SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10567-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
[RESPONDENT 1]	First Respondent
and	
SUJATA GUPTA	Second Respondent
and	
[RESPONDENT 3] (a recognised body)	Third Respondent

Before:

Mr E Richards (in the chair)
Mr E Nally
Mr S Howe

Date of Hearing: 26th - 28th July 2011

Appearances

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

The First Respondent, who was present, and the Third Respondent, were represented by Tim Nesbitt, Counsel, of Outer Temple Chambers.

The Second Respondent, who was not present, was represented by Susanna Heley, solicitor or Radcliffes LeBrasseur, 5 Great College Street, London SW1P 3SJ.

JUDGMENT

Allegations

1. The allegations against the First Respondent, the Second Respondent, Sujata Gupta and the Third Respondent, Davis Solicitors LLP were that they:-

1.1 Created or caused to be created letters which purported to have been written on earlier dates when in fact they had been prepared on later dates contrary to Rule 1.02, 1.04 and 1.06 Solicitors Code of Conduct 2007 ("the SCC").

1.2 Culpably overcharged clients contrary to Rule 1.02, 1.04 and 1.06 of the SCC.

1.3. Failed to adequately account to clients and beneficiaries contrary to Rule 1(a), (c) and (d) Solicitors Practice Rules 1990 (as amended) ("SPR") and Rule 1.02, 1.04 and 1.06 of the SCC.

1.4 Withdrew monies from client bank account otherwise than in accordance with Rule 22 Solicitors Accounts Rules 1998 ("SAR").

Allegation 1.1 was pursued against the Second Respondent only.

A further allegation against the Second Respondent alone, was ordered to lie on the file.

Documents

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

Applicant:

- Application dated 2 July 2010;
- Rule 5 Statement with exhibit "GW1" made on 2 July 2010;
- Bundle of documents comprising 122 pages concerning the first Forensic Investigation Report;
- Bundle of documents comprising 30 pages concerning the second Forensic Investigation Report;
- Copy letter 12 February 2008 re JK (deceased);
- Handwritten statement of account re JK (deceased);
- Timeline analysis of backdated documents prepared by Mr Han Lai
- Copy Case Reports: Weston v The Law Society, 29th June 1998, CO/225/1998: Bolton -v- The Law Society [1994] 1 WLR 512 and Twinsectra Ltd v Yardley and Others [2002] UKHL 12;
- Civil Evidence Act Notices 17 June 2011;
- Schedule of costs 21 July 2011.

First Respondent:

- First Respondent's statement dated 22 March 2011 with exhibit "NB1";
- Letter Davis & Co to the Solicitors Regulation Authority ("SRA") 3 October 2007;
- Statement of Victoria Garvin (unsigned and undated);
- Bundle of seven testimonials;
- Position statement 25 July 2011;
- Case report Akodu v SRA [2009] EWHC 3588 (Admin);
- Extract from Solicitors Handbook, Chapter 15.11.

Second Respondent:

- Second Respondent's statement dated 22 July 2011;
- Second Respondent's note to Tribunal concerning medical issues dated 12 July 2011 with copy letters from consultant dated 30 July 2010, 28 September 2010 and 16 December 2010;
- Extract from Bonhoeffer v GMC [2011] EWHC 1585..... paragraphs 108-110.

Preliminary Matter (1)

3. The Tribunal was informed that in the light of representations made by the First Respondent, the Applicant did not propose to pursue allegation 1.1 against the First or Third Respondents. The Tribunal agreed that this allegation should be withdrawn against the First and Third Respondents and be pursued only against the Second Respondent.

Preliminary Matter (2)

4. The Rule 5 Statement and supporting documentation included material dealing with an allegation against the First Respondent alone. The Applicant had served Civil Evidence Act Notices relating to documentation to be used in the proceedings on 17 June 2011. The First Respondent had recently served a counter notice. Although the counter notice had been served late, the Applicant did not propose to rely on late service of the counter notice and proceed with the allegation at this stage. As the documentary evidence had been challenged, it would be necessary to call witnesses to deal with the allegation. The key witness in respect of this allegation now lived in France and it had not been possible at short notice to arrange for this witness and any other relevant witnesses to attend this hearing. The Applicant did not wish to withdraw the allegation against the First Respondent but, taking a pragmatic view, would not seek to proceed with the allegation at this hearing. The Applicant therefore sought the Tribunal's permission for this allegation to "lie on the file".

5. The Tribunal noted that in the light of late service of the counter notice to the Civil Evidence Act Notices it was not possible to secure the attendance of the relevant

witnesses, in particular at least one witness based in France. The allegation was not one which should be withdrawn, but it was not realistic to pursue it at this hearing. Accordingly, the Tribunal agreed that the allegation against the First Respondent alone should "lie on the file".

Preliminary Matter (3)

6. The Tribunal noted that the Civil Evidence Act Notices served by the Applicant gave both "Notice to admit" and "Notice of intention to rely upon" the documents. The Tribunal noted that the former provides that in the absence of an appropriate counter notice a Respondent is taken to admit that the documents are true copies of genuine originals and in the case of letters that they were duly sent on the dates upon which they purported to have been sent to their named addressees. The Tribunal noted that the Applicant also sought to rely under the terms of the Civil Evidence Acts 1968 and 1995 upon statements made within the documents becoming admissible to provide the facts set out in the documents. The Tribunal noted that the Civil Evidence Notices served by the Applicant specifically excluded reliance upon those documents which contained explanations proffered by the Respondents.

7. The Tribunal further noted that the Applicant had called a forensic computer expert, Mr Han Lai, to give evidence as it had been indicated on behalf of the Second Respondent that his report was not agreed.

8. The Second Respondent was not present, but had arranged appropriate representation. In documents submitted to the Tribunal the Second Respondent had asserted that she was not able to attend for reasons including medical reasons. Although letters from a consultant dated 30 July, 28 September and 16 December 2010, which concerned the Second Respondent's illness and treatment, had been produced, there was no medical report to support the Second Respondent's assertion that she was not able to attend. There was no application on behalf of the Second Respondent to adjourn the proceedings.

9. The Tribunal noted the position and considered that in all the circumstances it was appropriate to proceed. The Second Respondent had not sought to adjourn the proceedings, nor had she sought to provide medical evidence which supported her contention that she was medically unfit to attend. The Tribunal noted that in a Memorandum of Directions dated 31 January 2011, prepared following a hearing on 25 January 2011, the Second Respondent had been ordered to file an up to date medical consultant's report within 56 days but had not done so. The Tribunal had some sympathy with the Second Respondent who had clearly faced some medical difficulties but there was no reason to depart from its usual procedures in this instance.

10. On behalf of the Second Respondent an application was made that information concerning the Second Respondent's medical condition should be treated sensitively. The Tribunal agreed that no unnecessary details would be set out in the judgment document and that the information provided by the Second Respondent would be treated with appropriate sensitivity.

Preliminary Matter (4)

11. The representatives of the First and Third and the Second Respondent had agreed with the Applicant's representative that the Applicant's witnesses could be present in court whilst the case was opened. The Tribunal agreed that those witnesses could be present.

Preliminary Matter (5)

12. The Tribunal noted from the outset that the burden of proof with regard to all of the allegations rested on the Applicant. The standard of proof to be applied by the Tribunal was the highest standard, that is it would have to be satisfied "beyond reasonable doubt". The Tribunal noted that the Applicant's position was that it was not necessary for the Tribunal to make findings of dishonesty in relation to any of the allegations in order to find the allegations proved. However, dishonesty was alleged against both the First and Second Respondents. The Tribunal noted that the test to be applied when considering any allegations of dishonesty was that set out in the case of Twinsectra Ltd v Yardley and Others [2002] UKHL 12. As dishonesty was alleged against the First Respondent, the Tribunal noted that it would be able to take into account the testimonials provided both with regard to making findings, and with regard to the imposition of any sanction.

Factual Background

13. The First Respondent was born in 1965 and was admitted as a solicitor in 2002. Her name remained on the Roll of Solicitors. The Second Respondent's date of birth was not known to the SRA, but appeared from the medical documents she submitted to be 1956. The Second Respondent was admitted as a solicitor in 1996 and her name remained on the Roll of Solicitors.

14. At all material times the First and Second Respondents carried on practice as solicitors in partnership with each other under the style of Davis & Co at 34/36 High Street, Barkingside, Essex IG6 2DQ. The Second Respondent was an equity partner and the First Respondent was a salaried partner. On 1 February 2009 Davis Solicitors LLP (the Third Respondent) was established and the First and Second Respondents were both members, and held the equity in equal shares.

15. The Second Respondent resigned from the Third Respondent on or about 1 July 2009. The Second Respondent was not in practice at the time of the hearing. The First Respondent remained in practice at the Third Respondent firm.

16. The allegations made against the Respondents arose from two Forensic Investigation Reports ("FI Reports") produced by the SRA. The first FI report was prepared by Mr Adrian Smith and the second was prepared by Mr Gary Page. Both reports were prepared following inspections carried out upon notice given to the First and Second Respondents. The reports were relied upon by the Applicant.

17. Both during the inspections and after the production of each report the Respondents had an opportunity to comment upon and/or explain matters which had arisen in the inspections. The explanations given were recorded within the documents submitted

by the SRA to the Tribunal but the SRA did not accept the explanations given and the explanations offered by the First and Second Respondents showed contrary positions. The Respondents confirmed that in general terms the Second Respondent had control of the accounting functions at Davis & Co but the First Respondent was able to access some accounts information.

First Forensic Investigation Report

The case of HS

18. The Second Respondent acted for HS in a family law matter. In or about July 2007 HS made a complaint to the Legal Complaints Service ("LCS") which centred upon the question of costs and in particular the costs information which had been provided during the Second Respondent's conduct of his case. No allegation was made in these proceedings with respect to the costs charged.

19. The Second Respondent entered into correspondence with the LCS in relation to the complaint. In so doing the Second Respondent submitted to the LCS copies of letters purportedly sent to HS in the course of the retainer. The Forensic Investigation Officer ("FIO") was concerned that the letters had been backdated. With the permission of the First Respondent he interrogated the relevant computer system and obtained information which suggested that ten letters to HS had been backdated. The letters purported to show that the Second Respondent was in correspondence with HS on the subject of costs and accordingly the letters supported the Second Respondent in resisting the complaint.

20. The letters in issue, (hereafter referred to as letters 1 - 10) with the apparent date and apparent creation date are set out below:-

Letter 1	9 December 2005	20 September 2007
Letter 2	9 May 2006	28 August 2007
Letter 3	25 January 2006	7 September 2007
Letter 4	12 June 2006	7 September 2007
Letter 5	27 October 2006	7 September 2007
Letter 6	12 May 2004	21 September 2007
Letter 7	5 January 2005	21 September 2007
Letter 8	23 February 2005	21 September 2007
Letter 9	16 March 2005	21 September 2007
Letter 10	11 October 2005	21 September 2007

21. On 12 September 2007 the Second Respondent wrote to the LCS enclosing copies of letters 3, 4 and 5. On 8 October 2007 a letter under the First Respondent's reference was sent to Gordons LLP (acting on behalf of the LCS) enclosing copies of letters 1, 8, 9 and 10.

22. The SRA obtained a computer forensic analysis report, dated 5 June 2009, prepared by Intelligent Forensics on behalf of the SRA. The SRA relied on that report.

The case of EH (deceased)

23. This probate matter was conducted by the Second Respondent. The Will of EH left specific legacies and the residue was left to a charity. The Second Respondent dealt with the question of fees in a client care letter sent to the executors on 5 March 2004. It was stated that fees were "mainly calculated" by reference to an hourly rate, which was stated, together with "1.5% of the net estate value".

24. In a document submitted to the Inland Revenue the net value of the estate was stated to be £34,883.53.

25. The work necessary to administer the estate had largely concluded by 9 March 2006. In addition to the "statute charge" bill dated 19 January 2005 in the total sum of £6,233.38 (about which no complaint was made by the SRA) five other bills were rendered in relation to this matter, with profit costs totalling £38,451.36. In addition, further bills were rendered in relation to the administration of the estate, including conveyancing charges for the sale of the deceased's property.

26. On 21 September 2007 a bill was created, the narrative of which stated "To professional charges to our statute bill for the period 2004 to 12/09/2007" and stated the charges were £25,773.87 together with VAT of £4,510.43, being a total of £30,284.30.

27. Shortly before the bill was created the sum of £60,568.59 had been received in the firm's client account being the proceeds of an investment. The bill was discharged by a client to office account transfer made possible by this receipt.

28. By June 2008 no estate accounts had been prepared.

29. The SRA's FIO drew this matter to the attention of the Second Respondent who issued a credit note to the executors and on 14 August 2008 accounted to the residuary beneficiary for £34,284.30.

The case of JK (deceased)

30. The First Respondent acted in this probate matter in which the bulk of the work had been carried out by October 2006. On 18 March 2008 a letter was sent to the executor client which enclosed an estate account and a cheque for £1,212.27 which purported to be the balance due. However, on 17 March 2008 the firm had received a credit to client account on this ledger of £9,522 which was not referred to in the estate account sent to the executor.

31. On 17 April 2008 a bill was created in relation to this matter for £7,977 together with VAT of £1,395 being a total of £9,372. It did not appear that this bill had been delivered to the executor. The bill was settled by way of a client to office account transfer.

Second Forensic Investigation Report

32. The second forensic investigation began on 27 May 2009 and the FI Report arising from that investigation was dated 16 September 2009. The FIO calculated that as at 30 April 2009 there was a minimum cash shortage on client account in the sum of £28,986.73 as a result of overcharging and improper transfers from client bank account to office bank account. The shortage was replaced by the First Respondent on 25 November 2009.

The case of AR

33. The Second Respondent acted for AR in property matters, being the sale of one property and the purchase of another. The Second Respondent issued five bills to AR which totalled £25,696.15 in connection with these transactions. Those bills were paid by transfer from client bank account to office bank account.

34. The firm's client care letters in this matter dated 3 February and 3 April 2006 stated that fees were to be calculated on the basis of an hourly rate (which was stated) "plus 2% commission". The FIO calculated that the total commission charge in accordance with the terms and conditions was £9,350. After comparing the commission charge with the profit costs charge and taking into account the hourly rate applied, the FIO calculated that the hourly rate part of the bills equated to approximately 53.5 hours of chargeable time.

35. The FIO reported that there had been improper transfers in respect of ten client matters totalling £5,858.74. In a number of cases the client account balances had lain dormant for lengthy periods between the end of the work in question and the raising of a bill, which did not appear to have been sent to the client, and all of these bills were settled by client to office account transfers.

Witnesses

36. Adrian Smith, former SRA FIO.

Gary Page, SRA FIO.

Han Lai, Intelligent Forensics.

First Respondent, [RESPONDENT 1].

Findings of Fact and Law

37. **Allegation 1.1: Created or caused to be created letters which purported to have been written on earlier dates when in fact they had been prepared on later dates contrary to Rule 1.02, 1.04 and 1.06 Solicitors Code of Conduct 2007 ("the SCC").**

37.1 This allegation was not pursued against the First or Third Respondent and was denied by the Second Respondent. The Applicant alleged that the Second Respondent had acted dishonestly, but the case against her was put on the basis that a finding of dishonesty was not essential to find that the allegation had been proved.

37.2 The allegation related to ten letters, details of which are set out in paragraph 20 above.

37.3 The Applicant alleged that these ten letters, which appeared on their face to be dated between 12 May 2004 and 27 October 2006 had in fact been created on various dates in August and September 2007. The context of the alleged backdating or creation of the letters in issue was that on 11 July 2007 a former client of Davis & Co, Mr HS, raised a complaint against the Second Respondent. The complaint related to an alleged lack of communication concerning the costs of dealing with his matrimonial and other related proceedings. The complaint was received by the LCS on 17 July 2007. In dealing with the complaint the Second Respondent wrote to the LCS on 12 September 2007. That letter enclosed the letters referred to as letters 3, 4 and 6, together with other documents. The Second Respondent wrote again to Gordons LLP on 18 and 21 September 2007. In a letter bearing the First Respondent's reference and signed by her, on 8 October 2007 copies of letters 1, 8, 9 and 10 were enclosed. All of these letters appeared to show that the client, Mr HS, had been given appropriate updates concerning the costs of his case. Mr HS denied receiving the letters.

37.4 The Tribunal noted that no allegation had been brought against the First or Second Respondents with regard to alleged overcharging of Mr HS. The Tribunal further noted and accepted the First Respondent's evidence concerning the letter dated 8 October 2007, which was that she had not written the letter but had signed it and that so far as she was concerned at the time she signed it the letter was correct.

37.5 The evidence in support of the allegation that the ten letters in question had been backdated came from two sources. Firstly, the FIO Mr Adrian Smith had become suspicious that the letters were backdated. He had interrogated the computer and obtained a number of screen prints showing the properties of the documents which appeared to show that the documents had been created after the date they had allegedly been sent. The Tribunal was concerned that it had taken three attempts for the FIO to obtain this evidence, and it was concerned that the attempts to extract the evidence from the computer may itself have corrupted some of the data. The Tribunal, therefore, considered with particular care the evidence of the forensic computer expert, in the light of this concern. The Tribunal found that the contents of the forensic computer report were compelling and although the report covered some complex issues the expert witness was clear in his evidence.

37.6 It had been put to Mr Lai in cross examination on behalf of the Second Respondent that his report contained significant unwarranted assumptions. It was suggested that the letters in question had gone through various updates, in particular because the firm had changed its operating systems and server before the examination by the computer expert.

37.7 Mr Lai had carefully given evidence to the effect that there was no trace of the documents in issue on the old server. His evidence was clear and consistent that the documents had been created on dates in August and September 2007 and that the meta data which showed this had not been corrupted. The Tribunal found particularly compelling the evidence that Mr Lai had examined all of the other correspondence and documents relating to the matter of Mr HS. On all of those documents, save for the ten letters in question, the date of creation or last modification matched or was

very close to the purported date of the document. Further, it was shown in the report that all of the documents relating to the file of Mr HS had been transferred on the computer system to the new server at exactly the same date and time (12 June 2008 at 15.46 – 15.47). This clearly supported the finding that the ten documents in issue, were the only computer files which showed a discrepancy between the purported date of the letter and its creation date.

37.8 The Tribunal further found compelling a document which appeared to be a typewritten letter from the Second Respondent dated 9 May 2006 which had been amended, and extended, by hand. The letter of 9 May 2006 was itself one of the letters in question (letter 2). The amendments included showing a date of 9 December 2005 and the Tribunal noted that the text of that letter was the same as that of letter 1, save that one sentence on the "handwritten" version had been omitted on the final version of letter 1. The First Respondent had given evidence, which the Tribunal accepted, that the handwriting on the document was that of the Second Respondent. That evidence had not been challenged.

37.9 The Tribunal noted that the Second Respondent dealt with the allegation of backdating letters in her statement. However, in the absence of the Second Respondent, who was therefore not available to be cross examined, it could give little weight to her evidence. The Second Respondent had suggested that she was not very computer literate and that it was possible that her secretary might have done something to the electronic files which caused the dates to change. The Second Respondent had further denied writing the handwritten note which created letter 1 although she accepted that the writing bore a "superficial resemblance" to hers.

37.10 The Tribunal applied the highest standard of proof to the evidence. Despite what the Second Respondent said, no reasonable doubt was created. The Tribunal was satisfied so that it was sure to the highest standard that the ten letters in question had been backdated. In reaching this conclusion it relied particularly on the evidence of the computer expert.

37.11 The Tribunal then had to determine to the highest standard whether there was sufficient evidence that the backdating which had occurred had been done by the Second Respondent or caused by her. In determining this matter, the Tribunal decided that it did not have to be satisfied that the Second Respondent personally had typed or created the letters on the computer system: it would be sufficient if she had given instructions to one or more other people to prepare the letters.

37.12 The only direct evidence that the Second Respondent was involved personally appeared in the form of the document on which her handwriting appeared. The Tribunal did not have the benefit of expert handwriting analysis but did have the benefit of the First Respondent's evidence. The First Respondent had had regular contact over a period of time with the Second Respondent and was familiar with her handwriting. The Tribunal found, so that it was sure, that the handwriting was that of the Second Respondent. This showed a direct link with the creation of letter 1. The Tribunal noted, further, that the typed letter on which the handwriting appeared was the document referred to as letter 2, which appeared to be dated 9 May 2006 but which the computer evidence had shown was created on 28 August 2007. Letter 1

was created on 20 September 2007. The Second Respondent had used one backdated letter as a template for a further backdated letter.

37.13. The Tribunal further found that there was overwhelming circumstantial evidence which showed that the Second Respondent had caused the backdated letters to be created. All of the letters in issue were in her name, bearing her reference and related to a file of which she had conduct. Creation of letters such as those in issue was not an administrative or secretarial function. Such letters could not have been created by chance, but had been created deliberately. In particular, they had been created to deal with a complaint against the Second Respondent. The Second Respondent was the person who would benefit from the creation of the letters as they would assist in defeating Mr HS's complaint.

37.14 The direct and indirect evidence showed overwhelmingly that the Second Respondent had created the backdated letters or caused them to be created. The Tribunal was satisfied of this to the highest standard.

37.15 The Tribunal considered whether the Second Respondent had been dishonest in creating the ten backdated letters. The Tribunal applied the test for dishonesty referred to in the Twinsectra case and considered both the objective and subjective parts of that test.

37.16 The Tribunal found that in creating ten letters in the period August to September 2007 which purported to have been created and sent in the period 2004 to 2006 the Second Respondent's conduct was dishonest by the standards of reasonable and honest people. Having noted the context in which the letters were created, that is that the letters would assist in defeating a complaint made by a client, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that creation of backdated letters was an appropriate and proper response to the complaint and therefore that she knew that what she was doing was dishonest by those same standards.

37.17 The Tribunal found the allegation proved against the Second Respondent, and further found that she had been dishonest. No findings were made against the First Respondent or Third Respondent.

38. **Allegation 1.2: Culpably overcharged clients contrary to Rule 1.02, 1.04 and 1.06 of the SCC.**

38.1 This allegation was not pursued against the Third Respondent. The allegation was pursued against the First and Second Respondents, but dishonesty was alleged against the Second Respondent only. The Second Respondent admitted the core allegation, that of overcharging, but denied dishonesty. The First Respondent denied the allegation.

38.2 The allegation related to three particular client matters and a further ten matters where it was alleged that either or both Respondents had been engaged in rendering bills in a "sweeping up" operation.

38.3 The Tribunal considered the facts and evidence in relation to each of the matters. It noted that the Second Respondent had admitted the core allegation, but had to consider whether in culpably overcharging clients she had behaved dishonestly. A number of the facts and issues raised in relation to this allegation were relevant also to allegations 1.3 and 1.4 below.

Re EH deceased

38.4 The Second Respondent had acted for the executors in the estate of EH deceased. The Will of EH left specific legacies and the residue to a charity, HTH. The executors were sent a client care letter dated 5 March 2004 which set out the firm's charges. It was stated that the charges were mainly calculated by reference to time spent at an hourly rate which was specified at £200 per hour. In addition there was provision to charge 1.5% of "the net estate value". In a document submitted to the Inland Revenue the net value of the estate was put at £34,883.53. In the same document the gross value of the estate had been said to be £264,816.15. The Tribunal had concerns about the accuracy of that document. It noted that the Applicant did not take issue with the "statute bill" dated 19 January 2005 in the sum of £6,233.38.

38.5 The Tribunal noted that the estate had largely been administered by 9 March 2006 at which point the balance on the client ledger was £0.80. On the estate account ledger it was noted that five bills have been rendered together with other charges in relation to the sale of the deceased's property. The allegation in relation to EH deceased's matter related to a bill dated 21 September 2007 which stated in its narrative "To Professional charges: to our statute bill for the period 2004 to 12.09.2007" and showed a charge of £25,773.87 together with VAT of £4,510.43 being a total of £30,284.30. When this bill was produced the total bills to the estate amounted to £38,451.36 in profit costs, which was more than the stated net value of the estate.

38.6 The Tribunal was satisfied that the bill of 21 September 2007 should not have been created. It could not have been a statute bill given that a statute bill had already been rendered and there can only be one in relation to each estate. The Tribunal heard, and accepted, that no substantial work had been done in relation to the administration of this estate since the previous bill had been rendered so there was nothing to suggest that the bill was reasonable and proper in amount. The further key fact the Tribunal found in relation to this matter was that the Second Respondent's firm received a payment of £60,568.59 from the realisation of investments with NS&I on 5 September 2007. The sum billed by the Second Respondent on 21 September 2007 was almost exactly half of this amount. The bill was paid by way of a client to office account transfer and thereafter, on 2 October 2007, the Second Respondent had taken personal payments from office account totalling £35,000.

38.7 The Tribunal found that on 26 September 2007 the Second Respondent had sent the sum of £30,498.32 to HTH, the residuary beneficiary. However, as at June 2008 no estate accounts had been prepared. The estate accounts had been requested by HTH in correspondence from at least 29 May 2007. The Second Respondent did not send HTH the balance due to that charity of £30,284.30 until 14 August 2008, after the FIO had raised his concerns about this matter with her.

38.8. The Tribunal noted and considered the Second Respondent's submissions with regard to this allegation. The Second Respondent had in her recent statement, for the first time, the suggestion that the bill of 21 September 2007 had been raised in error as a "consolidating replacement bill". The Second Respondent had submitted that she was not sure how this had happened. The Second Respondent had admitted that this bill, if it were an additional bill, was clearly excessive but had submitted that it was not excessive if it had replaced other bills in relation to the estate.

38.9 The Tribunal could put little weight on the Second Respondent's statement as she did not appear to give evidence in person. Further, the Tribunal could not accept that raising a bill for exactly half of the amount received (to within one penny) could be an error. There had been calculation in deciding to bill that amount. Further, the Tribunal found that no substantial work had been done which would justify the size of this bill. In describing the bill as a "statute bill" the Second Respondent had compounded the error. The Tribunal noted and accepted that for a bill of that size to be a "statute bill" the estate would have had to be valued at over £2million. This was clearly not the case. Further, neither HTH nor the executors had been told by the Second Respondent that she had raised a bill which accounted for half of the investment from NS&I. The residuary beneficiary should have been told the truth when it was sent the final sum due to it. Further, the charitable residuary beneficiary should have been sent an estate account. This had clearly not been done by 14 May 2010.

38.10 The Tribunal noted the Second Respondent's admission that she had culpably overcharged the estate of EH deceased and in any event found the allegation to have been proved.

38.11 With regard to the First Respondent, the Tribunal found that she had had a limited role in relation to the firm's accounting functions. The First Respondent had not raised this bill, or been aware of it at the relevant time. The Tribunal had regard to the principles set out in Akodu v SRA [2009] EWHC 3588 (Admin) whereby one partner in a firm will be liable for the acts or defaults of another only where there is some degree of personal culpability. In this case the First Respondent had no personal culpability. Further, the Tribunal noted her evidence that when this bill had been drawn to her attention by secretarial staff in the firm the First Respondent had considered that the Second Respondent had behaved dishonestly and had reported her concerns to the SRA. Accordingly, in the absence of any personal culpability on the part of the First Respondent, this allegation was found not proved against her or the Third Respondent.

38.12 The Tribunal considered whether it had been proved to the highest standard that the Second Respondent had behaved dishonestly in raising the bill dated 21 September 2007 and causing it to be paid by way of a client to office account transfer. The Tribunal took into account that the bill in issue was described as a "statute bill" whereas the only proper statute bill had been raised on 19 January 2005 as would have been apparent from examination of the file and the client ledgers. Further, the bill could not have been a proper statute bill as the estate was not worth over £2million. The bill was not sent to the executors at the time it was raised or before the client to office transfer which paid the bill. The bill was clearly not justified as no work justifying a bill of that size had been done. Raising the bill and transferring

funds to pay it had caused a loss to the charitable residual beneficiary. The Tribunal further took into account the fact that this bill was created shortly after receipt by the firm of over £60,000, and that the bill was for almost exactly half of the sum received. The failure to prepare and distribute to the executors and residuary beneficiary an estate account was a further cause for concern. In addition the Tribunal noted and found that the Second Respondent received two cheque payments from the firm's office bank account totalling £35,000 shortly after this bill had been created and paid.

38.13 The Tribunal found that in raising a bill for half of the sum received from an investment, where no work had been done to justify a bill of that magnitude, and in arranging for the bill to be paid without notification to the executors or the residuary beneficiary, the Respondent's conduct was dishonest by the standards of reasonable and honest people. Having taken into account the Second Respondent's explanation that the bill had been created in error, and having rejected that explanation, the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that the bill was proper and justified and therefore she knew that what she was doing was dishonest by those same standards.

38.14 Accordingly, this allegation was found not proved against the First and Third Respondents and this part of the allegation was found proved against the Second Respondent and in addition the Tribunal found that the Second Respondent had behaved dishonestly.

Re JK deceased

38.15 The second client matter on which the allegation was based related to the estate of JK deceased, a matter of which the First Respondent had conduct. That estate had largely been administered by April 2007 at which point there was a balance on the client ledger of £1,212.27. On 18 March 2008 a letter was sent to the executor of the estate in the First Respondent's name in which a cheque for £1,212.27 was enclosed, together with a "completion statement" relating to the estate. However, on 16 May 2007 the firm had received the sum of £9,522 into the client ledger from Lloyds TSB. This figure was not referred to in the letter to the client, nor was it mentioned on the "completion statement". On 17 April 2008 a bill for £7,977 plus VAT, being a total of £9,372, was raised by the firm and that bill was paid by way of a client to office account transfer.

38.16 The Tribunal found that no work had been done on the file which justified a bill for almost £8,000 in profit costs being raised on 17 April 2008. It was satisfied therefore, that in raising the bill the firm had overcharged the estate. Indeed, it noted the Second Respondent's admission of the overcharging allegation.

38.17 There was a clear conflict of evidence between the First and Second Respondents about who was responsible for preparing the bill, the letter to the executor and the "completion statement". The Second Respondent's position was that this file had not been her responsibility and it had been dealt with entirely by the First Respondent. The First Respondent asserted that the Second Respondent must have been responsible for raising the bill and sending the letter. The First Respondent argued, in particular, that the bill was incorrectly addressed (to the deceased rather than the executor), at an address which had been sold quite some time before the bill was

raised. Her position, broadly, was that she had prepared a handwritten "completion statement" before she had known about the £9,522 and had then passed the file to the Second Respondent It was the First Respondent's case that the Second Respondent, as the sole equity partner in the firm, had taken responsibility for finalising all files, including sending out bills, and that it must therefore have been the Second Respondent who had sent out the bill, the typed "completion statement" and "final cheque" to the executor.

38.18 Having heard all of the evidence and read the documents submitted in relation to this matter the Tribunal was satisfied that the estate of JK deceased had been overcharged. However, it was not satisfied that the evidence submitted proved which of the First or Second Respondents had been involved. Since the allegation required that some culpability be proved and the Tribunal was not satisfied which Respondent had caused the bill to be raised and/or arrange the transfer from client to office account to pay it, the Tribunal did not find this part of the allegation proved against the Respondents.

Re AR

38.19 The Tribunal considered the matter of AR. In this matter the Second Respondent had acted for AR in related sale and purchase transactions, which took place by way of auction sales. The Second Respondent sent to AR a client care letter relating to the sale transaction on 3 February 2006 and a client care letter in relation to the purchase on 3 April 2006. In both cases it was stated that costs were calculated on an hourly rate, which was stated, together with "2% commission". Both client care letters referred to an estimate of costs and disbursements but the FIO had not been able to find any copy of such costs estimates or that any estimates were sent to the client. Further, the Second Respondent had not sought or produced any evidence confirming that the client was aware of the likely level of charges, or confirming the time spent in dealing with these matters. Indeed, the Tribunal noted that the Second Respondent had stated in an interview with the FIO that she would not have provided an estimate as, "it was not a run of the mill transaction".

38.20 In this context the Tribunal found that the Second Respondent had raised bills in relation to the sale and purchase which totalled £25,696.15. All five bills were paid by way of client to office account transfers.

38.21 The Tribunal noted that after taking into account the commission charge the bills raised showed profit costs equivalent to 53.5 hours of work at the stated hourly rate. The Tribunal was concerned that it had not been presented with any evidence setting out the work done on the file and the time actually spent. It did not appear that the SRA had checked the file to see exactly what had been done. There was no time recording and no positive evidence to show that work had properly been done totalling over 53 hours. To some extent the SRA had relied on the First Respondent's evidence, which was that in her view AR had been overcharged.

38.22 The Tribunal noted that the firm's usual conveyancing charge was £500, plus disbursements. It accepted that in an auction sale and purchase costs may be higher than in other domestic conveyancing matters.

38.23 Whilst the Tribunal was concerned that it was being asked to find there had been overcharging without sight of the relevant files, or any analysis of the work done, the Tribunal considered that as an expert Tribunal it was in a position to form a view about whether charges appeared on their face reasonable or not. In this instance the profit costs charged by the firm appeared wholly disproportionate and excessive. The Tribunal further took into account the Second Respondent's admission of overcharging and the First Respondent's evidence that, based on what she knew of the transactions, the charges were excessive.

38.24 The Tribunal noted the Second Respondent's position during the SRA investigation which was that the costs had been agreed with the client. The Tribunal did not seek to interfere with any agreed charges between a solicitor and client: if such an arrangement led to costs being charged which appeared high, this did not in itself suggest the costs were improper or that the client had been overcharged. However, in this instance there was no evidence that the client had been aware of the level of charges. The Tribunal took into account AR's statement, which was taken by the FIO, on 15 June 2009 and in respect of which a Civil Evidence Act Notice had been served. In that statement AR had stated "I cannot recall being given an estimate for the costs involved in the sale and purchase conveyancing transaction" and going on to say "I have also been shown a number of bills – five in fact dated 4 April 2006, three dated 4 July 2006 and one dated 14 August 2008. I have no recollection of seeing these bills before".

38.25 The Tribunal noted that concerns had been expressed by a member of staff of Davis & Co, the Second Respondent herself and the FIO about whether AR was a vulnerable client. The FIO had met AR to take his statement and had stated in evidence that he had had to deal slowly with AR to make sure that they understood each other. The FIO had further given evidence that in his view AR presented as vulnerable. In interview with the FIO the Second Respondent was reported as stating "I have to say that the client really wasn't with it and did not understand the sale and purchase process." The Tribunal could not reach any conclusion that AR was in fact a vulnerable client but it was satisfied that there were circumstances, of which the Second Respondent was aware, which would raise concerns about this client's vulnerability. In those circumstances a solicitor should be particularly careful to ensure that the client understands both the nature of the legal transaction and the costs which he will incur.

38.26 The Tribunal was satisfied that the Applicant had proved that the bills raised in relation to AR were prima facie excessive and disproportionate. There had been no evidence presented to rebut this presumption and, as an expert Tribunal, the Tribunal was satisfied that the charges were excessive and that AR had been overcharged. The Tribunal further noted that the Second Respondent had admitted the allegation of overcharging and so was satisfied, so that it was sure, that this allegation had been proved against the Second Respondent.

38.27 The Tribunal considered whether the transactions involving AR also showed any dishonesty on the part of the Second Respondent. The Tribunal considered that the following factors were important:

- No proper costs estimate had been provided to the client;
- The client was not sent the bills when they were raised;
- The bills were paid by client to office account transfers before the client had been notified of the amount of the bills;
- The Second Respondent's confirmation that the client, AR, had required more help than other clients.

A further factor was that the final bill rendered in the matter on 14 August 2000 for the sum of £2,000 inclusive of VAT had been rendered about a year after the sale and purchase had completed and was paid by transfer from client to office account of £2,000 which sum had been held as a retention. There had been nothing to suggest that any further work had been done after the earlier bills had been raised and it appeared to the Tribunal that the Second Respondent had simply "swept up" the £2,000 held on client account in costs.

38.28 The Tribunal applied the combined test set out in the Twinsectra case. The Tribunal had grave concerns about the Second Respondent's conduct in this matter, particularly for the reasons set out in paragraph 38.27 above. However, it was not satisfied to the necessary high standard that dishonesty had been proved in relation to the matter of Mr AR.

38.29 The Tribunal noted that the First Respondent had had no dealings with the files of AR. There was no evidence to connect her with either raising the bills or arranging the transfers from client to office account to satisfy those bills. As the allegation was one of "culpable overcharging" the Tribunal did not find the allegation proved against the First Respondent with regard to the matter of AR.

Other matters

38.30 The Tribunal considered the ten matters where it was alleged the First or Second Respondents or both, had engaged in an improper "sweeping up" exercise and had thereby overcharged clients. In each of the ten matters the firm had raised a bill on client matters some time after the last correspondence or action on the file. In each case the bill matched exactly the amount held on client account. In five of the ten matters the fee earner was the First Respondent and in the remaining matters was either the Second Respondent or was unknown.

38.31 Reference was made throughout the proceedings to an audio tape which the First Respondent had passed to the SRA in about March 2009 which appeared to date back to 2006 and on which the Second Respondent had given various instructions concerning raising bills, transferring money and/or returning money to clients. That audio tape had to some extent been relied on in alleging that the Second Respondent had been engaged in some improper modus operandi. However, the Tribunal did not consider that the tape recording (a transcript of which was available at the hearing) was in any way decisive with regard to this allegation. The audio tape covered a wide range of client matters and could be seen as simply the recording of an occasion where the senior partner in the firm had reviewed a number of files where there were client balances and had determined how those should be dealt with. Some of the clients referred to on the audio tape were those to whom the alleged allegation of

"sweeping up" related. The other source of the list of ten matters presented to the Tribunal was a handwritten document presented by the Second Respondent to the FIO. It appeared that this document, which bore some of the First Respondent's handwriting, was used to support a suggestion that the First Respondent had herself been engaged in arranging improper bills and transfers.

38.32 The Tribunal noted that the evidence to support the alleged overcharging with regard to these ten matters amounted to a statement of when the last work had been done on a file, the balance held on client account and the details of the bills raised which were alleged to be improper. The alleged overcharging related to a period between March 2006 and October 2008.

38.33 The Tribunal was concerned to note that it was not given any information concerning the billing history on these various matters. Whilst the date of last correspondence was shown, it was not clear when the matter had last been billed (if at all) and whether any work had been done between the time the last bill had been rendered and the allegedly improper bill. The Tribunal considered that reasonable doubt had been created about whether there was overcharging. Although it appears suspicious that the amount of bill tallied exactly with the amount held on client account, it was not unusual for solicitors to limit costs to the amount held where it would be embarrassing or difficult to approach a client, several years after a matter had apparently ended, to ask for further funds. It could have been the case that there was genuine work done which had not been billed previously. The SRA had not provided sufficient evidence to prove that overcharging had occurred with regard to the ten matters on which they relied. Accordingly, this part of the allegation had not been proved with regard to either the First or Second Respondent.

38.34 Overall, therefore, the Tribunal found the allegation to have been proved against the Second Respondent with regard to the matters of EH deceased and AR: in the former the Second Respondent had acted dishonestly. Whilst the Tribunal Found that the estate of JK deceased had been overcharged it was not satisfied which of the Respondents was responsible for this. The Tribunal did not find the allegation proved against either Respondent with regard to the "sweeping up" allegations. No part of the allegation was found proved against the First Respondent, and none was proved against the Third Respondent, which did not come into existence until after the dates of the alleged overcharging.

39. **Allegation 1.3: Failed to adequately account to clients and beneficiaries contrary to Rule 1(a), (c) and (d) Solicitors Practice Rules 1990 (as amended) ("SPR") and Rule 1.02, 1.04 and 1.06 of the SCC.**

39.1 This allegation was denied by the First and Third Respondents and admitted by the Second Respondent, save that she denied she had acted dishonestly.

39.2 The allegations related again to the estates of EH and JK, the conveyancing transactions for AR and the ten allegedly improper transfers. The Tribunal noted that failure to account to clients and beneficiaries could include overcharging, failing to return monies held reasonably promptly and failure to provide estate accounts. The Tribunal noted that since the period in question further rules have been introduced whereby a solicitor must report more regularly to clients where money is held.

39.3 As set out above, in the matter of EH deceased there were significant failings on the part of the Second Respondent. Firstly, the estate was overcharged in that the bill raised on 21 September 2007 for £30,284.30 was wholly improper. Further, the Second Respondent failed to account to the charitable beneficiaries HTH, for over £30,000 due to that charity for almost a year after the money was received by the firm. In addition, the Second Respondent failed to prepare and send to either the executors or the beneficiaries the estate accounts. This had still not been done as at May 2010. The Tribunal found that in all of these regards the allegation had been proved against the Second Respondent.

39.4 The First Respondent had had no direct dealings with the estate of EH deceased. The Tribunal considered whether the First Respondent had demonstrated a lack of proper stewardship of client money under the principles in the Weston v The Law Society case. In particular it was alleged that from about September 2007, when the First Respondent first knew or suspected that her partner was dishonest, the First Respondent should have taken further steps to protect clients and their money.

39.5 The Tribunal noted that it was the alleged overcharging in the matter of EH deceased and in the matter of AR which caused the First Respondent to be suspicious and caused her to raise her concerns with the SRA. The SRA did not in fact begin their investigation at the firm until May 2008. The First Respondent's evidence was to the effect that she had expected the SRA to investigate more promptly and that she had been in regular contact with them because of her concerns. In these circumstances the Tribunal was not satisfied that the Applicant had proved a lack of stewardship on the part of the First Respondent.

39.6 With regard to the estate of JK deceased, again the estate had been overcharged by over £9,000. The "completion statement" which was sent to the executors was incomplete and inadequate in that it did not refer to the receipt of £9,000 or the bill dated 17 April 2008. There was thus clearly a failure to account adequately to clients and beneficiaries.

39.7 The Tribunal had determined that whilst the estate had been overcharged it could not be satisfied who had raised the bill or arranged the transfers of funds. The First Respondent's evidence was that she had dealt with most of the estate matters and then handed over the file, together with a handwritten draft completion statement, to the Second Respondent who was always responsible for concluding and closing files. The Tribunal accepted that this was indeed the normal practice which had existed in the firm. However, in the light of the Weston case the Tribunal had to consider whether the First Respondent should have taken further steps to check this or other matters after September 2007 when she began to have concerns about her partner.

39.8 The Tribunal noted that most of the work on the JK deceased matter had been concluded by about October 2006. It was not clear at what point the First Respondent had handed the file over to the Second Respondent, or at what point the draft completion statement had been prepared. However, the improper bill was not raised until April 2008. The First Respondent's evidence was that she did not know about the additional payment of £9,000 received on this matter and had not received a letter addressed to her from the executor clients dated 12 February 2008 asking for estate accounts. The Tribunal could not be satisfied, therefore, that there had been any

reason for the First Respondent to check the position on a file which she had handed over to her partner some considerable time before she had had concerns about her partner.

39.9 The Tribunal had not found either Respondent culpable for the overcharging, nor could it be satisfied which of the Respondents was responsible for the failure to send the estate accounts. The Tribunal was satisfied that the firm had failed to account adequately to clients and beneficiaries but could not make findings against either Respondent.

39.10 On the matter of AR the Tribunal had found that the Second Respondent was responsible for overcharging AR: in overcharging him that she had failed to account to her client for sums properly due to him. Again, the matter of AR was one of those which had caused the First Respondent to report her concerns to the SRA and in those circumstances the Tribunal could not find that she had failed to discharge her duty of stewardship.

39.11 Although the Tribunal could not find that clients had been overcharged with regard to the ten allegedly improper bills, the firm had not sent the bills raised to the clients, nor did it inform them that money had been transferred to pay the bills. Even if the firm had been entitled to some or all of the amounts billed, there was a failure adequately to account to clients in that they were not given proper information about how their money had been handled.

39.12 On this matter the Tribunal accepted the First Respondent's evidence that she had had limited dealings with the firm's accounts and that most accounting functions were dealt with by or on behalf of the Second Respondent who was the sole equity partner in the firm. Whilst the Tribunal found it hard to accept that any fee earner would have significantly restricted access to client ledger information on those matters with which they were dealing, the Tribunal was satisfied that the First Respondent had delegated to the Second Respondent the final billing and closure of her files.

39.13 The Tribunal considered that it would have been an onerous task for the First Respondent to review every file which she had previously passed to the Second Respondent in order to determine if there were any improper transactions, even after the First Respondent became suspicious of her partner. The Tribunal found that whilst both partners could have raised the bills in the ten matters in issue and/or arranged for the transfers to satisfy those bills, the evidence against the Second Respondent was compelling and that against the First Respondent was not. The Tribunal noted in particular in a submission to the SRA on behalf of the Second Respondent by RadcliffesLeBrasseur made on 20 May 2009 the Second Respondent had offered to "relinquish sole control of the client account, and all client account matters (including transfers from client to office account) will be subject to the requirement for both members' signatures...". This supported the First Respondent's contention that she had had a limited role in dealings with client money or the firm's accounts.

39.14 In the circumstances set out above the Tribunal was satisfied that the allegation, which had been admitted by the Second Respondent, had been found proved against her. The allegation was not proved against the First Respondent.

39.15 The Tribunal considered whether the Second Respondent had acted dishonestly in failing adequately to account to clients and beneficiaries.

39.16 The Tribunal had earlier concluded that the Second Respondent had been dishonest in overcharging in the matter of EH deceased. In that matter the Second Respondent had failed to provide proper information to the client and to the residuary beneficiary. Once again applying the Twinsectra test the Tribunal found that in overcharging in the matter of EH, in failing to send a bill prior to transferring funds from client to office account, and in failing to provide an estate account when repeatedly requested by the charitable beneficiary, the Respondent had compounded the original dishonesty in raising the bill and so the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that it was proper to raise the bill in issue, to fail to send it to the executor clients prior to transferring sums to pay the bill and in particular to fail to provide estate accounts. The Tribunal found that in deliberately withholding half of the sum realised from an investment from a charitable beneficiary the Respondent's conduct was dishonest by the standards of reasonable and honest people. The Tribunal considered the Respondent's assertions that the bill had been raised in error but noted that no attempt had been made to provide estate accounts or proper information to the executors or charitable beneficiaries and the Tribunal was satisfied so that it was sure that the Respondent did not have an honest belief that she was entitled to withhold over £30,000 from the charity and therefore she knew that what she was doing was dishonest by those same standards.

39.17 The Tribunal had considerable concerns about the Second Respondent's conduct with regard to the matter of AR, but was not satisfied to the necessary standard that her conduct had been dishonest.

39.18 The Tribunal had not found either Respondent culpable for overcharging in the matter of JK deceased and so did not have to find any finding in relation to dishonesty with regard to the JK deceased matter.

39.19 The Tribunal was not satisfied to the necessary high standard that either Respondent's conduct was dishonest with regard to the ten allegedly improper bills. Although there had been a failure to inform clients that their matters had been billed, and paid, this was not in itself sufficient in these circumstances to prove dishonesty.

40. **Allegation 1.4: Withdrew monies from client bank account otherwise than in accordance with Rule 22 Solicitors Accounts Rules 1998 ("SAR").**

40.1 This allegation was admitted by the First and Second Respondents on a strict liability basis.

40.2 The allegation related once again to the matters of EH deceased, JK deceased, and AR and the ten allegedly improper transfers. Solicitors must not transfer sums from client to office account to satisfy a bill without first delivering the bill or adequate written notification.

40.3 In this instance transfers had been made in breach of Rule 22 SAR in the matters of EH deceased, JK deceased, AR and the ten "improper transfers". In all of these cases

it was clear that bills and/or notification of charges had not been delivered to the clients before the transfers took place and were therefore improper and in breach of Rule 22 SAR.

40.4 It was clear to the Tribunal from all of the evidence heard and read that the Second Respondent had had primary control of the firm's accounting functions. Whilst the First Respondent had had authority to authorise certain transfers and to prepare bills, the Tribunal was not satisfied that the First Respondent had been personally involved in any of the improper transfers it had found proved. The Second Respondent was primarily responsible for the breach of Rule 22 SAR. However, the First Respondent was a partner in the firm at the relevant time and as such was liable on a strict liability basis for the breach of Rule 22 SAR which was accordingly found proved against the First and Second Respondents.

Previous Disciplinary Matters

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

Mitigation

First Respondent

42. The First Respondent had admitted the only allegation which had been found proved against her, and that had been found proved on the basis of her strict liability as a partner for compliance with the SAR.

43. The Tribunal was invited to take the view that there was no personal wrongdoing by the First Respondent. Indeed, it was submitted that the First Respondent had acted appropriately and courageously when she had detected possible wrong doing by the senior partner in the firm. It had been the First Respondent's evidence, and it had been accepted by the SRA, that the First Respondent had been a "whistle blower" in drawing to the attention of the SRA her concerns regarding the Second Respondent. In particular she had drawn the SRA's attention to the matters of EH deceased and AR. It was suggested that a member of the public, knowing the facts of this matter and in particular that the First Respondent had been the "whistle blower" would be surprised that the First Respondent might risk a penalty.

44. The Respondent wanted the Tribunal to know that she had learned a number of lessons through the painful process of the investigation and prosecution. In particular she was aware of the need to take proper care in finalising and closing files. The First Respondent would find it difficult again to trust other members of the profession.

45. It was submitted that the Tribunal should reflect on possible public policy implications if it were to impose a significant penalty on a member of the profession who had reported her suspicions properly to the appropriate authority. Whilst the First Respondent would have no hesitation in following the same course of action again, because it was the right course, and all solicitors should be expected to report possible wrongdoing to the SRA, the imposition of a significant penalty would give a worrying message to the profession.

46. The First Respondent continued in practice at Davis Solicitors LLP. It was assumed that the firm would continue to come under close SRA scrutiny, although there was no cause for any further suspicion. The First Respondent now works with another solicitor who is not a member of the firm but is senior to her in post qualification experience. The First Respondent and the Third Respondent were not "awash with funds". The Tribunal was told that the First Respondent was not motivated by profit so did not pay herself a regular substantial sum but last year had drawn something in the region of £50,000.

47. The Tribunal was told that the sum identified as a cash shortage in the second FI report (£28,986.73), had been paid into client account to cover the shortage. That shortage, it was submitted, had been caused by the Second Respondent's wrongdoing but the First Respondent had taken steps to remedy the shortage.

Second Respondent

48. Ms Heley acknowledged that as the Tribunal had found the Second Respondent to be dishonest on a number of counts the sanction to be imposed was almost inevitable.

49. The Tribunal was reminded of the Second Respondent's medical difficulties. Although there was no medical report confirming that the Second Respondent was unable to take part in the proceedings, it was the Second Respondent's position that she was unable to attend at least in part due to medical reasons.

50. The Second Respondent was not currently fit for work and it was not expected that she would be in a position to return to work due to ill health. Her income was limited with no prospect of increasing it and she was reliant on her husband for support. The Second Respondent had been "forced out" of the firm she had built up over a long period of time and had received no payment for her part of the equity. As a result she had lost something in the region of £90,000 which she had invested in the firm.

Sanction

First Respondent

51. The only finding made against the First Respondent was with regard to a technical breach of Rule 22 of the SAR. The First Respondent had been a partner in the firm at the relevant time and so must be liable for any failure by the firm to comply with the SAR. In this case the failure to comply related to arranging the transfer of money from the client bank account to pay bills where those bills had not been delivered to clients.

52. Compliance with the SAR was of the utmost importance for the profession. The profession was in the position where it had stewardship over clients' money and the SAR was in place in order to ensure clients' money was properly protected. The First Respondent could have been more vigilant in ensuring that her clients' files were properly billed and closed.

53. However, the First Respondent had put forward two strong points in mitigation which the Tribunal accepted. Firstly, the shortfall in client account which had been

identified in the second FI Report dated 16 September 2009 had been replaced, in that the First Respondent had made a payment into client account from her own funds. It had been suggested in the course of the proceedings that the money remained on client account and had not been repaid to the clients who had been overcharged. The Tribunal would expect that in all cases where clients had been overcharged, there had been a failure to account to clients/beneficiaries or where matters had been improperly billed, the First Respondent must repay clients forthwith. The Tribunal had made it clear on which matters it had found clients had been overcharged or there had been a failure to account. Whilst the Tribunal had not made specific findings that the ten "improper transfers" referred to were cases of overcharging, the position must be reviewed by the First Respondent and the clients repaid if any of the bills were not fully justified. If this expectation were not met, the SRA may well consider further disciplinary action against the First Respondent.

54. The most persuasive point in mitigation, however, was the fact that the First Respondent was a "whistle blower" with regard to the acts of her partner. The First Respondent had given evidence of her repeated and persistent attempts to alert the SRA to her concerns that clients were being overcharged from about September 2007. The Tribunal would not want members of the profession to be dissuaded from blowing the whistle on any colleague, including senior colleagues, where they suspected any wrongdoing or breach of the SCC/SAR.

55. A breach of the SAR such as had occurred in the matters of EH deceased, JK deceased, AR and ten other client matters would normally result in a fine in this Tribunal. However, the Tribunal here was satisfied that not only was there no personal culpability on the part of the First Respondent, but she had taken significant steps to rectify the shortfall on client account and, most significantly, had acted as a "whistle blower" to draw these matters to the attention of the SRA.

56. In these circumstances, and for these reasons, the Tribunal determined that it was appropriate to make no order against the First Respondent.

Second Respondent

57. The Tribunal had found the Second Respondent to have "backdated" a number of letters, and to have done so dishonestly; to have culpably overcharged clients, and to have done so dishonestly with regard to the matter of EH deceased; to have failed adequately to account to clients and beneficiaries and to have done so dishonestly in the matter of EH deceased; and to have been in breach of Rule 22 of the SAR.

58. In the light of the finding of dishonesty, and there being no exceptional circumstances or mitigating factors, the appropriate order was that the Second Respondent should be struck off the Roll of Solicitors.

Third Respondent

59. There had been no findings against the Third Respondent, Davis Solicitors LLP. There being no interference with the right to practice of the First Respondent, being a member of the LLP, there was no reason to make any order with regard to the Third Respondent.

Costs

60. The Applicant sought an order for costs in the total sum of £72,964.94 including FI Report costs of £20,633.71 for the first Report and £18,584.66 for the second Report.

61. It was submitted by the Applicant that the amount claimed was reasonable and that the Tribunal should summarily assess the costs payable. It was submitted that this was not a case where a "joint and several" order should be made against the Respondents; rather, it was suggested that it was a case where each should be ordered to pay a certain amount or a percentage of the costs.

62. On behalf of the First Respondent it was submitted that the costs appeared very large and covered a large range and nature of work. It was submitted that none of the costs had been incurred by acts or defaults on the part of the First Respondent. Where the First Respondent had contested allegations, she had been successful; the only allegation found proved against her had been a technical breach, which she had admitted. It was submitted that in those circumstances it was not appropriate for the First Respondent to pay any of the costs. However, if the Tribunal considered that the First Respondent ought to pay some of the costs, those costs should be a small percentage of the overall costs. Although it was stated that the costs appeared high, no challenge was made on behalf of the First Respondent to the amount of the costs claimed.

63. On behalf of the Second Respondent it was submitted that there may well have been duplication in the SRA investigations as two investigations had been carried out.

64. It was submitted that the Second Respondent had a limited income from a pension and was reliant on her husband for support. She was not fit to work at the moment and was unlikely to be fit to work. Ms Heley had been instructed that the Second Respondent had put all of her assets into the firm, from which she had been excluded. However, there was no evidence from the Second Respondent concerning her income or assets which could be presented to the Tribunal at the hearing.

65. On behalf of the Applicant it was noted that as the Second Respondent appeared to allege impecuniosity, she should have filed a statement of income and capital with supporting documents, as set out in the matter of Davis and McGlinchy (citation not available). The Tribunal could therefore take the view that it should simply order the Second Respondent to pay a specified amount in costs. If the Respondents in this matter did not pay the costs of the case, those costs would fall on the profession generally. The Tribunal might, therefore, want to be satisfied about whether it was realistic to recover costs from the Second Respondent. It was submitted that if the Tribunal were to consider making an order that any costs order against the Second Respondent should not be enforced without further permission of the Tribunal, then directions should be given for the Second Respondent to file evidence of means in a form which could be supplied by the SRA and to give directions for a hearing to determine her ability to pay.

66. The Tribunal had determined that it should impose no sanction on the First or Third Respondents. It considered carefully whether the First and/or Third Respondents should be ordered to pay or contribute to the costs of these proceedings.

67. The Tribunal noted that it had not been possible at this hearing to deal with an allegation (1.5) which had been brought against the First Respondent alone. That matter was to lie on the file and, if brought before the Tribunal at some future point, the costs of that matter could be determined separately. The SRA had been correct to prepare to deal with that allegation, and should not be penalised because late service of a Civil Evidence Act Notice on behalf of the First Respondent meant that the allegation could not be pursued at this point.

68. With regard to the allegations which had been dealt with before this Tribunal, it had already been noted that there was strong mitigation which had led to the Tribunal determining that no order should be made. The Tribunal noted that there had been no discreet findings against the First Respondent, simply in respect of a technical breach. She had apparently made good a shortfall on client account and had been the "whistle blower". In these circumstances the Tribunal did not consider it appropriate to order the First or Third Respondents to pay any of the costs of the proceedings which it had heard.

69. The Tribunal considered the schedule of costs submitted to it. It considered that there was a possible element of duplication in that two SRA investigations had been carried out, and some of the costs may relate to allegation 1.5. It considered that the overall sum for costs which it would be reasonable to order against the Second Respondent was £65,000.

70. The Tribunal noted that the Second Respondent had not produced any evidence in the form of a statement of means, verified by a statement of truth, together with supporting documents to support the assertion made on her behalf that she was not in a position to pay costs. However, the Tribunal noted the Second Respondent's medical position. The Tribunal considered it appropriate to order the Second Respondent to pay the costs of the proceedings which it summarily assessed at £65,000, but that the order should not be enforced without further permission of the Tribunal. That said, however, the Tribunal did not wish to leave the matter in abeyance and therefore ordered that the Second Respondent should serve and file information about her financial position by 4pm on Friday 26 August 2011 and that the matter should be re-listed to determine whether the costs should be enforced on the first available date after 1 November 2011. The Tribunal noted that as it had determined the amount of costs which would be payable by the Second Respondent a different division of the Tribunal could hear and determine the issue of whether the Second Respondent must pay the costs.

Statement of Full Order

71. The Tribunal Ordered that the Respondent, Sujata Gupta of 18 New Forest Lane, Chigwell, Essex, IG7 5QN, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that;

    1) The Respondent, Sujata Gupta shall pay the costs of the proceedings summarily assessed at £65,000, such order not to be enforced without leave of the Tribunal;

2) The Respondent, Sujata Gupta shall serve and file a full statement of income, expenses, assets and liabilities in a format to be supplied by the SRA together with supporting documents by 4pm on Friday 26th August 2011;

3) This matter to be relisted for hearing with regard to enforcement of costs on the first open date after 1st November 2011 with a time estimate of half an hour.

Dated this 26th day of September 2011
On behalf of the Tribunal

E Richards
Chairman