest degree. The Second Respondent had accepted in giving evidence, and in his letter of 26 July 2010 to the Applicant that she was not dishonest. She had told the truth and it would prevail as it had in the criminal proceedings. She accepted that she had not put up as much resistance as she could at ALP, but she had suffered a nervous breakdown, which caused her to fear for her life. She had been fearful at one stage that her GP would have her committed because of her mental state. She had refused medication. In December 2008 when she discovered the problem with Miss O'D's money she had become suicidal and obtained counselling from her pastor who was presently in Nigeria but willing to give a statement. She stated, but Mr Bosworth disputed, that he had advised her that a written statement from her pastor was not acceptable. She had the courage to close the practice and report to the Applicant. She had acted in her clients' interest; it was the responsible thing to do.

Determination of the Tribunal in respect of allegations 1.1 and 1.2

43.5 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. In respect of allegation 1.1, the Tribunal had heard from the First Respondent that she did not read the Memorandum of Agreement dated 1 July 2004 with its references to the employment status of the other parties. The Tribunal was not satisfied to the required standard that the First Respondent had read the Memorandum or that she had it in mind when she signed the defence statement for the County Court proceedings. The statement had been drafted by Counsel based on what he had been told and the Tribunal was satisfied that the First Respondent had left the matter to the Second Respondent to deal with as she did so many other things. Allegation 1.1 was very specifically pleaded and required a finding of dishonesty in order to be proved. The test to be applied to these allegations of dishonesty was that in Twinsectra Ltd v Yardley 2002 UKHL 12:

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

The Tribunal found allegation 1.1 not proved to the required standard.

43.6 Allegation 1.2 was based on the First Respondent's letter to the Applicant of 23 December 2008 which conflicted with information shown in screenshots from the Applicant's records based on information provided by the firm. The Tribunal was not satisfied to the required standard that the First Respondent had populated the screen shots and she was adamant in evidence that the letter of 23 December 2008 was not hers although she had signed it. The Tribunal was also satisfied in any event as in connection with allegation 1.1 above that the First Respondent did not regard SA as a member of staff or practice manager. Again allegation 1.2 was very specifically pleaded and required a finding of dishonesty in order to be proved. The Tribunal was not satisfied on the evidence to the required standard that the First Respondent dishonestly misled or attempted to mislead the Applicant as alleged. The Tribunal found allegation 1.2 not proved to the required standard.

44. Allegation 1.3: The First Respondent dishonestly misled or attempted to mislead the SRA on 23 September 2008 by stating that she was unaware of the loan made to her in March 2005 when money was paid into her firm's then office account, thereby acting in breach of Rules 1.02 and 1.06 of the Code.

44.1 For the Applicant, Mr Bosworth submitted that any cheques referred to or payments out of ALP/ILPL were signed by the First Respondent and no one else. Thirty-five cheques had been made out to C from the First Respondent, trading as ALP. He referred the Tribunal to a Memorandum of Agreement dated 20 October 2005 entered into between "Mr [SA] of ALP]" and C. It recited:

> WHEREAS the second party [C] loaned the sum of £40,000.00 to the first party [SA] on 7th March 2005 of which £20,000 was paid back to the first

party on 19th September 2005 and the balance of £20,000 remains outstanding.

…NOW THEREFORE THESE PRESENT WITTNESSETH (sic)

1. That the agreement dated 7th March 2005 is now considered null and void and now replaced by this new agreement which also acts as receipt for the £20,000 paid on 19th September 2005

2. [ALP] will pay interest of £580 per month to the second party on behalf of the first party starting on 20th November 2005 until the debt (sic) £20,000 is fully repaid

…

5. The first party undertakes to sign a second charge over the property described as 8 [W] Gardens [remainder of address] if the loan period exceeds six months from the date …"

The agreement was witnessed by the First Respondent and her office account ledgers recorded payments to C. Therefore Mr Bosworth submitted that it was misleading for her to state that she was unaware of the loan.

44.2 The First Respondent testified in respect of her signing the Memorandum of Agreement for the loan dated 20 October 2005, that the Second Respondent said that if she did not sign it she would be left to deal with the other parties on her own. Also she had not seen the earlier agreement of 7 March 2005 to which it referred. It was always her evidence that she was subject to undue influence; she did not think she was a party to the loan agreement.

44.3 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The First Respondent stated that she was unaware of the March 2005 loan referred to in the Memorandum of Agreement relating to the October 2005 loan and the Tribunal found that there was no evidence to contradict that assertion. The First Respondent admitted that she had witnessed the Memorandum and accepted that there was a commitment for the firm to pay interest but she denied having read the Memorandum and also asserted that the letter of 23 December 2008 to the Applicant was not hers, as set out above. The Tribunal considered that witnessing the Memorandum was not sufficient to fix the First Respondent with knowledge of its contents and while she accepted that there was an obligation on the firm to make interest payments for SA the Tribunal found that she was not a party to the Memorandum. The Tribunal considered that it was not dishonest by the test in Twinsectra for the First Respondent to sign the 23 December 2008 letter to the Applicant in the way that she had. As with allegations 1.1 and 1.2, the Tribunal was troubled by the First Respondent's evidence about her state of knowledge regarding the authorship of the 23 December 2008 letter and her approach to it. However allegation 1.3 was again very specifically pleaded and the Tribunal did not find it proved to the required standard.

45. Allegation 1.4: The First Respondent acted for Mr C when her own interests conflicted with those of Mr C in relation to the borrowing of money from him and without ensuring that he obtained independent legal advice, thereby acting in breach of Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1999 (8th edition) and Rule 16D(2)(b)(ii) of the Solicitors Practice (Conflict) Amendment Rules 2004.

45.1 For the Applicant, Mr Bosworth submitted that the First Respondent had been qualified for six and a half or seven years when the Memorandum of Agreement for the loan was entered into. She was aware from the Memorandum of Agreement relating to employment that SA was an employee of ALP and that funds were going into ALP's office account to pay for rent on the premises. There was no evidence from her to show that C had received independent legal advice. She had to be aware of at least the potential for conflict in a loan to the firm if she was not sure that independent legal advice had been given.

45.2 In cross-examination by Mr Bosworth, the First Respondent testified that she was not a party to the loan agreement and was not in her right mind-set at the time. In her answer she stated:

> "In any event, I did not want to witness the agreement dated the 20th October 2005, however, [the Second Respondent] said if I didn't he would walk away and leave me to deal with them all…"

45.3 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal found as a fact that C was a client of the firm. This was clear from the list of transactions in which the firm had represented him, as listed in his letter of 10 March 2009 and from the client care letter dated 28 October 2005. In his letter to the Applicant of 10 March 2009, C stated said:

> "I gave the money twice. The first was £20,000.00, which I paid to them. It was made to ALP in their premises and in the presence of [the First Respondent], [the Second Respondent], [SA], and [JT]. At the time, I was given the impression that they were all business partners and [the First Respondent] was the senior partner (the boss).
>
> Also, I further transferred the balance of £20,000.00 from my NatWest Account… to [ALP] Office Account. This is also a proof that the money was loaned to ALP and [SA] had contacted me on behalf of ALP…"

C also said in the letter:

> "It is also not true that [the First Respondent] was not aware of the loan. The second part of £40,000.00 which was the balance of £20,000.00 was paid into her office account. This all gave me the impression that the loan was for ALP. [SA] and [JT] can confirm how the first instalment of £20,000.00 was paid. It is also not correct that I was advised to seek independent advice. This was never done and why was it not put in writing as honest solicitors do. [JT] was

not even around in September 2005 and she could not have advised me that I should have an (sic) independent advice."

The Tribunal noted that the First Respondent relied on the loan being a personal arrangement between the client C and SA. The First Respondent said that this was SA's capital contribution to the firm. The Tribunal also noted that the First Respondent disputed that she was present when the money was handed over or that JT was present as she was in custody. Whoever was present, it was clear from the report extracted from the firm's accounts and attached to C's substantive letter of complaint to the Applicant that the accounts recorded "TWO CHEQS FROM [C] LOAN TO SA" on 25 February 2005 in the sum of £20,000. The Tribunal found that regardless of whether SA was an independent contractor as the First Respondent asserted, or an employee of the firm, in acting on behalf of the firm he had procured C to enter the loan agreement and the monies lent went straight into the firm's office account. The Memorandum of Agreement for the loan acknowledged ALP's liability at least for the interest element and the First Respondent accepted that she had an obligation to repay the money even if only by way of diverting commission due to SA. The accounts recorded that some payments were made to C. The Tribunal did not accept that the firm had nothing to do with the loan. It found that the First Respondent had acted for C as alleged and that it was incumbent upon her to ensure that the client was independently advised and failing that she should not have gone ahead. The Tribunal found allegation 1.4 proved.

46. Allegation 1.5: The First Respondent failed to comply with an undertaking given by Mr SA, a member of her staff, in a Memorandum of Agreement dated 20 October 2005 to execute a charge over 8 W Gardens when a loan period for such an agreement exceed six months thereby acting in breach of Principle 18.11 of the Guide.

46.1 For the Applicant, Mr Bosworth submitted that this allegation arose out of the undertaking given in part 5 of the Memorandum of Agreement for the loan dated 20 October 2005 which the First Respondent had witnessed. Mr Bosworth had no idea how ALP would have signed a second charge over the property in question as it did not belong to the firm but he submitted that the fact that an undertaking could not be complied with did not prevent it from being given. As to the fact that witnesses do not always know what is in a document and are not generally required to do so, Mr Bosworth submitted that the First Respondent was a sole practitioner and must be aware that an undertaking from one of her employees committed her. It was for her to say if she did not know about the undertaking.

46.2 The First Respondent said in respect of the undertaking in her Answer to the Rule 5 Statement:

> "What I understood from the agreement dated 20th October 2005, that if after 6 months the £20,000 was not paid by Mr [SA] then Mr [C] could place a second charge (and it was Mr [C] responsibly (sic) to do so and could enforce it against Mr [SA] with the agreement dated 20th October 2005) on one of Mr [SA's] properties, namely 8 [W] Gardens."

46.3 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal considered that it was unclear from the evidence and the Memorandum of Agreement dated 20 October 2005 who had given the undertaking to C and whether it was a personal commitment that the firm had guaranteed in some way. The Tribunal noted that the First Respondent was not a party to the document and said that she did not read it. The Tribunal did not consider it had been proved to the required standard that the undertaking had been given on behalf of the firm and that the First Respondent was therefore obliged to fulfil it. The Tribunal found allegation 1.5 not proved.

47. Allegation 1.6: The First Respondent was in breach of Rule 5 of the Code in that she failed to properly supervise and manage the responsibilities of her practice.

47.1 For the Applicant, Mr Bosworth relied on the evidence and that allegation 1.6 was admitted.

47.2 In her Answer to the Rule 5 Statement, the First Respondent stated:

> "I admit the allegation [1.6] made against me, and this is the main reason I closed the business and reported all matters to you.
>
> …
>
> I tried to supervise and control Mr [SA] activities (including the business and the others who worked in the business as much as I could, most of them being Mr [SA's] contacts, save [the Second Respondent] who I thought was helping me and I could trust. Mr [SA] had his own contacts and ways of working, which unfortunately for me I could not control and looked to [the Second Respondent] as I explained in my statement… Although I did really try, but this document 1 July 2004 kept me in a constant state of despair and fear, and things just got worse in the business as it wasn't working out and so did the blackmail and threats which led to my devastation and total dependence upon [the Second Respondent], who introduced me to the business and said "I should trust him". My health deteriorated and kept me away most of the time from the business, and trusted [the Second Respondent] to deal with matters in my absence. I was very depressed and stressed out, not much in coherence. I simply could not cope with Mr [SA] and all that was going on and didn't realise the deception I was under with [the Second Respondent] whom I trusted with my life as stated in my said statement and I felt so indebted to him. As I thought he had mine and best interests' (sic) of the clients at heart and that he was more qualified than I was and had more experience and competence than I had, and then that was how he was able to control the business the way he did and so in fact in reality it wasn't me running the business, but [the Second Respondent]. I was under his instruction and direction based on his deception…"

47.3 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second

Respondent and by the First Respondent. The Tribunal found allegation 1.6 proved, indeed it had been admitted.

48. Allegation 2.1: That the First Respondent entered into practising arrangements between herself and an unadmitted person that were not permitted between 30 June 2004 to 19 December 2006 under the style of "Antonia Law Partnership" and from 20 November 2006 to 28 February 2009 under the style of "Imanuel Law Practice Ltd" contrary to Principle 3.02 of the Guide.

48.1 For the Applicant, Mr Bosworth referred the Tribunal to the Memorandum of Agreement between the First Respondent and those he submitted were her employees and the statement enclosed with her 15 October 2009 letter, in which she said:

> "Towards the end of May 2004 [the Second Respondent] contacted me and informed me of a great "once and (sic) a lifetime opportunity". What I had always dreamed of: my own firm and in Covent Garden. [The Second Respondent] informed me that it was already set up, the premises, the staff, the clients and even the bookkeeper [DS] who would do all the accounts (as he knew I didn't understand accounts very well) and all I had to do is join him, as [RT] was leaving. He told me not to worry about anything and to leave it all to him and he would guide/instruct me as to what to do like before and that I should trust him and depend on him."

and

> "therefore, after a few meetings [ALP] was created on 28th of June 2004 and started to practise from 30th June 2004 at… Covent Garden. Using my name, as I was the only qualified lawyer and can now see why they needed me."

and

> "I got really confused. I completely retreated at home as could not cope with the financial pressure, the daily battle, and all that was happening in ALP, mainly with [SA] who took to blackmail and all sorts to get his way, due to the agreement I signed on the 1st July 2004 that he cleverly drafted, as [SA] was relentless in threatening to use this agreement against me either with you [the Applicant] or law courts. I wanted to leave, but there seemed no way out. I felt really tramped (sic). I was hardly at the office and became very depressed…"

Later in the statement, the First Respondent described the start of ILPL following the expiry of the lease of the premises on 20 November 2006 and with that SA's ultimate responsibility for paying the rent under the lease. The First Respondent stated that she wanted to leave but the Second Respondent told her that she could not as she would lose her practising certificate as the debts were so high that if she left the business, she would most definitely become bankrupt and would not be able to practise as a solicitor again. She continued:

> "In the last week of June 2008 [the Second Respondent] had a heart attack, and this is when I first realised that things were not quite right. [As I was then able to take his calls, look in his room, looking for files etc and now started to

> receive the DX and post, who (sic) [the Second Respondent] had totally insisted should be opened by him due to his experience (he did this from [ALP] time). He often would collect the DX in the morning. Therefore, it just became a rule that [the Second Respondent] would be the first to open the DX and Post.
>
> I never previously looked at his files due to the respect and relationship we had, unless he wanted me to and in any event he worked in such a way it would be very difficult to see what was going (sic) in his files, to me it looked like a mess, but he seemed to know what he was doing and in fact he assisted me in supervising the files in the office. As I specialised mainly in residential conveyancing so my knowledge on other areas of law was very limited, whereas [the Second Respondent] is one of the last of a dying pried (sic) of general practitioners. He was able to deal with most areas of law.[The Second Respondent] has been practising law for about 30 years and understands accounts, unlike myself. Therefore, I was confident of his competence and his expertise and knowledge and my lack of confidence didn't help. I was the underdog. My name might have been down on paper as my practice, but in reality [the Second Respondent] was the one running and controlling me and the firm as his own…"

Mr Bosworth submitted that, shockingly, the First Respondent said in her statement:

> "My role became more of a residential conveyancer, office manager, to administrator."

Mr Bosworth drew the Tribunal's attention to the First Respondent's letter to the Applicant of 23 March 2010 in respect of ALP. In it she said:

> "I did not want to enter into a sham partnership and did my best to resist it, once I realised what I was made to sign. (Agreement dated 1 July 2004…"

Mr Bosworth submitted that the First Respondent submitted no resistance. She had displayed no insight into the issues arising from abandoning her practice to unqualified individuals and relied on them as the sole reason for the difficulties which had arisen. He submitted that First Respondent had been dishonest and reckless throughout the periods in question but confirmed to the Tribunal that no dishonesty was alleged in respect of allegation 2.1.

48.2 In cross examination by Mrs Millin for the Second Respondent, the First Respondent was referred to the Second Respondent's letter of 26 July 2010 responding to the Applicant and she agreed that at the inception of ALP, the Second Respondent had no money to put into the firm although each of those signing what she regarded as a fee sharing agreement was expected to put in £20,000. She believed that JT assisted him. The First Respondent had provided him with £10,000 but this had been invested in a 'singles club' not the firm. In evidence the Second Respondent testified that he accepted that the First Respondent might have signed the 1 July 2004 Memorandum of Agreement without reading it because from her character she did not like to read things that were difficult. He assumed that she read it.

48.3 In respect of roles in the firm as between the Respondents, the Second Respondent stated in his 26 July 2010 letter:

> "My role at [ILPL] was to be an assistant to the Principal."

This was at the beginning.

48.4 The letter continued that at ILPL:

> "I did the following:
>
> (a) introduced new clients.
>
> (b) I carried out work in conveyancing, litigation, family law, crime…
>
> (c) It was intended that [the First Respondent] would have two further fee-earners, and therefore she would spend part of her day attending her own clients and the rest of the day supervising me and the other two fee earners…"

48.5 The First Respondent accepted that at the beginning of ALP the Second Respondent was an assistant to the principal but otherwise she disputed the description of his role. At the beginning she had been so overwhelmed by the opportunity she did not think as far ahead as adding more fee earners. The First Respondent agreed that she remained principal and sole solicitor save for JF who joined towards the end of ILPL. She trained in family and conveyancing work. She had knowledge of litigation but it was not that good. The Second Respondent undertook the negotiation and drafting of settlements in litigation work. As to whether she had thought about her ability to do the job, the First Respondent said she admitted she was naive and had trusted the Second Respondent. The First Respondent stated that the Second Respondent's description of supervision, was a figment of the Second Respondent's imagination:

> "all files that I had worked on, on any particular day, were to be left on [the First Respondent's] desk at the end of the day and were to be collected by me the next morning, or by the end of the day…"

Although the firm was supposed to be hers, that did not happen. She accepted that she had assisted the Second Respondent with some of his files when he asked her. She disputed that the Second Respondent had prepared documents under her direction because the files were his. As to his further description of his role in the letter to the Applicant which included:

> "I did not "run" the office, but, yes, I assisted as far as possible by answering phones, posting letters, collecting document, attending to ad-hoc problems that arose or attending new clients or other clients, who called at the offices. Someone had to do this, if [the First Respondent] was not at the offices or if she was at the offices, was too busy attending to other office or personal matters…"

The First Respondent disputed that this was just the description of an entirely hard-working support worker. The First Respondent denied in evidence that she closed her eyes to a sham partnership because she derived her living from it.

48.6 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. Principle 3.02 of the Guide provided:

> "A solicitor shall not enter into partnership with any person other than a solicitor, a Registered Foreign Lawyer or a recognised body."

The Memorandum of Agreement dated 1 July 2004 related to the setting up of ALP. The First Respondent was fixed with the document because she had signed it as the first party. It entitled her entirely at her discretion to pay bonuses to the second party JT, the third party SA and the fourth party the Second Respondent. It also contained provisions specific to her; she was to credit herself with a seven and a half percent share of the total fees earned by the firm in respect of the supervision work carried out by her over and above any profits and drawings that she might be entitled to. The Memorandum used the language of employment throughout. There were provisions for the termination of the agreement by the second, third and fourth parties giving notice to the First Respondent. She was also obliged to give them notice of termination of what was described as their employment. There was a reference to waiver of the notice period in the event of a gross misconduct by any of the second, third or fourth parties. Mr Bosworth submitted that this was a sham partnership; the First Respondent denied that and said that it was a fee sharing arrangement which was permitted by The Law Society. She also denied that the other parties were employees. The Tribunal did not find that it had been proved to the requisite standard that this was a partnership arrangement and found that Rule 3.02 of the Guide had not been breached during the period when the Guide applied, that was from 30 June 2004, when ALP was founded and then succeeded by ILPL, until 30 June 2007. As to the period after 1 July 2007 when the Code applied, the allegation was brought under Rule 7 of the Code which related to publicity while Rule 8 of the Code related to fee sharing. (The Tribunal noted that Rule 7 of the Solicitors Practice Rules 1990 had related to fee sharing.) No application had been made to amend allegation 2.1. The Tribunal considered that the other parties to the agreement were employees (although the First Respondent denied this) and it would have been in order for her to fee share with them. She had in fact adopted the rules relating to fee sharing as a defence to this allegation. The Tribunal found the thrust of this part of the allegation as pleaded, setting aside the numbering issue, not to have been proved to the required standard either. Accordingly the Tribunal found allegation 2.1 not proved.

49. Allegation 2.2: That the firms of "Antonia Law Partnership" and "Imanuel Law Practice Ltd" were improperly described as solicitor partnerships or sole practices when in fact they were businesses carried on by the First Respondent and other unadmitted persons. The First Respondent had no control over those businesses.

49.1 For the Applicant, Mr Bosworth relied on the evidence and submitted that allegation 2.2 was admitted notwithstanding that allegation 2.1 was denied. By letter of 15 October 2009, the First Respondent wrote to the Conduct Investigation Unit of the

Applicant setting out her response to previous correspondence stating that she had little control of the business of ALP. She stated that the Second Respondent had control of the business and that throughout he exercised control over the business.

49.2 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal found allegation 2.2 proved, indeed it had been admitted.

50. Allegation 2.3: That the First Respondent was in breach of Rule 1, Rule 6, Rule 7, Rules 22 (1) and 22 (3) and Rule 32 of the Solicitors Accounts Rules 1998 as amended.

50.1 For the Applicant, Mr Bosworth relied on the evidence and submitted that allegation 2.3 was admitted. These allegations related to the matters reported in the FI Report including the minimum cash shortage of £144,683.08 that existed as at 28 February 2009 and the transfers and associated accounting entries relating to Miss O'D's account.

50.2 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal found the First Respondent to be responsible for accounting matters at the firm and therefore for the transfers which led to the cash shortage. The Tribunal found allegation 2.3 proved, indeed it had been admitted by the First Respondent.

51. Allegation 2.4: That the First Respondent created false documentation in relation to transfers in connection with the sale of a property of a client of Imanuel Law Practice Ltd.

51.1 For the Applicant, Mr Bosworth submitted that this allegation arose out of matters relating to the client Ms O'D and he relied on her signed witness statement for the police dated 19 April 2010 which was referred to in the FI Report, where it was recorded:

> "It is mentioned that a review of Miss [O'D's] signed witness statement… had originally stated… "I asked the Second Respondent for my balance account he gave me a completion statement on 24/10/08". [Miss O'D] has crossed out 'he' and replaced it with 'Antonia Kouriakou (sic)'. Mr Dhanda [IO] spoke with [Miss O'D] on 12 May 2010 and she explained that she recalled clearly that she was in [the Second Respondent's] room and he spoke with [the First Respondent] who then brought in the completion statement and handed it to her. Mr Dhanda also spoke with [the First Respondent] on 12 May 2010 in respect of the above situation and she denied that she had handed [Miss O'D] the completion statement."

The completion statement was before the Tribunal and to be fair to the First Respondent, Mr Bosworth accepted that there was nothing signed by the First Respondent on the document. He submitted that the First Respondent's actions were

in breach of Rule 1 of the Code obliging a solicitor to act in the best interests of the client.

51.2 The First Respondent testified that the Second Respondent had stated that she was not aware of the over transfers and that this was absolutely true but now he sought to deny what he had said. She reminded the Tribunal of the statements in the second of his handwritten documents dated 17 February 2009, about her unawareness of the over transfers. The First Respondent also submitted that the Second Respondent had stated in interview and in a letter to the Applicant that he had only made these statements because he believed that sanctions could only apply to her. She rejected the suggestion that it had been arranged so that actions in respect of Miss O'D's files had to be seen to be done by the Second Respondent because she led him to believe that it protected the firm from proper scrutiny by The Law Society. She had closed the practice and made restitution of whatever she could and reported the situation to the Applicant. She relied on the evidence in the trial bundle including her statement of 10 May 2010 enclosing the handwritten documents. She had drafted her statements without legal assistance and would draft them differently now. She would rather have gone bankrupt than deal as the Second Respondent had with client money. She was not in her right mind; she was petrified, scared and like a 'zombie' and just came in to sign cheques.

In cross-examination by Mrs Millin in respect of the allocation of culpability between the Respondents, the First Respondent stated that she only wrote cheques on the Second Respondent's instructions; she accepted that he was not allowed to write cheques. She also accepted that the Second Respondent was not allowed to handle money but she stated that she was a tool in his hands and so he did not need to. She felt that it was appropriate that he had taken all the blame in the criminal court because he was responsible. She accepted that the money which was the subject of criminal proceedings came into the firm but asserted that the Second Respondent was in control of the firm and he had received £47,000 over two years. She did not recollect what her fee income was but it was not much because she was very ill and had a nervous breakdown which continued throughout the period of ILPL's existence. She denied that she had acted under the guidance of JF; he only came on the scene in October or November 2008 before she closed the business. She disagreed with the suggestion that she had signed cheques and demanded transfers including for drawing down her salary which it was suggested she was not earning. She denied that she had demanded money for a car on the basis that when she obtained it she would behave better. She denied that she was instrumental in demanding the funds which had been withdrawn from Miss O'D's account but had eluded justice to account for her participation.

51.3 Mrs Millin referred the First Respondent to Miss O'D's statement in the criminal proceedings dated 19 April 2010 where she said:

> "I returned to The Gambia 18/03/09, around the middle of June I received a phone call from Antonia of [ILPL] who told me [the Second Respondent] had stolen all my money, I was extremely shocked and found it hard to believe. She told me he had given her £8,500 of my money in July 2008 for her to put towards the purchase of a car. He had told her, "she's out of the country, on her own and I can fob her off".

The First Respondent stated that she had been guided by the Applicant in telephoning Miss O'D who was quite rightly shocked. The IO was at the premises and he wanted Miss O'D's side of events; also the First Respondent wanted to assist Miss O'D with the Compensation Fund.

51.4 The First Respondent refuted the suggestion made by the Second Respondent in interview with the IO that when she had removed the Second Respondent's files from the premises of JF's firm she had removed documents relating to the movement of money which the Second Respondent had recorded and accepted that for a solicitor to do that would be dishonest. She had removed the files at the request of JF who had taken over her firm and she needed the files to give to the IO.

51.5 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Second Respondent had stated in the handwritten document of 17 February 2009 that the First Respondent "was unaware of this. However, she did put pressure on me to find monies and I should have been strong enough to say no. But I failed to do so." He was referring to making over transfers from client account to office bank account to meet ALP's expenses. The Rule 7 Statement recorded that the Second Respondent made the accusation that the First Respondent forced him to continue making transfers to "rob Peter to pay Paul" even after he had suffered a heart attack and was in hospital. The Tribunal was satisfied that the First Respondent had put pressure upon the Second Respondent to produce the money which was needed to meet her financial demands but was not satisfied on the evidence that she was knowingly involved in false transfers in respect of Miss O'D's funds. This was the converse of her admitted lack of supervision and what the Tribunal considered to be her abrogation of responsibility to others and standing aside from the work of the firm. The Tribunal found allegation 2.4 not proved.

52. Allegation 2.5: That the First Respondent failed to deliver finalised accountant's reports for Imanuel Law Practice (Ltd) for the year ending 31 December 2008 (due by 30 June 2009) and 31 December 2009 (due by 30 June 2010) in breach of Section 34 of the Solicitors Act 1974 (as amended) and Rule 35 of the Solicitors Accounts Rules 1998 (as amended).

52.1 For the Applicant, Mr Bosworth relied on the evidence and submitted that allegation 2.5 was admitted.

52.2 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal found allegation 2.5 proved, indeed it had been admitted.

<u>Allegations against the Second Respondent</u>

(The allegations against the Second Respondent were considered together as they arose out of the same facts.)

The allegations against the Second Respondent on behalf of the SRA were:

53. **Allegation 3.1: That the Second Respondent dishonestly created false documentation in relation to transfers in connection with the sale of a property of a client of "Imanuel Law Practice Ltd" and was party to an act or default which involved conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice.**

Allegation 3.2: That the Second Respondent misled clients of Imanuel Law Practice Ltd as to the conduct of their conveyancing matter and was party to an act or default which involved conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice.

Allegation 4.1: That the Second Respondent pleaded guilty to Indictment/Case number T20110290 at the Central Criminal Court on 16 April 2012 to a single charge of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 in that he admitted the fraudulent use of approximately £150,000 of a Miss O'D, a client of the Imanuel Law Practice (Ltd).

Allegation 4.2: That the Second Respondent was sentenced on 11 May 2012 to 12 months imprisonment suspended for 24 months on suspended sentence and ordered to carry out unpaid work for 80 hours on or before 10 May 2013. The suspended sentence supervision was to last for a nine month period.

Allegation 4.3: That by admitting to a single charge of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 the Second Respondent had been involved in conduct of such nature that it would be undesirable for him to be employed or remunerated by a solicitor or in connection with a solicitor's practice and that an Order be made to this effect as set out in Section 43(2) of the Solicitors Act 1974 (as amended).

53.1 For the Applicant, Mr Bosworth submitted that the Second Respondent admitted all the allegations against him. The Forensic Investigation was carried out by the Applicant following initial complaints but was somewhat superseded by a criminal investigation by the police. A copy of a certificate of conviction from the Crown Court at the Central Criminal Court dated 31 July 2012 in respect of the Second Respondent was before the Tribunal. Mr Bosworth submitted that the Second Respondent was a man of experience and mature years and aware of what he was doing. In respect of Mrs Millin's submission that the Second Respondent had been sentenced as a solicitor (see below), Mr Bosworth reminded the Tribunal that he had been sentenced for abuse of a position of trust. The Second Respondent had pleaded guilty and the Tribunal had a choice of imposing either no order or a section 43 order. Mr Bosworth submitted that the former would be wholly wrong having regard to the facts, the Second Respondent's admissions and the need to protect the public. Mr Bosworth took issue with the absence of personal benefit point made by Mrs Millin. Section 4 of the Fraud Act did not require it for the offence to be committed. Mrs Millin submitted that the Court had to find a construction of benefit in sustaining the practice thus allowing his salary to be paid, although it was not paid. There was

also the risk of exposure of the loss of Miss O'D's funds. Mr Bosworth did not agree that to arrive at a conviction, the Crown Court had to take the Second Respondent's salary into account.

53.2 The Second Respondent stated in evidence that the misconduct in respect of Miss O'D's account had been his idea. He thought he had a discretion which he did not use correctly in lending money to ILPL. He was most hurt by what was said in Miss O'D's statement to the effect that the First Respondent had reported him as saying he would fob Miss O'D off. He emphasised that he was not seeking to be equivocal about his guilty plea in the criminal proceedings; he believed that if he had asked Miss O'D for permission to use the money as he had, her answer would have been 'No' and so what he had done was dishonest, not meaning any harm but accepting that harm had been done. It appeared that Miss O'D had not received any of her money back. The money removed from Miss O'D's account normally went to pay the firm's creditors or possibly deficits on the accounts of other clients. As to the £8,500 he provided from Miss O'D's funds for the First Respondent to buy a car, the Second Respondent testified that he thought she really needed it and that it would enable her to come to the office more regularly. He told her there was a recession, that conveyancing work had decreased and he did not have the money. There then occurred in the office what he described as a "Third World War" and the First Respondent said she must have the car at all costs. As the money for the car was going to the First Respondent it was put in office account.

53.3 The Second Respondent referred the Tribunal to his letter of 26 July 2010 for his full explanation of what had occurred at the firms. He disagreed that he shared control of the firms with the First Respondent. Neither he nor the other staff thought that ALP would close by reason of financial problems except when the First Respondent was threatened with bankruptcy by HMRC and they were confident that the negotiations to extend the lease would be successful. The firm had mostly trade creditors. He had a working plan to have the same number of staff in a smaller space to make savings.

53.4 The Second Respondent testified that the First Respondent had a lot of problems with SA and he tried to mediate. If the First Respondent had issues she would come to him and confided in him the problems she was having with SA and others. Before ILPL was set up, the Second Respondent had met with the First Respondent's parents and explained that if they were to continue in practice he wanted her to work regularly and earn a minimum of £5,000 per month to make the business viable. He proposed to earn £15,000 per month (in his 26 July 2010 letter he said £10,000). ILPL came into being because the First Respondent was concerned she would go bankrupt if she ceased to practise. The Second Respondent testified that he had acted in this way without any benefit to himself because he felt responsible for bringing the First Respondent into ALP. He disputed the First Respondent's contention that the real reason he wanted the practice to continue was to conceal the deficit. If he had bad intentions, he would have taken some of the money for himself and would not now have £50,000 credit card debts and other financial problems. There was no paper trail showing a flow of money from the firm to his accounts.

53.5 The Second Respondent confirmed that he had the mistaken belief that as he was not a solicitor, no sanction could be made against him; the First Respondent told him nothing would happen. All the transactions were in his handwriting but they had to be

authorised by someone else. The First Respondent presented him with a list of items for which she needed the money by the end of the month, sometimes she discussed them with him but not always. The First Respondent knew that the firm had a deficit and that he was obtaining and transferring funds to meet them. She did not know the specifics of the deficits; she did not want to know. He did not think to say 'Stop' to her at the end of each month because he did not think the firm was in that bad shape. The First Respondent was not his puppet in respect of cheques. She was the only person authorised to sign them. She left blank signed cheques with the bookkeeper when she went on holiday. The Second Respondent testified that the First Respondent knew of the transfers of Miss O'D's funds at each time when a transfer was made. After his heart attack, the Second Respondent returned to the office and gave the First Respondent the details of the shortfalls on the different accounts. He told her not to ask him for any more money and that he would earn the fees to pay back the deficit. There was also a client Mrs R who was prepared to loan money. The First Respondent told the Second Respondent that she could not borrow the money as a solicitor because Mrs R was a client. Mrs R obtained independent legal advice and the First Respondent drafted an agreement and all the monies (loaned to the Second Respondent) went to ILPL. The Second Respondent testified that he had raised around £220,000 including £60,000 from his house. When Miss O'D returned from The Gambia he had genuine hopes of obtaining money to pay her back but it did not materialise. He referred the Tribunal to two statements from clients whose continuing placement work with the firm would have generated the necessary fee income.

53.6 The Second Respondent testified that his relationship with the First Respondent had started to deteriorate after he came back from his heart attack. When she returned in January 2009 from a holiday she was adamant that she wanted to close the firm. He asked her to keep the firm open until the end of June and she compromised with the end of May. His intention was to find someone to buy the firm. There were two main creditors. Miss O'D and Mrs R. The Second Respondent knew that Miss O'D did not want her money for three years and Mrs R was not interested in the immediate return of hers. He had a very argumentative discussion with the First Respondent and said he would take the blame and protect her, and this was how he came to produce the handwritten document in the sealed envelope. After the confrontation with her he prepared a long tape which he gave to her. She said she heard it and destroyed it and felt very sorry. There were ongoing discussions about when to close the firm and he wrote the document about the implications of closure with a view to getting a longer date. The First Respondent misled him into giving her the handwritten documents.

53.7 The Second Respondent testified that the First Respondent had closed ILPL after discussions with JF. The Second Respondent had told JF that he did not like him and could not work with him but the First Respondent persuaded him to stay on with JF. The Second Respondent had done what he did because they had obligations and he had an expectation of funds. The First Respondent went to The Law Society on 10 March 2009 but only told them about Miss O'D's matter and a list of shortages but did not tell them that she had left the files. JF took over certain non controversial files but other files with client account shortages were left in limbo. Ninety-eight percent of the clients in the firm were the Second Respondent's and he was pursued for a year or two to sort out the files after he left the firm set up by JF. He paid off various claims. He acknowledged that the First Respondent had put first £56,000, then £13,000 and later £7,500 into the business and had not got it all back.

53.8 The Tribunal considered the evidence including the oral evidence of the First and Second Respondents and the submissions for the Applicant and the Second Respondent and by the First Respondent. The Tribunal first considered the facts as alleged in allegations 3.1, 3.2, 4.1 and 4.2. It considered separately the aspects of allegations 3.1 and 3.2 relating to what if any order should be imposed on the Second Respondent, which also formed the subject matter of allegation 4.3. By virtue of Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007, a conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts, save in exceptional circumstances. The Tribunal was satisfied that it could rely upon the Second Respondent's conviction and the facts upon which it was based. The Tribunal found allegations 3.1, 3.2, 4.1 and 4.2 proved, indeed they were admitted. Allegation 4.3 did not constitute a separate charge but rather an application for a section 43 order, in respect of which see under Sanction below.

Previous disciplinary matters

54. None in respect of either the First Respondent or the Second Respondent

Mitigation

First Respondent

55. The First Respondent stated that she was before the Tribunal because she had acted in a responsible way and treated the clients' interests and those of the public as paramount. She had learned a hard lesson and would not appear here again. She had emerged from the criminal proceedings with a clear record and her character intact; her probity and integrity were of the highest. She appreciated the seriousness of the proceedings. As soon as she became aware of the misappropriation of Miss O'D's money towards the end of 2008 of which she knew she was innocent, she had a great shame to bear and the issue of how to prove her innocence. She had considered taking her own life as a way out but received pastoral counselling and then reported the matter to the Applicant and worked with the IO to bring proceedings. She had given complete access to client accounts, documents and files, some of which, including Miss O'D's files, she had to take from the Second Respondent without him knowing. She gave the Second Respondent her statement so that he could respond while she had not received his. She had not removed anything from the Second Respondent's files as he alleged; she had given all the files to the firm's insurance company, as there were other matters arising out of the firm, which were ongoing. She had to face those as well as facing the Tribunal. The First Respondent had to represent herself because she did not have the required funds to obtain legal representation. She was no longer the person she had been, was not a threat to the public, and she could put her terrible ordeal to good use to the benefit of the public in terms of the expertise she had acquired. The First Respondent submitted that most of the mitigating factors in the Tribunal's guidance note on sanctions applied to her. Her misconduct resulted from deception or otherwise by a third-party. Her misconduct was a single episode; previously she had a clean record. She had made restitution by selling her car and

would have done more if she had funds. She had made open and frank admissions and closed the firm as soon as she realised what was going on. The First Respondent accepted that she had provided no medical evidence, but submitted that she believed she had suffered a nervous breakdown. She had not been in her right mind-set throughout. She did her best to read documents, but what she was reading and doing were not connecting to her mind. She had worked hard to qualify; it was her life ambition to practise. She had withdrawn her application for a practising certificate until the outcome of these proceedings. She submitted that the Applicant encouraged solicitors to come forward; what message it would send if, after having come forward she were not given the opportunity to practice. If she were not permitted to practise her life would not be meaningful. She had not practised for over four years while awaiting the outcome of these proceedings and had lost everything in the two firms. She was currently studying for a Masters degree in corporate governance and was on track for a distinction. She was the student representative for her class and had achieved positive outcomes for the class and the University. The course was due to finish this year. Her professor was prepared to provide a testimonial. She was the secretary to her church and trusted with its finances. As to her own financial position, the First Respondent explained that she lived with her parents and for four years was unemployed and in receipt of benefit. For the last 10 months she had been employed as a course facilitator on a course at a remuneration rate of £140 per day. She had no car. She was in receipt of a career development loan and had two bank overdrafts. Her flat was in negative equity and rented out but the income was taken up with service charge, mortgage and other expenses.

Second Respondent

56. Mrs Millin submitted that the Second Respondent had made admissions and accepted that by the subjective and objective tests for dishonesty set out in the case of Twinsectra his conduct had been dishonest. She also referred to the interpretation of the test in Barlow Clowes International Ltd v Eurotrust International Ltd [2006] 1 All ER 333. Mrs Millin asked the Tribunal to bear in mind that the most important point in assessing the Second Respondent's case was that he was not a solicitor and bore no regulatory responsibility and had no requirement to uphold the profession as a solicitor. That was not to say he could act as he pleased. The First Respondent was the principal and the responsible party. Mrs Millin also referred to the case of Bryant and Bench v The Law Society [2007] EWHC 3043 (Admin) in respect of a solicitor going so far beyond the standards expected of an ordinary competent solicitor as to justify condemnation. The Second Respondent would expect the appropriation of client funds to be beneath the standard of a competent solicitor and accepted that client funds were sacrosanct, that any misappropriation was misconduct and as a consequence of his actions he was dishonest. He had displayed a clear demonstration of remorse and insight and he had not once sought to self serve or minimise his culpability for these transactions. He had surrendered himself to the full force of the criminal law. He had very little choice but he immediately pleaded guilty. He was nearly 66 and a father of three, with one grandchild. Until that moment his character and career were unblemished. There had been no end of problems regarding disclosure and the evidence of the complaint was not disclosed until the day his plea was entered. He intended that by his actions some form of remedy would be available to Miss O'D and it was not his fault that such a remedy was not found. He had been subject to the rigours of his sentence and paid his debt to society. Extraordinarily, in a

fraud case, the maximum tangible personal benefit to the Second Respondent was that the wheels stayed on the partnership he worked for. Under the criminal law, he had been sentenced as a solicitor and bore a greater weight than in the Tribunal where the solicitor was the regulated person. Mrs Millin submitted that his punishment might be viewed as disproportionate because he had been punished by a criminal Court and not by regulatory sanction. It was to his credit that his cooperation with the investigation was outstanding and to his own detriment. At its highest he said that he yielded to pressure which was financially based but he did not seek to minimise his dishonest participation. Supervision of him was incompetent and put at its highest, wholly dishonest. The circumstance that arose which affected client funds were not the responsibility of the Second Respondent; that responsibility must fall on the solicitor. Mrs Millin submitted that the regulatory standards to be applied to the Second Respondent were no different to those to be applied to a filing clerk. There should be a formal structure in which the circumstances should not arise. He knew as a lay employee but not as a solicitor that what he did was wrong. He cooperated in a style that the Tribunal would expect a qualified solicitor to cooperate. So far as making good any losses, he was limited in what he could do. Professionals in the probation service had pinpointed for personal development his capacity to say "no". The Second Respondent accepted that the reputation of the professions was more important than any individual member and he was a member by association. These were classic Salsbury principles but Mrs Millin submitted that his wrongdoing could only be seen within the context of any professional dishonesty by the principal of the practice.

57. Mrs Millin submitted that there was a marked distinction in the legal profession between the treatment of solicitors and unadmitted persons. The Tribunal had a limited range of options so that the entirety of proportionate and balanced justice was unavailable to an unadmitted person. If a section 43 order was made, the consequences were left to the discretion of the regulator so that the Second Respondent was denied the transparency of open justice. He had been susceptible to a suspended 12 month prison sentence and considered in the round this was way beyond the force of any condition that could be imposed upon him by the Tribunal. If he were a solicitor, the lack of personal gain and the force of his predicament might have caused him to fall into the rare and residual category of persons mentioned in the case of Solicitors Regulation Authority v Dennison [2012] EWCA Civ 421. He had already been punished by the criminal law and it was highly unlikely that his conduct would be repeated. Mrs Millins submitted that if the Tribunal was not with her then she submitted that a section 43 order was a blunt instrument and prohibited any upright solicitor from taking on someone with experience who could make a valuable contribution to the working world. If no order were made a future solicitor would be bound to take into account his responsibilities to the regulator in considering whether to employ the Second Respondent who would disclose his criminal conviction, so this was not a case of the Tribunal washing its hands of its section 43 responsibility but discharging its duty to exercise proportionality insofar as the regulations allowed. The pronouncements in the cases of Salisbury and Bolton v The Law Society [1994] 1 WLR 512 were subject to the ECHR. (In the latter the Court said: "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal…").

58. The Second Respondent said that he sincerely apologised to Miss O'D for all the suffering he caused. He suffered a criminal conviction, adverse publicity and probation/community service. He had to leave his mosque and give up a charitable activity. He had had to miss his daughter's wedding in South Africa because of possession proceedings taken against him in respect of a charge on his property related to money he put into the firm. The Second Respondent gave details of his heart and other health problems. As to his financial situation, the Second Respondent provided a statement of his assets and liabilities. He was in receipt of a pension of £168 per month and in due course would receive an additional £450 per month. He received £1,500 month from employment. He was carrying out administrative work for a doctor. His liabilities exceeded his assets all of which had been disclosed to the Crown Court during the criminal proceedings. He had a second charge on his property related to the firm and credit card debts. County Court possession proceedings were ongoing in respect of his property. Mrs Millin submitted that his working life was behind him and asked the Tribunal to take that into account.

Sanction

59. In considering sanction, the Tribunal had regard to its own Guidance Note on Sanctions, the authorities to which it had been referred and the mitigation made by the First Respondent and for the Second Respondent. It gave due credit for cooperation with the investigations made. The First Respondent described what had happened as a dream which developed into a nightmare but that underestimated the detriment to clients and beyond that the reputational harm to the solicitors' profession. Two firms had failed in quick succession which were purportedly at least controlled and owned by the First Respondent and one client in particular had been defrauded of £150,000. A criminal trial ensued and the Second Respondent pleaded guilty to one charge and proceedings against the First Respondent were not proceeded with but the Tribunal was satisfied that the stolen funds had found their way into the First Respondent's practice on the evidence that it had heard.

<u>First Respondent</u>

60. The Tribunal considered this to be a serious case. The First Respondent's approach to what she was signing which she explained to the Tribunal was without studying or understanding and the way in which she engaged in practice and the oversight that she was theoretically undertaking was virtually non-existent or reckless. The Tribunal reflected on the judgment in Iqbal; it appeared that the First Respondent fell squarely into the ambit of Iqbal in that there had been no dishonesty but she was a person who in a course of conduct manifested incompetence. The Tribunal was also troubled by her lack of awareness and the lack of insight that she showed throughout the proceedings. There appeared to be little acknowledgment or understanding about her obligations to the public and to the profession. Her default position was to blame others and to abrogate her responsibility to others throughout. Her failure to supervise and manage and her admitted lack of control over the businesses was at the heart of what went wrong. Her own evidence painted a picture of displacement from the practice and only casual involvement. She continued to draw a salary in full from the practice until it closed. The Tribunal concluded that the First Respondent's misconduct was at the most serious end of the spectrum and the absence of a finding of dishonesty did not diminish the Tribunal's concern about the factual matrix. The

Tribunal considered whether the most severe sanction should be imposed. After serious reflection it decided that the First Respondent should not be struck off the Roll of solicitors. She had not been found dishonest and she had lost everything. However it would suspend her from practice for a period of five years and on the expiry of that period if she returned to practice it would be subject to conditions.

Second Respondent

61. The Tribunal had regard in addition to the authorities referred to above, the testimonials and to Mrs Millin's submissions about open justice. The Second Respondent frankly admitted the fraud which he had perpetrated and his conviction for dishonesty reflected on Mrs Millin's proposition for sanction and her submissions on the range of the Tribunal's powers under section 43. The Tribunal bore in mind as helpfully summarised in the case of Gregory v The Law Society [2007] EWHC 1724 (Admin) to which it had been referred by Mr Bosworth that:

> "…section 43 is not punitive in nature. It is there to protect the public, to provide safeguards and to exercise control over those who work for solicitors, in circumstances where there is necessity for such control shown by their past conduct. Its purpose is to maintain the good reputation of, and maintain confidence in, the solicitors' profession. An order made under section 43 does not prohibit a person from working for a solicitor…"

The Tribunal disagreed with Mrs Millin's submission about the way in which such an order would bind a future solicitor in respect of employing the Second Respondent. A section 43 order gave a potential employer and the Applicant the opportunity to reflect on the Second Respondent's contrition and the facts of the case. As set out later in the same judgment:

> "The expressions of hope in the findings that proper training and good work experience might overcome the type of flawed behaviour which the Tribunal had found are not, to my mind, inconsistent with the order made. The order does not prohibit employment by solicitor. It requires that such employment be approved, no doubt in circumstances where the Law Society is satisfied that the public interest is protected."

The Tribunal determined that in the Second Respondent's case it was appropriate that a section 43 order be made.

Costs

62. For the Applicant, Mr Bosworth applied for costs in the sum of £59,279.35 of which £41,177.35 were the costs of the forensic investigations into the two firms. He submitted that the costs should be borne equally by the First and Second Respondents because both had been involved in what occurred. For the Second Respondent, Mrs Millin submitted that the costs of the Applicant's investigation in so far as they related to the running of the firms could not concern the Second Respondent and nothing had been discovered in respect of him during the investigations. He had produced all the information which had been relied on against him in the proceedings. The Tribunal considered that the element of the costs schedule which related to legal costs

including associated disbursements was reasonable at around £18,000. It had some difficulty in respect of the bill of costs relating to the forensic investigation undertaken by the Applicant which it considered to be somewhat high in terms of time spent. The Tribunal summarily assessed the total costs at £38,000. It had regard to the need to take into account the means of the First and Second Respondents bearing in mind the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin). It had also noted that in the case of the First Respondent several allegations had not been found proved but they had been properly brought. The Tribunal determined that the First Respondent should make a contribution to the Applicant's costs of £5,000 and that the Second Respondent should make a contribution in the amount of £1,000.

Statement of Full Order

First Respondent

63. 1. The Tribunal Ordered that the Respondent, Antonia Kyriacou, solicitor, be suspended from practice as a solicitor for a period of five years to commence on 16th April 2013 and it further Ordered that having summarily assessed the Applicant's costs of and incidental to this application and enquiry fixed in the sum of £38,000.00 she do pay a contribution towards the costs of £5,000.00.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent:

2.1.1 May not practice as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP), or Alternative Business Structure (ABS);

2.1.2 For the avoidance of doubt may only work as a solicitor in employment approved by the Solicitors Regulation Authority;

2.1.3 There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Second Respondent

64. The Tribunal Ordered that as from 16th April 2013 Younus Mohammed except in accordance with Law Society permission:

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

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitors practice the said Younus Mohammed;

(iii) no recognised body shall employ or remunerate the said Younus Mohammed;

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

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

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

And the Tribunal further Ordered that having summarily assessed the Applicant's costs of and incidental to this application and enquiry fixed in the sum of £38,000.00 he do pay a contribution towards the costs of £1,000.00.

Dated this 21st day of May 2013
On behalf of the Tribunal

E. Nally
Chairman