SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10680-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[RESPONDENT 1] First Respondent

and

PINACLE LAW LTD (Recognised Body) Second Respondent

Before:

Mr D. Green (in the chair)
Mr R. Prigg
Mr G. Fisher

Date of Hearing: 7 and 8 June 2011

Appearances

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

Fiona Horlick, Counsel, of Outer Temple Chambers, 222 Strand, London WC2R 1BA, instructed by Michael Brough and Cohen Solicitors, for the Respondents.

JUDGMENT

Allegations

Allegations against both Respondents

1. The allegations against both Respondents were that they:

1.1 Contrary to Rule 6 of the Solicitors' Accounts Rules 1998 ("SAR"), failed to ensure compliance with the SAR;

1.2 Contrary to Rule 7 SAR, failed to remedy breaches promptly upon discovery;

1.3 Contrary to Rule 19(2) and/or (3) SAR, transferred money from client account;

1.4 Withdrew money from client account contrary to Rule 22 SAR;

1.5 Failed to carry out the required reconciliations contrary to Rule 32(7) SAR;

1.6 Contrary to Rule 20.05(2)(b) of the Solicitors' Code of Conduct 2007 ("SCC") and Section 84(1) of the Solicitors Act 1974 (as amended), failed to notify the Solicitors Regulation Authority ("SRA") that Pinacle Law Ltd had moved premises on 30 November 2009;

1.7 Permitted, facilitated or acquiesced in a non-lawyer (RG) being a co-director of Pinacle Law Ltd between 25 March 2009 and 6 July 2009, contrary to Rule 14.01(3)(a) SCC;

1.8 Permitted, facilitated or acquiesced in Pinacle Law Ltd and/or Hunnybun & Sons carrying on practice contrary to Rules 14.01(2)(a) and 14.01(3)(a)(i) SCC;

1.9 Failed and/or delayed in payment to a third party (R) of sums due to him totalling £15,000, contrary to Rules 1.02 and 1.06 SCC;

1.10 Failed and/or delayed in the payment of the premium due to the Assigned Risks Pool ("ARP") contrary to Rules 10.3(a) and 10.12 of the Solicitors' Indemnity Insurance Rules 2009 ("SIIR");

1.11 Failed and/or delayed in payment of a County Court Judgment dated 3 November 2009, contrary to Rules 1.02 and 1.06 SCC;

1.12 Failed to secure client files and/or to comply with their obligation to keep clients' affairs confidential, contrary to Rules 1.02, 1.04, 1.06 and 4.01 SCC;

1.13 Failed and/or delayed in the payment of a costs order in the sum of £600 dated 29 July 2009, contrary to Rules 1.02 and 1.06 SCC;

1.14 Permitted, facilitated or acquiesced in office account cheques being dishonoured contrary to Rules 1.02, 1.04 and 1.06 SCC;

1.15 Failed to adequately or at all supervise the Huntingdon Office of Pinacle Law Ltd contrary to Rules 5.01, 14.01(2)(a) and 14.01(3)(a)(i) SCC;

Additional allegation against the First Respondent

The additional allegation against the First Respondent was that she:

1.16 Misappropriated clients' funds, an allegation of dishonesty. The case was put against the First Respondent in relation to the improper transfers from client to office bank account in the sum of £10,518.25 as particularised in the Forensic Investigation Report ("FIR") dated 23 March 2010 on the basis that she was dishonest with regard to those transfers. In the alternative it was alleged that the First Respondent was reckless. The issue of dishonesty was a matter for the Tribunal to decide and it was open to the Tribunal to find the allegation proved, absent a finding of dishonesty.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 10 December 2010 and exhibit marked "JRG1";

- Applicant's Statement of Costs dated 8 June 2011.

First and Second Respondents

- File entitled "Complete Bundle For The Hearing".

Preliminary Matters

3. The Chairman declared that he was a partner in Radcliffes Le Brasseur. In April 2010 that firm acted on behalf of NL, the First Respondent's former partner and co-director. The Chairman said that he had had no involvement in NL's case and was satisfied that it was not necessary for him to recuse himself. However he thought it proper bring the matter to the parties' attention. The parties confirmed that they were content that the Chairman should continue to sit.

4. Ms Horlick applied for the hearing to be adjourned. The Tribunal was handed copy correspondence between the parties concerning the application and was referred to the First Respondent's witness and personal statement. Allegations 1.1, 1.2, 1.5, 1.6, 1.9, 1.10, 1.11, 1.13 and 1.15 were admitted. The remaining allegations were denied including the allegation of dishonesty against the First Respondent.

5. Ms Horlick provided the Tribunal with details of the First Respondent's poor health from 2009 to date. Until recently it had been impossible for her solicitors to take instructions. They had now compiled a witness statement and Ms Horlick had held a conference. Ms Horlick also submitted that the First Respondent and her legal team required access to client ledgers relating to client to office account transfers alleged to have been improper and dishonest, in order to prepare the First Respondent's case properly. It was said by the Applicant that the First Respondent had misappropriated

client funds, but she did not know whether the funds referred to were in fact client funds. Only one specific example had been provided in the documents supporting the Rule 5 Statement. The First Respondent was unable to say what work had been done on that file which justified the transfer without first having inspected the file herself. The First Respondent's costs draftsman, PB, had drawn up the bill giving rise to the transfer. The First Respondent had always proceeded on the basis that the transfer was justified, but needed to examine the file in order to confirm. Without first inspecting all the files she was prevented from putting her case before the Tribunal properly.

6. Mr Goodwin opposed the application for an adjournment. He disputed the necessity for inspection of the files and ledgers and reminded the Tribunal that a bill must first be raised and delivered to the client in order to justify any transfer from client to office account to pay costs. Mr Goodwin outlined the basis upon which allegation 1.16 was put against the First Respondent. Allegation 1.3, which was denied, alleged against both Respondents that money was transferred from client to office account contrary to Rule 19(2) and/or (3) SAR. It was open to the Tribunal to find that allegation proved against both Respondents. As against the First Respondent only, allegation 1.16 alleged misappropriation of client funds, on the basis that she was either dishonest or reckless. The First Respondent signed two cheques totalling £12,001.46 to transfer money from client to office account. The Applicant's case was that the sum of £10,518.25 included in those cheques was improperly transferred. The Chairman invited Mr Goodwin to set out the test for dishonesty as formulated by Lord Justice Hutton in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. The test set out at paragraph 27 of the Judgment was as follows:-

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

Ms Horlick agreed that this was the appropriate test.

7. The Chairman confirmed that the Tribunal members had read the papers carefully and were clear on the issues. Mr Goodwin would have to prove the denied allegations to the high standard required, which would include satisfying the combined test for dishonesty in respect of allegation 1.16. The Respondents could be reassured that any doubts would be resolved in their favour.

8. The Chairman asked the parties when the intention to apply for an adjournment was first notified to the Applicant. Ms Horlick said that her instructing solicitors raised the matter with Mr Goodwin on 24 May 2011, when they also asked to inspect the files. The request was repeated on 27 May 2011 on grounds that the case was becoming complex, inspection of the files was required, and that the time estimate of three days might be insufficient. The Respondents' admissions and denials were also confirmed. Mr Goodwin replied on 31 May 2011, asking for clarification in relation to inspection of the files. He referred to earlier opportunities to inspect files and disagreed that the case had become more complex. He noted the admissions and disagreed that the case would take longer than two days. By email dated 3 June 2011 he confirmed formally that the Applicant opposed the application. Ms Horlick

submitted that, even if the application was made late in the day, the Tribunal had to consider overall fairness to the First Respondent. Regardless of who was at fault for the late application, the First Respondent must be given an opportunity to prepare a proper defence to these serious allegations. The Respondents would say that they were prejudiced in the presentation of their case by a refusal to adjourn the hearing.

9. The Chairman clarified for the record the two grounds on which the application for an adjournment was made, namely, the request for inspection of the files relating to the allegedly improper transfers from client to office account and the difficulty in obtaining instructions from the First Respondent due to poor health, from which she had only recently recovered.

10. Ms Horlick confirmed that the Chairman's clarification was correct. She referred the Tribunal to medical evidence exhibited in the Respondents' Bundle, and in particular to the letter dated 8 March 2010 from Olaf Richardson, Principle Practitioner, and the detailed medical reports dated 27 May 2010, 25 October 2010, and 15 May 2011.

11. Mr Goodwin set out the chronology of the proceedings. On 23 December 2010 he served the First Respondent with Notice to Admit Evidence in relation to the documents at exhibit JRG1. She responded on 30 December 2010 admitting the documents; she did not serve a counter-notice. Mr Goodwin continued to communicate direct with the First Respondent until 17 May 2011, when he was contacted by solicitors instructed on her behalf concerning the bundle of documents for the hearing. On 24 May 2011 he received a letter from those solicitors requesting inspection of the client files. He replied on 26 May 2011. On 27 May 2011 he received a further letter from the solicitors requesting for the first time that the Applicant agree to an adjournment.

12. Mr Goodwin said that the First Respondent accepted that she had signed the two cheques giving rise to allegation 1.16. She also accepted the cash shortage on client account. The critical issue was her state of knowledge at the point when the cheques were signed. The content of the client files, which the First Respondent on her own admission did not inspect before signing the cheques, was irrelevant. The Applicant opposed the application for an adjournment. It did not understand why the application had been left so late in the day. On 3 June 2011 the First Respondent served her witness statement. She served her medical evidence on 5 June 2011. In spite of the late service of these documents the Applicant was ready to proceed.

13. Mr Goodwin referred to the Tribunal's Policy/Practice Note on applications for adjournment. The Policy stated that lack of readiness on the part of the parties would not generally justify an adjournment. Mr Goodwin invited the Tribunal to reject the application, whilst fully acknowledging that he would have to satisfy the Tribunal so that it was sure that the First Respondent had behaved dishonestly, with any doubt being resolved in the First Respondent's favour.

14. Ms Horlick responded. She said that the annotated lists of transfers were handed by the First Respondent to the IO on 22 February 2010. The First Respondent was referred for medical treatment on 25 February 2010. Mr Richardson referred her for further treatment on 8 March 2010. The First Respondent was extremely unwell by then. The First Respondent had not had an opportunity to inspect the relevant files,

having said since 29 July 2010 that she wanted to do so. Mr Goodwin had not addressed the substance of the application for an adjournment, namely that the Respondents and their legal advisers should be allowed to establish that these were proper rather than improper transfers. Mr Goodwin disagreed. The Applicant's case was that the First Respondent had signed the material cheques without first having sight of the files. Its case was that she was dishonest or that she did not know or care whether she was entitled to use the money in client account, and was reckless.

Tribunal's decision on Respondents' application for adjournment

15. The Respondents made an application for the substantive hearing listed for two days commencing on 7 June 2011 to be adjourned on the grounds of the Respondents' lack of readiness and the First Respondent's poor health. It was suggested that the First Respondent's poor health had caused or contributed to her inability to give instructions to her legal advisers in sufficient time to enable them to prepare properly her defence to the allegations which she denied. In any event her defence could not be properly prepared without first inspecting the complete client files on which transfers had been made from client to office account giving rise to allegation 1.16, namely the dishonest or reckless misappropriation of client funds.

16. On 29 July 2010 the First Respondent requested inspection of the files. The Tribunal had carefully considered the chronology of the proceedings after that date. No effective action to follow up the initial request for inspection had been taken by the Respondent. Now nearly a year later, that request was repeated. The underlying reason for the delay in repeating the request was said to be the First Respondent's inability to give instructions. The Tribunal had concluded that the First Respondent was able to give detailed and proper instructions after that date. It had been provided with written explanations in response to the FIR from the First Respondent sent to the SRA shortly after the inspection had been completed which purported then to cast doubt on the Applicant's position regarding the transfer of monies. The First Respondent's detailed witness and personal statements included a full and detailed account of events.

17. The Tribunal's Policy/Practice on adjournments made clear that last minute applications would be accepted only in the limited circumstances where there was injustice to the Respondents in proceeding with the substantive hearing. The Tribunal did not believe that there was any such risk of injustice in this case. Mr Goodwin accepted that the Tribunal must give the First Respondent the benefit of any doubt and that the Applicant must prove the allegations which were denied, including the allegation of dishonesty/recklessness in relation to the alleged misappropriation of client funds, to the high standard required.

18. The medical evidence produced by the First Respondent did not suggest that she was currently incapable of giving instructions to Counsel and her solicitor with whom she had attended the hearing. Ms Horlick would be given every opportunity to put points on the First Respondent's behalf and her client would receive the benefit of doubt whenever doubt arose. Counsel would be able to draw the Tribunal's attention to the complete set of circumstances out of which the allegations arose. If the Tribunal had had any doubt that the First Respondent would be prejudiced if the case was permitted to proceed, it would have granted the application. However the Tribunal did not

believe that the refusal to grant the application, which was made at a very late stage and fell outside the reasons for granting such an application as set out in the Tribunal's Policy, would result in any injustice to the Respondents. The application was therefore refused.

Factual Background

19. The First Respondent was born on 28 January 1953 and was admitted as a solicitor on 1 May 2003. Her name remained on the Roll of Solicitors. She had not practised since June 2010.

20. The Second Respondent was incorporated on 18 December 2008. It became a recognised incorporated practice on 16 January 2009. The First Respondent was a director of the Second Respondent. The Respondents practised as Pinacle Law Ltd, Pinacle Law Ltd trading as Moeran Oughtred & Co, Hunnybun & Sons and Eagle Legal Ltd ("the Firm").

21. The Second Respondent was an SRA recognised body under Section 9 of the Administration of Justice Act 1985 ("AJA") and Regulation 2 of the SRA Recognised Bodies Regulations 2009. A recognised body and its managers or employees were subject to the SCC, SAR and SIIR, to regulation by the SRA and to the disciplinary sanctions of the SRA and the Tribunal. SCC Rule 14 set out the legal and regulatory framework relevant to recognised bodies. Rule 14.01(2) (a) SCC provided that at least one manager of a recognised body must be a solicitor with a current practising certificate or a Registered European Lawyer ("REL"). Rule 14.01(3) SCC required every recognised body to be at least 75% owned and managed by lawyers. The Tribunal's jurisdiction and powers with respect to recognised bodies was set out at paragraphs 6 – 18 of AJA Schedule 2.

22. On 15 June 2010 an SRA Panel of Adjudicators resolved to intervene in the Second Respondent and the practice of the First Respondent in the Second Respondent and any other practices or former practices of both Respondents.

23. The allegations before the Tribunal arose from an inspection of the books of account of the Respondents by the SRA's Investigation Officer ("IO") commencing on 2 December 2009 and resulted in a Forensic Investigation Report ("FIR") dated 23 March 2010 by M.J. Calvert, the SRA's Head of Forensic Investigation.

24. The books of account were not in compliance with the SAR for reasons particularised in the FIR, to include:

24.1 Client bank account reconciliations had not been carried out since August 2009;

24.2 Transfers, alleged to be improper, from client to office account had been carried out;

24.3 Client money appeared to have been retained in office account;

24.4 There were debit balances on client ledger accounts.

25. On 21 December 2009 the IO attended at the Firm. She was informed that the books would not be up-to-date until after Christmas. On 22 January 2010 she was told by RG that the Firm's accounts system had crashed and had been sent away for repair. As a consequence the books had not been brought up to date.

26. The IO was unable to express an opinion as to whether or not sufficient client funds were held to meet the Firm's liabilities to clients as at 31 December 2009. She ascertained that at that date there was a minimum cash shortage of £15,088.42, made up as follows:

Allegedly improper transfers from client to office account	£10,518.25
Eight debit balances on client ledger accounts	£4,125.17
Client money allegedly incorrectly retained in office bank account	£445.00

27. The First Respondent agreed the existence of the minimum cash shortage.

28. The IO reviewed the client bank account for Moeran Oughtred & Co., the First Respondent's former firm. She noted that a cheque for £12,001.46 from that account had been honoured on 26 February 2009 and credited to the Second Respondent's office bank account. On 6 May 2009 another cheque from the same account for £7,767.76 was honoured and credited to the Second Respondent's office bank account. The First Respondent informed the IO at their initial meeting that the money would have been for costs due to her from Moeran Oughtred & Co.

29. The IO asked the First Respondent for a breakdown of the client matters included in the two cheques. The First Respondent provided the IO with an A4 folder which contained two lists itemising client to office transfers in February 2009 and April 2009 and subsequent client ledgers and bills relating to those transfers. The IO noted that the 40 client ledgers appeared to have old balances retained on them. The February 2009 list related to 30 clients and the sums involved totalled £7,519.59. The list included the reason for the retained balances. In 9 cases the reason was given as "monies being due back to the clients" and in 13 cases as "retention". The April 2009 list related to 10 clients and the sums involved totalled £2,998.66. The reasons for the retained balances were given as "monies being due back to client" in 4 cases and as "retention" in 3 cases. In both cases some entries were not annotated.

30. The IO interviewed the First Respondent and provided her with a CD and later a transcript of the interview. During interview the First Respondent agreed that she had signed the two cheques; she was the only person authorised to sign client account cheques. The Firm employed a costs draftsman, PB. The First Respondent said that she did not instruct PB to make the transfers. Any transfers that had been made were made without her knowledge or consent. RG attended the interview. He informed the IO that PB was a costs draftsman, given the task of looking into ledger balances. The IO asked the First Respondent when it was brought to her attention that the exercise of writing off old balances had taken place. The First Respondent said that she knew

of it for the first time in July 2009 when she was informed by the Firm's the book-keeper. She had expressed her horror at being told that money had been transferred in these circumstances. She said that she knew that the money had to be replaced.

31. The Firm acted for Mr and Mrs M on a house purchase. The IO reviewed the client matter ledger and noted that a client account cheque for £2,490 in respect of Stamp Duty was sent to HM Revenue & Customs ("HMRC") on 24 July 2009. The payment created a debit balance on the client ledger of £4.06. The cheque was honoured by the bank on 30 July 2009, but for £21,490 rather than £2,490. The First Respondent informed the IO that enquiries were made with HMRC around the end of July 2009. HMRC admitted having overcharged Mr and Mrs M by £19,000 and promised to return the money to the Firm as soon as possible. The money was not refunded until 8 October 2009. The IO asked the First Respondent why she had not replaced the money when she became aware of the error. She stated that she did not have the funds to do so. At the date of the final meeting the debit balance of £4.06 remained on the client matter ledger.

32. As set out above, money from client account was transferred to office account by means of two cheques signed by the First Respondent. The IO referred in detail to one matter concerning a transfer of equity for client KR. Moeran Oughtred & Co invoice number W465 was posted on 5 October 2004, having been paid out of monies held on client account on 30 September 2004. Payments totalling £876 were made from client account to HM Land Registry and HMRC on 24 March 2006. On 19 April 2006 £70 was received into client account from HMRC. On 14 July 2006 a BACS transfer from office account to HMRC for £213 was made. On 30 June 2008 £213 was transferred from client to office account, seemingly to reimburse the payment to HMRC. This left a client account balance of £164.75. There was also a bill dated 29 April 2009 referring to client KR and the matter as "transfer of equity" for £164.75. This bill appeared on the April 2009 list of monies transferred from client to office account alongside reference "Bill C135"; that reference also appeared on the bill itself. It was not clear whether the bill had been delivered to the client.

33. The sum of £445 was retained in office account in relation to litigation conducted by a fee earner who had previously worked for W Solicitors which had been closed by SRA intervention. The fee earner transferred a number of files to the Second Respondent. He provided the IO with a completed matter for client B. B had signed an agreement with insurer AAH authorising a deduction of £445.32 from any damages recovered. The fee earner informed the IO that he believed that his previous employers had paid the fee to AAH in advance. The client matter ledger was not available for inspection due to problems with the Firm's computerised accounting system.

34. On the client matter file was a letter dated 30 November 2009 to B which stated:

> "Accordingly, I am pleased to enclose a cheque for £5,054.68 in settlement of your claim, representing £5,500 less £445.32 in settlement of AAH management fee, in accordance with your original instructions..."

35. On 8 December 2009 the sum of £1,244 was transferred from client account to the office bank account. Details obtained by the IO from the bank revealed that part of the transfer related to £445 in respect of B's matter. On 3 February 2010 the IO asked the First Respondent if the £445 was the Firm's money to transfer into office account or whether it should have gone back to W Solicitors. The First Respondent informed the IO that she would "get back to her". At the final meeting the First Respondent handed the IO written notes as to what she thought the position was. She believed that the money should go back to W Solicitors or its Trustee in Bankruptcy. The First Respondent agreed that the money should in any event be put back into client account as soon as possible.

36. The First Respondent informed the IO at the initial meeting that the Firm had not carried out client bank account reconciliations since August 2009, due to the book-keeper having left in September 2009 and staffing problems. Posting to ledgers had not taken place since August 2009.

37. The Second Respondent changed address on 30 November 2009 when it moved to 35 High Street WD23 1BD. The IO noted that the Second Respondent's address held by the SRA was Monmouth House, 87 Parade, Watford.

38. The Second Respondent was incorporated on 18 December 2008. The First Respondent and NL were registered as directors. NL resigned on 9 June 2009. The First Respondent signed Companies House Form 288a (Appointment of Director) dated 25 March 2009, which was also signed by RG, appointing RG as a director of the Second Respondent. At some point Form 288a was submitted by someone to Companies House formally registering RG as a director from 25 March 2009 until his resignation on 6 July 2009. In consequence RG, who was not a lawyer, owned 50% of the Firm during the material period.

39. On 3 February 2010 the IO was approached by an employee of Hunnybun & Sons ("Hunnybun"), who worked for that firm before and after its acquisition by the Second Respondent. The employee raised concerns regarding the acquisition of Hunnybun and its subsequent management by the First Respondent, RG and PB. The IO was provided with a copy of a letter dated 16 February 2010 from the employee to the First Respondent in which the employee expressed concern about Hunnybun's continued presence on lender panels and the mechanics for obtaining completion monies in time for completions. A formal witness statement was taken from the employee. She did not attend the hearing to give evidence, and her written evidence was not accepted by the Respondents.

40. The same employee provided the IO with typed notes said to be from a third party R, a former partner of Hunnybun, setting out his involvement with the Respondents. R became involved in a dispute with the Respondents regarding non-payment of monies due to him totalling £15,001. R later confirmed to the IO that a Statutory Demand had been served on the Respondents. The First Respondent was said to have provided to the SRA a letter from R dated 27 April 2010 confirming that the Statutory Demand had been withdrawn.

41. The First Respondent informed the IO that the Firm had gone into the ARP for its professional indemnity insurance for the year 2009/2010. The premium due to Capita

Insurance Services was £151,200. On 30 October 2009 Capita wrote to the Firm informing it of the premium due and requesting payment within 30 days. The First Respondent confirmed that neither she nor the Firm had paid the premium to Capita.

42. When practising as Moeran Oughtred & Co, the First Respondent rented two garages from a storage company in which some client matter files were stored. On 5 February 2010 the storage company wrote to the Legal Complaints Service ("LCS") concerning non-payment of a Judgment for £1,115 in respect of unpaid rent. The letter to the LCS stated that one of the garages was "in no way secure due to a damaged lock". The letter made reference to a number of sensitive files having been left in the garages. The First Respondent had informed the storage company in response to the Judgment that she had applied to have it set aside as the proceedings were not served on her by the court.

43. On 29 July 2009 an SRA Adjudicator directed the First Respondent to pay costs of £600. On 15 February 2010 the Law Society contacted the IO regarding non-payment of the costs order. The IO asked the First Respondent why the costs had not been paid. She said that she thought that they had been paid and would have to make enquiries with her costs draftsman PB. On 15 March 2010 the Law Society contacted the IO again as the costs remained outstanding. Payment was made prior to the hearing.

44. A review of the Firm's office account statements for the period 24 December 2009 to 26 January 2010 revealed 9 dishonoured cheques totalling £11,736.87.

45. Hunnybun was acquired by the Second Respondent and renamed "Pinacle Law Ltd trading as Hunnybun & Sons" on 1 September 2009. The IO attended the Huntingdon office of Hunnybun on 3 February 2010. She was informed by RG that the two previous partners, O and R, had ceased their employment on 29 January 2010. O's departure was planned; R's departure was premature. The solicitor replacing O was not due to start work until 1 March 2010. RG said that a locum solicitor would be employed in the interim. Until 29 January 2010 Hunnybun operated its own client account and prepared its own bank reconciliations. There were no issues with Hunnybun's compliance with the SAR at the point at which funds were transferred from Hunnybun's client account to the Second Respondent's client account. Hunnybun's cashier managed the accounts using an Excel spreadsheet and was not connected to the Second Respondent's office accounting system. The IO asked the First Respondent how the Huntingdon office requested client monies, as the accounting systems had not been merged and she was not at Hunnybun's office full time. The First Respondent said that fee earners would ring her and request funds. She authorised payment. A Hunnybun employee raised concerns about the firm's acquisition once partners O and R had resigned. She made allegations concerning the management of Hunnybun by RG and PB, who were not solicitors, and the payment of staff wages.

46. The SRA wrote to the First Respondent on 12 April 2010 seeking her explanation. A further letter was sent to her on 22 April 2010. The First Respondent replied by means of two letters dated 28 April 2010. On 11 May 2010 the SRA requested further documentary evidence. The First Respondent replied by letters dated 9 and 14 June 2010.

Witnesses

47. The SRA's Investigation Officer, Sarah Taylor, gave oral evidence on oath. Ms Taylor confirmed for the record that the contents of the FIR dated 23 March 2010 with supporting appendices were correct. The documents were admitted in evidence. Ms Taylor said that she did not have the original files containing the documents from which the February and April 2009 lists of client to office transfers exhibited to the FIR had been prepared. She said that the Respondent provided an A4 folder containing the lists annotated with what the First Respondent said was the reason for the balance on each client account. Ms Taylor looked at the ledgers and bills and not at the client files. Under cross-examination Ms Taylor confirmed that she took copies of the contents of the A4 folders but did not attach them to the FIR. She had not been asked to produce the original documents, held elsewhere, for the Tribunal hearing. Ms Taylor said that she had not exhibited every client ledger and bill in respect of payments included in the 2 cheques transferring funds from client to office account because she had not considered it necessary to do so. Although the lists were produced by the First Respondent, she had said that they were prepared by PB. Ms Taylor was unable to say whether or not on client R's file, which she had inspected, work might have been done between 2004 and 2006 to justify submission of the bill for £164.75 in 2008.

48. The First Respondent gave evidence on oath. She confirmed that the contents of her witness statement and personal witness statement, both bearing statements of truth and dated 5 June 2011, were correct. The First Respondent gave evidence in accordance with her witness statements and was cross-examined in detail by Mr Goodwin for the Applicant.

49. The Tribunal read signed witness statements containing statements of truth submitted on behalf of the First and Second Respondents. The witnesses attended to give oral evidence. Mr Goodwin agreed to their statements being read, as follows:

- Bernard Leigh dated 16 May 2011;
- Michael Richard Rosenfeld dated 22 March 2011;
- Valerie Rosenfeld dated 26 May 2011.

Findings of Fact and Law

50. **Allegation 1.1: Contrary to Rule 6 SAR, the Respondents failed to ensure compliance with the SAR.**

50.1 The Respondents accepted that the books of account were not up-to-date at the time of the inspection. The First Respondent informed the IO that client bank account reconciliations and posting to ledgers had not been carried out since August 2009.

50.2 Rule 6 SAR required all principals in a practice to ensure compliance with the SAR by the principals themselves and by everyone employed in the practice. This duty extended to the company directors of a recognised body.

50.3 The Tribunal found the allegation, which was admitted by the Respondents, proved on the facts and the documents.

51. **Allegation 1.2: Contrary to Rule 7 SAR, the Respondents failed to remedy breaches promptly upon discovery.**

51.1 Rule 7 SAR required any breach of the Rules to be remedied promptly upon discovery. The duty extended to replacing missing client money from the principals' own resources. The First Respondent admitted that there was a minimum cash shortage as at 31 December 2009 of £15,088.42. She did not dispute the manner in which the minimum cash shortage had come into existence. She denied that transfers from client to office bank account totalling £10,518.25 were improper as alleged at allegation 1.16. The First Respondent conceded that she first became aware of the cash shortage arising from the client to office transfers in July 2009. She was "horrified" when this information was given to her by the Firm's book-keeper. At the time of the hearing the minimum cash shortage had not been repaid. The First Respondent also conceded that she was aware in July 2009 of the pre-inspection shortage of £19,004.06 on the client matter for Mr and Mrs N. That shortage was not rectified until 8 October 2009.

51.2 The Tribunal found the allegation, which was admitted by the Respondents, proved on the facts and the documents.

52. **Allegation 1.3: Contrary to Rule 19(2) and/or (3) SAR, the Respondents transferred money from client account.**

52.1 This allegation was initially denied by the Respondents. During the course of the First Respondent's evidence, and after consultation with Counsel, the Respondents admitted the allegation solely on the basis of the Respondents' strict liability for the facts and circumstances in the FIR which gave rise to a breach of Rule 19.

52.2 In short it was alleged that the Respondents transferred money from client account contrary to Rule 19(2) and/or (3) SAR. Rule 19(2) stated that a solicitor who properly required payment of her fees from money held for a client in a client account must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party. Rule 19(3) stated that once the solicitor had complied with paragraph (2) above, the money earmarked for costs became office money and must be transferred out of the client account within 14 days.

52.3 The Applicant relied upon the transfer from client to office account of £10,518.25 by means of two cheques signed by the First Respondent. It alleged that this was done in breach of Rule 19 SAR. The Applicant submitted that it was open to the Tribunal to find the alleged Rule 19 breach proved, without of necessity having to make a finding of dishonesty or recklessness against the First Respondent as alleged at allegation 1.16.

52.4 The Respondents' late admission was limited to the First Respondent's involvement in signing the cheques making the transfers. She was the only signatory on the client account cheque book and the only person authorised to make transfers from client account. In evidence the First Respondent said that she signed the cheques because

she believed the transfers to be "totally legitimate". She said that the Firm's costs draftsman PB prepared the bills, which she had not seen when she signed the cheques. She did not see the bills at all until some months later and was very unhappy about the way in which they had been drafted. The First Respondent's evidence was that she had not seen the client matter files and relied on PB who was said to be an experienced costs draftsman. The First Respondent was adamant when giving evidence, that she was aware that it was a breach of the SAR to transfer balances from client to office account before bills had been delivered to clients. In her witness statement she referred to having asked an employee whether the bills had been sent to clients. The employee informed her that they had not been sent. When she was told what had happened her response was:

> "... the money has got to go back; it's contrary to SRA regs".

52.5 The Tribunal found the allegation, which was admitted by the Respondents on the basis of strict liability, proved on the facts and the documents.

53. **Allegation 1.4: Withdrew money from client account contrary to Rule 22 SAR.**

53.1 The Respondents denied the allegation, which related to the sum of £445 transferred on 8 December 2009 by the First Respondent on behalf of the Firm from client to office account in respect of litigation carried out by the Firm on behalf of client B. It was alleged by the Applicant that this sum had been incorrectly retained in office account in breach of Rule 22. The First Respondent was unclear as to whether the money belonged to the Firm or to B's former solicitors or to their Trustee in Bankruptcy. The First Respondent informed the IO that she believed that the money should go back to W Solicitors.

53.2 Rule 22 SAR set out in detail how money might be withdrawn from client account. Mr Goodwin put the Applicant's case on the basis that there had been a straightforward breach of Rule 22, without going into detail of the specific provision(s) of that Rule said to have been breached.

53.3 Ms Horlick submitted that the limited evidence available in support of the allegation consisted of hearsay evidence which was not accepted by the Respondents, and notes prepared by the First Respondent which she handed to the IO and which were exhibited to the Rule 5 Statement. The First Respondent made it clear in those notes that she was querying whether the £445 belonged to W solicitors or to the Firm. The notes did not record that she came to a conclusion. She said in her evidence that it might have been "safer" to send a cheque to the Trustee in Bankruptcy. However there was no clear, objective evidence as to whether the sum of £445 was properly due to the Firm or was client money.

53.4 The Tribunal had not found any clear answer in the facts and evidence giving rise to the allegation. The First Respondent said that if she was in any doubt about what should be done with the money (and it appeared from her handwritten notes that she did have some doubt), it would have been safer to send a cheque to W Solicitors' Trustee in Bankruptcy. She frankly stated that she did not know how insurance in personal injury cases worked. She accepted under cross-examination that, if the money had indeed been transferred incorrectly, it should be put back into client

account. This was consistent with what she told the IO. She also conceded that if the money had been transferred when it should not have been, that would be a breach of the SAR. However the First Respondent did not accept that the money had been withdrawn from client account in breach of Rule 22.

53.5 The Tribunal had to look at the Applicant's pleaded case and the evidence in support of that case. It was specifically pleaded that the money had been incorrectly retained in office account in breach of Rule 22. The Rule provided detail on the withdrawal of client money. However the Tribunal was not directed to the relevant clause(s) dealing with incorrect retention of money in office account. It might be that the First Respondent's actions in retaining the money in office account constituted a breach of a different Rule, but that was not what the Tribunal was being asked to decide. The Tribunal was not satisfied so that it was sure on the evidence put before it by the Applicant, and having heard the First Respondent's oral evidence, that the money was incorrectly retained in office account. There remained doubt as to who the money belonged to. If it belonged to the Firm then it was perfectly proper for it to be in office account. The Applicant had produced no evidence other than the First Respondent's speculation that the money belonged to the Trustee in Bankruptcy. No evidence from the Trustee had been adduced by the Applicant.

53.6 In all the circumstances, and giving the benefit of the doubt to the Respondents, the Tribunal found the allegation, which was denied by the Respondents, not proved.

54. **Allegation 1.5: Failed to carry out the required reconciliations contrary to Rule 32(7) SAR.**

54.1 The Respondents admitted the allegation. It was a matter of undisputed fact that the required reconciliations as set out at Rule 32(7) SAR were not carried out after August 2009. The Tribunal found the allegation proved on the facts and documents.

55. **Allegation 1.6: Contrary to Rule 20.05(2)(b) SCC and Section 84(1) of the Solicitors Act 1974 (as amended), the Respondents failed to notify the SRA that Pinacle Law Ltd had moved premises on 30 November 2009.**

55.1 The Respondents admitted the allegation. In her witness statement the First Respondent said that she instructed costs draftsman PB to write a formal letter to the SRA confirming the change of address, but that he failed to do so. She accepted responsibility for that failure. She was right to do so. Important matters such as notifying her regulator of a change of address should be delegated to non-solicitor colleagues rarely and only when there were procedures in place to ensure that the task was done in a proper and timely manner. The Tribunal found the allegation substantiated on the facts and documents.

56. **Allegation 1.7: Permitted, facilitated or acquiesced in a non-lawyer (RG) being a co-director of Pinacle Law Ltd between 25 March 2009 and 6 July 2009, contrary to Rule 14.01(3)(a) SCC.**

56.1 The Respondents denied the allegation. RG, a non-lawyer, was a co-director of the Second Respondent from 25 March 2009 until 6 July 2009. Rule 14.01(3)(a) required at least 75% of a recognised body's managers to be individuals who were,

and were entitled to practise as, lawyers of England and Wales. It was specifically alleged by the Applicant that the Respondents permitted, facilitated or acquiesced in RG being a co-director when he was not entitled to be. In support of the allegation the Applicant relied primarily on the undisputed fact that the First Respondent, together with RG, signed Companies House Form 288a (Appointment of Director) on 25 March 2009. Without this form RG could not have been registered at Companies House as a co-director. On 18 December 2008, when the Second Respondent was incorporated, the First Respondent and NL were registered as co-directors and 100% of the body's managers were lawyers. They remained registered as co-directors as at 25 March 2009. NL resigned as a co-director on 9 June 2009 leaving the First Respondent and RG as the only directors, with the First Respondent as the only lawyer manager. RG resigned as a director on 6 July 2009.

56.2 The First Respondent said in evidence that she signed Form 288a at a rare Board meeting when she and NL were both present. She handed the signed form to NL who dealt with all Companies House matters. In corroboration of her evidence, the First Respondent relied upon the documentary evidence that the application for initial recognition recorded NL's practising address as the Second Respondent's registered office address. NL's telephone number and email address were also provided on the form as points of contact. It had always been intended that there would be three solicitor-directors of the Second Respondent. However, an individual identified as a potential director was not in a position to proceed with his appointment and NL ultimately resigned. The First Respondent said that during the March 2009 Board meeting someone suggested filling in form 288a so that RG could become a director at some time in the future. The form was completed, although the Tribunal was not told by whom, and signed by RG and the First Respondent. The First Respondent was adamant when giving evidence that she gave clear instructions to NL that form 288a must not be submitted to Companies House because there were insufficient lawyer directors. She said that she did not know who submitted the form, and that she was "livid" when she found out that RG was a director. She immediately called RG and he too was aware that he could not, and should not be a director. The First Respondent referred to copy Companies House form 288b terminating RG's appointment. The Tribunal noted that the company name on the form was that of Eagle Legal Ltd and not the Second Respondent. The First Respondent said that she had not been able to find the form relating to the Second Respondent in her files but it was the same as the form for Eagle Legal Ltd. Under cross-examination, the First Respondent said that she had signed form 288a in March 2009 because it was "another job done". There had not been any urgency to get the form signed but it was rare for the First Respondent and NL to be together at a meeting.

56.3 Ms Horlick submitted that the documentary evidence tended to support the First Respondent's contention that NL dealt with all Companies House correspondence. As soon as the First Respondent and RG became aware of the latter's registration as a director, they tried to put matters right. They took proper and responsible action long before the SRA became involved. All of the evidence pointed towards the Respondents neither permitting, facilitating or acquiescing in RG's appointment as a co-director.

56.4 The Tribunal expressed its surprise that the First Respondent signed Companies House form 288a when there were insufficient lawyer managers involved in the Firm

to comply with Rule 14.01(3)(a) SCC. She was very foolish to do so. This was a serious allegation; the Rule was intended to minimise the risk to the public when dealing with recognised bodies. The Rule had been carefully drafted by those concerned to ensure that it met the purpose for which it was intended. It was not to be flouted. However the Tribunal had to examine all the circumstances surrounding the registration and resignation of RG as a co-director. It also had to look carefully at the Applicant's pleaded case, which was that the Respondents permitted, facilitated or acquiesced in RG being a co-director when he was not entitled to be. The Tribunal had not been presented with any evidence which satisfied it so that it was sure that the Respondents permitted, facilitated or acquiesced in RG being a co-director. It accepted the First Respondent's evidence on oath that she had signed form 288a but at the same time had given clear instructions to NL and RG that it was not to be submitted to Companies House. As all correspondence with Companies House came from and went to NL there was no reason that had been brought to the Tribunal's attention for the Respondents or RG to be aware that the latter had been registered as a co-director. Support for the Tribunal's view came from the rapid reaction of the First Respondent and RG to finding out about RG's appointment, which was after NL's resignation. The First Respondent took prompt steps to remove RG's registration in spite of the fact that she perceived herself to be working in a difficult environment at the time, and long before the SRA's involvement. It could properly be argued that the First Respondent facilitated RG's appointment by signing form 288a. However the Tribunal was not satisfied so that it was sure that by signing the form the First Respondent was in fact facilitating RG's appointment as a co-director as at that date. It accepted her evidence that she signed the form then solely because everyone was together and so as to get another job done in preparation for the time when RG did become a director. Further it accepted her evidence that she told NL that the form was not to be submitted to Companies House and why.

56.5 The Tribunal found the allegation, which was denied by the Respondents, not proved.

57. **Allegation 1.8: Permitted, facilitated or acquiesced in Pinacle Law Ltd and/or Hunnybun & Sons carrying on practice contrary to Rules 14.01(2)(a) and 14.01(3)(a)(i) SCC.**

57.1 The Respondents denied the allegation, which arose from concerns expressed by an employee to the IO concerning the management of the Second Respondent and/or Hunnybun after the latter firm's acquisition by the Second Respondent.

57.2 The Applicant relied heavily upon documents produced by the employee, including a witness statement dated 22 February 2010, a letter from the employee to the First Respondent dated 16 February 2010 and typed notes produced by the employee, the provenance of which was unclear, but which purported to be from a former Hunnybun partner. The employee was not called to the hearing by either party to give evidence. Mr Goodwin submitted that a Notice to Admit the documents attached to the Rule 5 Statement, including the documents from the employee referred to above, had been served on the First Respondent on 23 December 2010, and that she had replied admitting the documents without serving a counter-notice on 30 December 2010. On behalf of the First Respondent, Ms Horlick said that her state of health was poor at the time and she was not able to give instructions or respond properly to the Notice to Admit. In a letter dated 27 May 2010 from the First Respondent's solicitors to Mr

Goodwin, the First Respondent queried the purpose of the typed notes. Ms Horlick made submissions to the Tribunal concerning the weight to be given to hearsay evidence, and stressed that the evidence produced by the employee was not accepted by the Respondents. She said that the employee had first approached the IO a matter of only four or five working days after the former Hunnybun partners had left. At that time she appeared to be complaining about locum solicitors in the office. This was not the same as complaining about those in charge. Ms Horlick submitted that the evidence before the Tribunal, most of which was hearsay, did not support the allegation.

57.3 In short, the employee alleged that non-lawyers RG and PB ran the office of Pinacle Law Ltd trading as Hunnybun & Sons after the former partners O and R left the firm on 29 January 2010. The First Respondent's evidence was that by the time the takeover of Hunnybun was completed, she was too ill to travel to the firm's offices in Huntingdon often, and did not have the financial resources to do so on public transport (she did not drive). She tried to attend twice a week. The First Respondent said in evidence that she understood from RG that other solicitors would be attending the Huntingdon office, but later found out that this did not happen. The First Respondent insisted under cross-examination that solicitor LH was in the Huntingdon office every day. LH gave clients her mobile telephone number. The First Respondent disputed the allegations made by the employee to the IO.

57.4 The Tribunal had some difficulty in tying the allegation as pleaded to the facts set out in support in the Rule 5 Statement, which primarily relied upon the evidence of the employee, who was not present at the hearing to be cross-examined by Ms Horlick on behalf of the Respondents. The Tribunal felt unable to take any account of the typed notes exhibited to the Rule 5 Statement which were unsigned and undated. Their provenance and relevance was unclear. The Tribunal was able to give limited weight to the employee's witness statement as its contents were disputed by the Respondents. It was open to the Applicant to request an adjournment of the hearing in order to secure the witness's attendance once it became apparent on the morning of the hearing that there was some doubt about the First Respondent's capacity to give instructions when she responded to the Notice to Admit. No such application was made. In any event the Tribunal did not consider that the employee's evidence was material to its determination of the allegation.

57.5 On a strict analysis of the allegation as pleaded, there was compliance with Rules 14.01(2)(a) and (3)(a)(i). The First Respondent was the sole director of the Second Respondent. She was a solicitor with a current practising certificate. It might be that the employee perceived that RG and PB were running the Firm and that the First Respondent was not present in the office every day. The employee might have been concerned about the First Respondent's lack of supervision of RG and PB, but that was not what was alleged here. Further the First Respondent, while readily admitting that she did not go to the Huntingdon office every day but only about twice a week, gave evidence on oath that solicitor LH was present on a daily basis.

57.6 The Tribunal found the allegation, which was denied by the Respondents, not proved.

58. **Allegation 1.9: Failed and/or delayed in payment to a third party (R) of sums due to him totalling £15,000, contrary to Rules 1.02 and 1.06 SCC.**

58.1 The Respondents admitted the allegation. R, a former partner in Hunnybun, was owed £15,001 arising out of the acquisition of that firm by the Respondents. The Tribunal was shown a copy of the Statutory Demand that he issued against the Second Respondent. The First Respondent told the IO that the Demand had been withdrawn. In her witness statement she stated that the business was failing so could not meet its obligations to R. The Tribunal found the allegation proved on the facts and documents.

59. **Allegation 1.10: Failed and/or delayed in the payment of the premium due to the ARP contrary to Rules 10.3(a) and 10.12 of the SIIR.**

59.1 The Respondents admitted the allegation. In her witness statement the First Respondent said that, for the reasons set out in that statement, indemnity cover on the commercial market could not be obtained. At the point at which the practice entered the ARP it was insolvent and unable to pay the insurance premium. The Tribunal found the allegation proved on the facts and documents.

60. **Allegation 1.11: Failed and/or delayed in the payment of a County Court Judgment dated 3 November 2009 contrary to Rules 1.02 and 1.06 SCC.**

60.1 The Respondents admitted the allegation on the basis that payment had been delayed, which the Applicant accepted. The Judgment related to unpaid rent on garages rented by the Firm's Watford offices, which prompted the storage company to write to the LCS. At some point the First Respondent suggested to the storage company that she had made an application to set the Judgment aside. In her witness statement she admitted that the debt remained unpaid due to the financial collapse of the business.

60.2 The Tribunal found the allegation that the Respondents delayed in the payment of a County Court Judgment as alleged, which was admitted by the Respondents, proved on the facts and the documents.

61. **Allegation 1.12: Failed to secure client files and/or to comply with their obligation to keep clients' affairs confidential contrary to Rules 1.02, 1.04, 1.06 and 4.01 SCC.**

61.1 The Respondents denied the allegation, which arose from the storage of files at lock-up garages situated near the Firm's Watford offices. The Applicant relied on the statement made by the storage company to the LCS by letter dated 5 February 2010, that the Firm had left:

> "a number of sensitive files in lock-up garages... one of the garages is in no way secure as it has a damaged lock. This firm are a very bad advertisement for the legal profession and we believe some action should be taken against them."

61.2 Mr Goodwin submitted that the First Respondent had a duty to ensure that client files were maintained in a safe and secure place, and that confidentiality was maintained. In particular he submitted that the First Respondent had failed in her duty under Rules 1.02, 1.04 and 1.06 SCC to act with integrity, to act in the best interests of clients and

not to behave in a way that was likely to diminish the trust the public placed in her or the legal profession by failing to ensure that the garages were secure. The situation was aggravated by the failure to pay the rent on the garages. In her witness statement the First Respondent said that she was unhappy with the arrangement but could not afford to make alternative storage arrangements. She said that it appeared that there had been an attempted break-in at the garage with the result that the lock-up was not as secure as it could have been. When giving evidence the First Respondent said that she had asked PB to arrange for the rent on the garages to be paid but he did not do so. She then attended at the garages with Bernard Leigh to ensure that the files were in good order and the garages locked. She did not knowingly leave the files in an insecure place; she believed that she was vigilant and took security and confidentiality of client matters very seriously. Mr Leigh said in his statement, which was accepted by the Applicant, that the First Respondent arranged for someone to help them to collect the files. They attended at the garages, re-stacked the files in order and locked both garages. Ms Horlick submitted that the First Respondent's evidence that there had been an attempted break-in at the garages was believable. She said that a break-in could and did happen at any solicitors' office.

61.3 The Tribunal did not accept that a lock-up garage was never an appropriate place in which to store client files. Each case had to be looked at on its own facts. The Tribunal had not been provided with any evidence, for example photographs, to support the unsubstantiated allegation made by the storage company that one lock-up garage was insecure. The Tribunal accepted the evidence of the First Respondent, supported by Mr Leigh, that she had done all she could to ensure that the client files were kept in a safe, locked location. The garage had been locked on the last occasion when she visited and a break-in could occur at the most secure of premises. It was of course sensible to minimise the risk but the First Respondent had done all that she could in that regard. Further there was no evidence that the files had been tampered with and/or client confidentiality breached.

61.4 The Tribunal found the allegation, which was denied by the Respondents, not proved.

62. **Allegation 1.13: Failed and/or delayed in the payment of a costs order in the sum of £600 dated 29 July 2009 contrary to Rules 1.02 and 1.06 SCC.**

62.1 The Respondents admitted the allegation on the basis that payment had been delayed, which the Applicant accepted. The costs had been paid by the time of the hearing. The Tribunal found the allegation that the Respondents delayed in the payment of a costs order as alleged proved on the facts and the documents.

63. **Allegation 1.14: Permitted, facilitated or acquiesced in office account cheques being dishonoured contrary to Rules 1.02, 1.04 and 1.06 SCC;**

63.1 The Respondents denied the allegation. They did not dispute that cheques had been dishonoured, namely 9 cheques totalling £11,736.87 during the period 24 December 2009 to 26 January 2010. The First Respondent's evidence was that RG and PB were signatories on the office account cheque book and were responsible for monitoring balances on office account daily. The First Respondent said that she relied on them to ensure that the account remained within the overdraft limit. She had no information about the office accounts, and therefore did not permit, facilitate or acquiesce in office

account cheques being dishonoured. She was not aware that the cheques had been dishonoured until this was brought to her attention at a later date. Under cross-examination she said that PB carried the office cheque book with him and she had no ability to control the cheques that he was writing. With hindsight she recognised that she should have demanded the return of the bank mandate so that she could regain control of the accounts. The First Respondent's evidence was that control of the Firm's finances had been wrested from her by RG and PB at a time when her health was very poor.

63.2 The Tribunal made it clear to the First Respondent that, as a solicitor and director, she had sole responsibility for managing the Firm and its accounts. The medical evidence, which the Tribunal accepted, indicated that she was very unwell at this time. The allegation was not one of strict liability, so the First Respondent's culpability had to be considered. The Tribunal had to be satisfied that she actively permitted, facilitated or acquiesced in office account cheques being dishonoured. The Tribunal had not been directed by Mr Goodwin to any evidence that the First Respondent had signed the cheques. There was no suggestion that the bank had contacted her to discuss the matter. This was consistent with her evidence that she did not know that office cheques were being dishonoured. It was also consistent with the evidence in her witness statements and at the hearing that one of her main reasons for entering into business with RG was that he would manage the back end functions of the office. The public was entitled to expect that cheques issued in the name of a firm of solicitors would be honoured by its bank. This basic requirement went to the heart of the preservation of the public's confidence in the reputation of the profession. It was an important reason why solicitors had to ensure that those managing accounts on a day-to-day basis were supervised. However the issue here was one of lack of supervision rather than what was actually alleged against the Respondents.

63.3 The Tribunal found the allegation, which was denied by the Respondents, not proved.

64. **Allegation 1.15: Failed to adequately or at all supervise the Huntingdon Office of Pinacle Law Ltd contrary to Rules 5.01 and 14.01(2)(a)(i) SCC.**

64.1 The Respondents admitted the allegation. The First Respondent's medical evidence suggested that she was already unwell by the time RG arranged for the Second Respondent to take over the Huntingdon office of Hunnybun in September 2009. That medical evidence had been served very late in the day. However the Applicant did not seek an adjournment to obtain its own evidence, and did not, perhaps could not, dispute what those treating the First Respondent said. The First Respondent's health deteriorated rapidly towards the end of 2009 and continuing into 2010. It was clear from the totality of the evidence that there were problems at Hunnybun's offices after acquisition by the Respondents. The fact that cheques were dishonoured and obligations to others, for example R, were not met was sufficient evidence that supervision was lacking to a considerable degree. In her own witness statement the First Respondent said that she was too ill to go to the office often and without the financial resources, namely the fare for public transport as she did not drive, to enable her to do so. Some limited supervision of staff other than RG and PB was taking place when she was there. Overall supervision as required by the Rules was lacking.

64.2 The Tribunal found the allegation, which had been admitted by the Respondents, proved.

65. **Allegation 1.16: The allegation against the First Respondent only was that she misappropriated clients' funds, an allegation of dishonesty. The case was put against the First Respondent in relation to the improper transfers from client to office bank account in the sum of £10,518.25 as particularised in the FIR dated 23 March 2010 on the basis that she was dishonest with regard to those transfers. In the alternative it was alleged that the First Respondent was reckless. The issue of dishonesty was a matter for the Tribunal to decide and it was open to the Tribunal to find the allegation proved, absent a finding of dishonesty.**

65.1 The First Respondent denied the allegation, including the allegations of dishonesty and recklessness. The allegation arose from the transfer of funds totalling £10,518.25 from client to office account. The Applicant alleged that the transfers were improper. It further alleged that the First Respondent was dishonest with regard to the transfers, or in the alternative that she was reckless.

65.2 The Applicant asserted that the First Respondent signed cheques for £12,001.46 honoured on 26 February 2009, and £7,607.76 honoured on 6 May 2009 which were drawn on the client account of her former firm Moeran Oughtred & Co, and paid into the Second Respondent's office account. The First Respondent was the only signatory on the client account cheque book. The Applicant alleged that the cheques included money due to clients totalling £10,518.25 which could not properly be transferred from the client account to the office account. The Applicant submitted that when signing the cheques the First Respondent knew that she was not entitled to the entirety of the money, or alternatively that she did not care whether she was entitled or not. The Applicant's submission was that she was at the very least reckless as to whose money it was and in failing to ascertain who it belonged to before signing the cheques. Mr Goodwin referred to the combined test for dishonesty as set out in the decision of the House of Lords in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In the words of Hutton LJ at paragraph 27:

> "... 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."

He submitted that the Tribunal could be satisfied so that it was sure that a member of the public looking at the facts would conclude that the First Respondent's conduct was dishonest by the standards of reasonable and honest people (the objective test). He further submitted that at the time of signing the cheques the First Respondent knew that what she was doing was wrong by those same standards (the subjective test).

65.3 Mr Goodwin relied on the decisions of the Court of Appeal in Bultitude v The Law Society [2004] EWCA Civ 1853 and Weston v The Law Society, decided on 29th June 1998, CO/225/1998, reported at the Times Law Reports 15.07.1998. The Tribunal read both cases.

65.4 Mr Goodwin submitted that the Tribunal must look at the First Respondent's knowledge at the time when she signed the two cheques. She told the IO during interview that:

> "If I signed a cheque I hold my hands up and say I didn't ask what it was about. Well if I did I was given an explanation which I found satisfactory".

She was asked what procedure she followed before signing cheques. She was asked in particular about the February 2009 cheque for £12,001.46. It was suggested to her that £7,519 from that cheque related to old balances that PB had written off. The First Respondent confirmed that she:

> "did not know anything about it and would never have let him do it".

Mr Goodwin submitted that if the First Respondent relied upon RG and PB to tell her that what she was signing were cheques for costs without actually knowing that that was what she was signing, and without any supporting documentation, her case was on all fours with Bultitude. If dishonesty was not made out then the First Respondent was in the alternative clearly reckless.

65.5 The First Respondent in her evidence on oath, relied in part on the fact that she had not been able to inspect the underlying files giving rise to what she said were costs transfers. Her consistent position was that some, if not all, of the money transferred might have been properly due to the Firm in respect of costs. Mr Goodwin made the point that under the SAR, payments for costs should not be transferred until bills had been delivered to the clients. The First Respondent had not seen bills to support the cost transfers until sometime after the event when one of the First Respondent's employees stated that the bills had not been delivered.

65.6 The underlying files with the bills were not made available by the Applicant to the Tribunal at the hearing. The IO, Ms Taylor, accepted when giving evidence that she had relied upon only one example of a transfer (out of 40 cases identified on inspection), namely the case of client KR where the sum of £164.75 was transferred against a bill for the same amount in 2008. The Applicant also relied in evidence upon the lists of transfers provided to the IO by the First Respondent which had been annotated by someone as to whether or not payments were due back to clients, were retentions, or were being held for other reasons. The First Respondent assumed that PB had annotated the list. She said in evidence that she had not done so.

65.7 During her evidence the First Respondent went into some detail concerning the influence that RG and PB had upon her at the relevant time, and also addressed her state of mental health. The Tribunal was left in no doubt that the First Respondent gradually lost control of the financial aspects of the practice. By her own admission one of the attractive features of going into business with RG was the fact that he would take over the running of the finances and that she would be relieved of all financial matters. Moeran Oughtred & Co had been in financial difficulty at the time when the new business relationship was entered into. The First Respondent described RG as something of a white knight. She was clearly impressed by his appearance, his qualifications (in so far as she troubled to check the same), and his apparent wealth. In evidence the First Respondent insisted that she did not authorise the transfers from

client to office account. She admitted to signing the cheques, but had not looked at the client account ledgers or files before doing so. She recalled having received a telephone call from RG telling her that PB had "found" £10,000. She assumed that he had collected all the files that required billing, had costed them, had sent out the bills, and had then transferred the money due to the Firm. The First Respondent vehemently expressed her outrage at the allegation of dishonesty, and insisted that she had relied on PB to "do the correct thing". She said in evidence that if she was reckless in not getting out all of the files and inspecting them, then she was indeed reckless. Two to three months later her book-keeper told her that the balances had been transferred and at that point she wanted to pull out every file and inspect it. However, PB refused to allow her access. The First Respondent did not overrule him because she said she felt that he and RG were "so much in charge". In short she did not know at the time when she signed the cheques whether there were legitimate costs on file to justify the transfers from client to office account. However she believed that to be the case because PB was an experienced, expert costs draftsman, who had been given the task by RG of looking at the files to see what could be billed.

65.8 During cross-examination Mr Goodwin reminded the First Respondent that she had had five separate opportunities on which to examine the files in question:

- Before signing the cheques;
- In July 2009, when she discovered the truth of what had occurred;
- Following the visit by Ms Taylor in February 2010;
- When she was contacted by the SRA in April 2010;
- After the Rule 5 proceedings were issued by means of contacting the Intervention Agent.

65.9 The First Respondent said that she had been too unwell on the last three occasions. She wanted to see the files in July 2009, but PB had prevented her. She had relied on what she had been told in February and April 2009 when she was signing the cheques. The First Respondent said that she had discussed her situation with LawCare, who suggested that she go straight to the SRA. She had also sought legal advice. However, she was not sufficiently well to be able to take any action. The First Respondent did not accept that she had been reckless in signing the cheques because she relied on PB as an experienced honest costs draftsman. She vehemently rejected the allegation that she had acted dishonestly, and referred to the references attesting to her integrity and her own financial investment in the firm. The First Respondent emphasised that she signed the cheques in good faith believing that they related to money due to the firm. She confirmed that the lists of files to which the transfers related were contained in an A4 holder in her possession until the intervention, which was shortly before she became very ill. However, the folder was not available to her when the cheques were signed. She accepted that comments on the lists such as "due back to client" and "retention" suggested that the money was not the Firm's money. In July 2009 when she became aware of what had happened she immediately contacted her accountant and PB. Her accountant said that the money had to be paid back. She recognised that there had been a breach of the rules. She pleaded with RG

and PB to pay the money back. She was aware that costs should not be transferred until a bill had been delivered. When asked why, if PB was as disorganised as she had described during her evidence, the First Respondent had relied upon him, she said that an individual could be disorganised but still good at what he did. She said she had no doubts at that point about his competence as a costs draftsman.

65.10 In her detailed submissions Ms Horlick reminded the Tribunal about the First Respondent's poor state of health. She said that she had requested an adjournment on behalf of the First Respondent in order to inspect the underlying files. That adjournment application had been refused. She said that the Tribunal had to be sure that the monies transferred were client funds and not monies that might legitimately have been due to the Firm. It was for the Applicant to prove the allegation and it had chosen to rely on only one example in support, and the file for that example was not before the Tribunal. Ms Taylor had not inspected any of the actual files, although they had been made available to her by the Respondents. The file relating to the sole example on which the Applicant relied might well have supported the First Respondent's case by revealing that work had been done between 2004 and 2006 justifying the bill to the client. The Tribunal could not be certain so that it was sure that the monies transferred were in fact client funds in that or any case. The Applicant relied on the case of Bultitude, but could not rely on the facts of one case in relation to the facts of another.

65.11 Ms Horlick submitted that, once the Tribunal had satisfied itself so that it was sure that the funds were in fact client funds, only then should it consider the test for dishonesty in Twinsectra. Looking first at the objective test, the First Respondent had been told by RG that PB had found £10,000 that could be transferred from client to office account. PB was an experienced costs draftsman and this was early in his business relationship with the First Respondent. There was no requirement for solicitors to draw up their own bills of costs. Once the First Respondent had assured herself that the bill had been prepared by a competent person, a reasonable and competent solicitor such as the First Respondent was also entitled to rely on that person as having properly drawn up and delivered the bill in accordance with the SAR. It was not dishonest conduct by the standards of reasonable and honest people to rely on another person to draw up a bill. If the person in question was known to be incompetent then the solicitor might be held to account, but not if they had employed an expert in the field.

65.12 When considering the subjective test, the Tribunal should examine the First Respondent's character evidence and her written and oral evidence. There were many statements to her good character and integrity in her Bundle; Ms Horlick referred to one example from HC. She asked the Tribunal to give weight to her positive good character when considering the question of her propensity to be dishonest or otherwise. It was highly unlikely that she would behave in this way towards her clients. There was considerable evidence that she was very caring and that she had no idea that not all was above board until several months later. Her story had been consistent from the outset. Ms Horlick submitted that the Tribunal had to be satisfied so that it was sure that when the First Respondent signed the cheques she was aware that she was acting dishonestly by the standards of reasonable and honest people. The evidence pointed in the opposite direction. She first became aware that the transfers should not have been made only some months after signing the cheques.

65.13 Ms Horlick submitted that with regard to recklessness, that would exist only where the First Respondent knew that there was a risk and took it nonetheless. The First Respondent did not realise that there was any risk because she was relying upon a competent, experienced costs draftsman.

65.14 The Tribunal had listened very carefully to the helpful submissions on behalf of the parties and had had the benefit of seeing and hearing the First Respondent give evidence. This had enabled the Tribunal to form its own view of her character, entirely separate from what others had said on her behalf.

65.15 The Tribunal first considered whether or not the monies in question were client funds. On a strict analysis of the lists produced by the First Respondent to the IO, the Tribunal had no difficulty in finding that some of the monies did belong to clients. The First Respondent had had the opportunity to check that the notes written against the matters on the lists were accurate before handing the documents over. She could have looked at the files or could have asked an accountant to do so. Much had been said about what the First Respondent was able and unable to do in early 2009. Matters could be taken quite shortly. She did not know whether bills had been delivered to clients to justify the transfer of the funds. She had not drafted the bills. More importantly there was no evidence that she had signed them out; the evidence in fact suggested that they had never been sent. The First Respondent signed the cheques in reliance on the word of an employee, who had an excellent reputation, but who she barely knew. Whilst it was acceptable to delegate some functions in an office to a costs draftsman, the final decision to transfer client monies into office account should have remained solely with the First Respondent. She should have ensured that she retained responsibility for that final decision and should have had the courage to stand firm to protect client money, no matter how small the amount, if she was not entirely satisfied that the transfers could be justified in compliance with the SAR. Looking at the April 2009 list alone, there was no evidence that the client monies transferred to office account totalling just under £3,000 related to work done for clients for which they could properly be charged. The notes alongside the list of entries, which the First Respondent could have checked if she had chosen to do so, suggested that the opposite was the case, and that the money should have been returned to the clients. The First Respondent should not have signed the cheques until she had looked at the bills against the ledgers and the files. The Tribunal was therefore satisfied so that it was sure that the First Respondent had misappropriated clients' funds as alleged at allegation 1.16.

65.16 The Tribunal then considered the combined test as set out in the case of Twinsectra. The Tribunal looked first at the objective test. It was satisfied so that it was sure that, in signing cheques which transferred funds from client to office account on account of costs said to be due to the Firm, without the bills of costs first having been delivered to the clients (where notes on the lists handed by the First Respondent to the IO indicated that the monies should be repaid to them), was dishonest conduct by the standards of reasonable and honest people.

65.17 The Tribunal considered the subjective limb of the test, namely whether the First Respondent herself realised that by those same standards her conduct was dishonest. The Tribunal noted that she assumed that she was entitled to transfer the funds from

client to office account. She did not check by looking at the files or by going through them with PB. The costs related to monies on client accounts held by her former firm. One would have expected her to have greater knowledge of those client balances than anyone else, including PB. Client money was sacrosanct and the First Respondent should have checked the accurate position first, but did not do so. What the Tribunal had to consider was whether there was sufficient doubt, or alternatively was her explanation so implausible that it could be rejected. This went to the First Respondent's credibility. Her evidence in the witness box was persuasive. She was a convincing witness. Her version of events was plausible in the view of the Tribunal, particularly in the absence of any contradictory evidence on behalf of the Applicant. The First Respondent was firmly of the view that she was entitled to rely on PB's advice because he was an experienced costs draftsman. Having seen the First Respondent give evidence the Tribunal found her behaviour in early 2009 entirely consistent with that belief.

65.18 The Tribunal had significant doubt that the First Respondent knew that what she was doing was dishonest by the standards of reasonable and honest people. She believed that PB had gone through her old files and had found £10,000 which could be billed to the clients. This was probably welcome news and the First Respondent was of a trusting nature. It would not have occurred to her then to doubt what she was being told or that the Firm was not entitled to the money. She trusted RG and PB and believed that they had the best interests of the business at heart. The First Respondent turned out to be a poor judge of character, but that did not mean that she knew that she was acting dishonestly when she signed the cheques. This was a different situation to that in Bultitude where Mr Bultitude signed a cheque for £50,000 transferring client funds to office account without supporting documentation. The First Respondent was not guilty of conscious impropriety; she had reason to trust what she was told by RG and PB. She handed over the financial management of the business to RG so that she could concentrate on fee earning, and PB was the costs draftsman who he chose to employ.

65.19 The First Respondent was however reckless at the serious end of the scale in failing to ask any questions and to check the files and the ledgers. She should first have insisted on seeing the files and the bills before signing the latter, so that they could be properly delivered to clients. Monies should not have been transferred from client to office account until the bills had been delivered. The First Respondent's conduct had to be considered in the context of the environment in which she worked, and the context in which she had gone into business with RG. He had sold his proposal to her on the basis that he would be responsible for financial matters and she would get on with the fee earning. The First Respondent's behaviour was entirely consistent with a significant misunderstanding of her overriding responsibilities and obligations as a solicitor. She did not satisfy the subjective limb of the combined test on dishonesty, but she was without any doubt reckless. At the relevant time she neither knew nor cared whether the Firm was entitled to the money.

65.20 The Tribunal therefore found allegation 1.16, which was denied, proved to the extent that the First Respondent misappropriated clients' funds by means of improper transfers from client to office bank account totalling £10,518.25 as alleged, on the basis that she was reckless with regard to those transfers.

Previous Disciplinary Matters

66. None recorded against the Respondents.

Mitigation

67. Ms Horlick submitted that the First Respondent was more sinned against than sinning. She allowed herself to be taken in by RG and PB. RG had held himself out to be a person on whom she could rely. Ms Horlick made submissions in relation to RG's credibility and honesty. Once she was taken in, her business was slowly and insidiously taken from her. Like many solicitors she was pleased to return to fee earning. Her status gradually decreased and a mark of this was the manner in which she had been told that her office was moving from Watford to Bushey. When she arrived there, she was put in a tiny room which she shared with her staff. Whilst it was easy for other, perhaps more robust, professionals, to say "why don't you stand up to RG and PB", it was impossible for someone with the First Respondent's psychological make-up. Ultimately, though, she had not flinched from her responsibilities. She had demonstrated proper remorse. She had lost everything that she had worked for. She had become mentally unwell over a lengthy period of time. The First Respondent had lost her livelihood and professional standing which she had worked very hard to achieve. She would find it difficult to obtain employment in an uncertain job market. The First Respondent wished to retain her ability to practise as a solicitor. She currently lived in rented accommodation paid for by a friend. Her own property had been sold. She owed Capita £337,000. Her Firm had been intervened in and the intervention costs totalled £300,000. It was anticipated that in due course someone would apply to make her bankrupt. The First Respondent was earning £150 per week gross, doing outdoor clerking and delivery work plus unpaid secretarial work. She had been offered employment at a construction company doing marketing. Her ultimate aim was to work in-house as a lawyer. Currently her practising certificate was suspended. The First Respondent asked for mercy and leniency. The matters proved against her could not be divorced from the very unusual circumstances of this wholly exceptional case.

Sanction

68. The First Respondent admitted ten allegations, which were found proved. The Tribunal found allegation 1.16, which was denied, proved and that the First Respondent had been reckless. A further five allegations were found not proved. Out of fifteen allegations made against the Second Respondent, ten were admitted and found proved, and five denied and found not proved.

69. The Tribunal had attended carefully to the mitigation on behalf of the Respondents. It had read all of the documents, including the references at tab 5, the medical reports at tab 8 and the witness statements at tab 9 of the Respondents' bundle.

70. The Tribunal's starting point was the decisions of the Court of Appeal in Bolton v The Law Society [1994] 1WLR 512 and The Law Society v Salsbury [2008] EWCA Civ 1285. The misappropriation of client money was a very serious matter. A solicitors' client account was sacrosanct and the funds within it were to be treated with the utmost care and respect by solicitors at all times. The allegation that the First

Respondent had misappropriated clients' funds had been found proved, as had the allegation that the First Respondent's conduct was reckless. In the case of Weston, decided in 1998, to which Mr Goodwin referred the Tribunal, The Lord Chief Justice, Lord Bingham said that:

> "..the tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed."

The Lord Chief Justice, Lord Bingham went on to observe that, where a solicitor, against whom no dishonesty was alleged, was guilty of breaches of the rules through his partners' activities of which he was unaware, his conduct was unbefitting that of a solicitor and he might be struck off the Roll. This Tribunal found that all too often solicitors failed to understand that proper compliance with the SAR was not merely a matter of ticking the right boxes on applications forms and checklists. It was an often onerous responsibility which was to be approached diligently by all solicitors at all times.

71. In the eyes of the public the First Respondent was the solicitor and director in charge of the Second Respondent and all its various trading guises. All partners in law firms and directors of recognised bodies faced challenges and responsibilities. The First Respondent was fully aware of what those challenges and responsibilities might be before she went into business with RG, having had the experience of running Moeran Oughtred & Co. The Tribunal had heard and accepted her evidence that control of the Firm had ultimately been rested from her by RG and PB. There was no evidence before the Tribunal to dispute what the First Respondent said in that regard. Whatever the circumstances however the First Respondent retained the responsibility and obligation to ensure that the Firm complied with the SAR to the letter. Her evidence was that she had been advised by Lawcare to approach the SRA about her difficulties at the Firm. It was very foolish of her not to have followed that advice.

72. In relation to sanction the Tribunal took heed of the oft-quoted words of the then Master of the Rolls, Lord Bingham in Bolton:

> "It was important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of those orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention... In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an

> order of striking off. 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 re-admission... A profession's most valuable asset is its collective reputation and the confidence which that inspires."

When dealing with matters raised in mitigation, Lord Bingham said:

> "But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

73. Lord Justice Jackson analysed the decision in Bolton, taking full account of the impact of the Human Rights Act 1998, in his Judgment in Salsbury. He concluded that the statements of principle set out in Bolton remained good law subject to the qualification that in applying the Bolton principles the Tribunal must also take into account the rights of the solicitor and Articles 6 and 8 of the Act.

74. The Tribunal had considered the full range of sanctions available to it. The allegations proved were serious. Numerous SAR breaches had been admitted. There had been a failure to remedy breaches promptly upon discovery. The practice had effectively run out of money so that financial obligations could not be met promptly or at all, including an order for costs in favour of the Law Society where payment was long delayed. The Tribunal had also found that the First Respondent had recklessly misappropriated clients' funds. It was therefore appropriate for the Tribunal to give serious consideration to whether the First Respondent should be struck off the Roll. That sanction might be proportionate, even absent a finding of dishonesty, and would often be the appropriate penalty in cases where recklessness had been proved.

75. The Tribunal had considered very carefully the First Respondent's medical evidence. It was not necessary, and would be unfair to the First Respondent, to set out the details of that evidence for the purpose of this Judgment. It was clear on the face of that evidence that the First Respondent had been very unwell since September 2009. The evidence corroborated the First Respondent's own evidence and that of her witnesses that she had become unwell largely because of her increasingly difficult working relationship with RG and PB. It was fair to say that the First Respondent's previous personal and medical history made it highly likely that she would find the working environment in which she ended up very difficult to manage. The First Respondent brought most of her problems upon herself by not carrying our proper due diligence before going into business with RG. It may be that there were over optimistic expectations and inevitable disappointments on both sides. The relevance of the First Respondent's past history to the events that took place was set out in detail in the Psychological Report of Dr Scheiner dated 15 May 2011. For example, Dr Scheiner noted the First Respondent's longstanding propensity to trust rapidly with relatively little deliberation leading to her failure to corroborate the information RG

provided about himself. Her determination to succeed was also referred to, as were her ultimate feelings of powerlessness. The Tribunal considered that the medical evidence adduced by the First Respondent, which was unchallenged by the Applicant, was entirely consistent with the evidence that she gave and the references that had been provided. This was indeed an exceptional state of affairs. In summary, the First Respondent was a trusting, somewhat naïve individual, who had put her all into Moeran Oughtred & Co, and for what she thought were the best of reasons had entered into a business relationship with individuals she did not know well. Unfortunately she lost the will to stand up to those individuals, against whom she felt powerless.

76. The First Respondent's conduct was unacceptable, no matter what was said by her Counsel and others on her behalf. Her demeanour when giving evidence made it clear to the Tribunal that she was well aware that what she had done had been wrong. The Tribunal was in no doubt about her remorse and regret. However the seriousness of the allegations meant that only striking off or suspension could properly address the purpose of a penalty as stated in Bolton.

77. The Tribunal had concluded that it was not necessary or proportionate to strike the First Respondent off the Roll or to suspend her from practise indefinitely. She had much to offer the profession which she had worked very hard to join. There was still time for her to put matters right. The exceptional circumstances of this case included what the Tribunal adjudged to be a combination of personalities who should never have gone into business together. The Tribunal was impressed by the First Respondent's efforts to become a solicitor as set out in the witness statements and medical evidence. She had given up much in order to pursue her goal. All that she had worked so hard to achieve had been taken from her due to her own foolishness. The realisation that she largely had herself to blame was manifestly difficult for the First Respondent to bear. However the Tribunal was very concerned to ensure that she did not repeat the same mistakes. The First Respondent needed time to reflect on what had happened. She had not practised since the Firm was intervened. Further time for consideration was required now that these proceedings had been concluded. The Tribunal also had concerns about the First Respondent's lack of management and financial skills. It therefore considered that a fixed term of suspension for one year was appropriate and proportionate. This would ensure that the First Respondent did not have the opportunity to repeat her mistakes while she took stock. The public and the profession were also adequately protected. The Tribunal sincerely hoped that First Respondent would take careful note of Lord Bingham's words and that the experience of suspension would make her meticulous in her future compliance with the required standards, whether she ultimately returned to private practice or achieved her stated goal of becoming an in-house lawyer.

78. The Tribunal also considered that it was its duty to make recommendations to the SRA and the First Respondent concerning her eventual return to practise. The First Respondent should not be permitted to practise on her own account. She should be permitted to work in SRA-approved employment only. She should also attend a Law Society-approved accounts course. The Tribunal considered that it was essential that the recommendations set out were observed in order to protect the public, the reputation of the profession, and the public's confidence in it. The Tribunal sincerely hoped that, within a more supportive working environment, and having taken every

opportunity to become more knowledgeable and assertive, the First Respondent would be able to put these proceedings behind her and enjoy a satisfying career as a solicitor.

79. The Tribunal also ordered that the recognition of the recognised body of Pinacle Law Ltd be revoked under Section 9 of the Administration of Justice Act 1985. This was the only sanction available to the Tribunal under that Act.

Costs

80. The Applicant claimed costs of £36,565.01 plus costs relating to casework and internal investigation etc., in the sum of £4,050, making a total of £40,615.01. That figure was not agreed by the Respondents. Ms Horlick said that, unless the First Respondent won the lottery, costs could not be paid, and an order for detailed assessment would only increase the costs that could not be paid. Ms Horlick submitted that the First Respondent had been entitled to dispute certain allegations, which had ultimately not been proved in the main. A hearing would always have been necessary. She asked the Tribunal to make the order in terms which it considered just in all the circumstances, not to be enforced without leave of the Tribunal. The Tribunal had been provided with details of the First Respondent's means, which revealed that she was not in a position to pay costs immediately.

81. Mr Goodwin submitted that, in spite of the fact that not all of the allegations had been proved, they had been properly brought and the investigatory and preparatory work had been properly done. He reminded the Tribunal that those acting for the Respondents had described the case as being complex when they initially sought an adjournment. Further a large bundle of material had been served late by the Respondents but had still had to be read. Mr Goodwin did not accept that the number of hours engaged on the matter had been disproportionate. He submitted that the Tribunal should not make any deduction for the fact that not all of the allegations against the Respondents had been proved. In support he referred to the Tribunal's determination that the objective limb of the test for dishonesty had been found proved. It was only on the subjective limb, namely the First Respondent's knowledge at the time the cheques were signed, that the allegation had fallen down. In all cases where costs were not ordered against the Respondents, they fell as a burden on the profession. The First Respondent should therefore be required to bear the burden of the full amount of costs incurred subject only to her ability to pay. Mr Goodwin therefore invited the Tribunal to make a fixed costs order, leaving it to the SRA to agree terms of repayment direct with the First Respondent.

82. The Tribunal found that the Applicant properly brought these proceedings. The facts giving rise to the allegations had been properly investigated. However the Tribunal considered that the number of hours engaged on investigation, particularly by the Investigation Officer, were high, bearing in mind that this was a relatively paper-light case compared to others that the Tribunal members had sat on. In support of that conclusion the Tribunal referred to the fact that only one specific example of an improper transfer had been detailed with two pages of supporting documents within the papers. The Tribunal decided a modest reduction in costs was required to take these factors into account. It allowed £3,000 for the costs of the internal investigation, £12,000 for the costs of the forensic investigation and £18,000 for the

SRA's legal fees, which with VAT came to a total of £36,600. The Tribunal ordered that those costs were to be payable jointly and severally by the Respondents, not to be enforced without leave of the Tribunal. The Tribunal accepted the First Respondent's evidence that she currently had no means with which to pay costs. It was likely to be some time before she was some way towards being back on her feet. The Tribunal was satisfied that when that day came the First Respondent would use her best endeavours to ensure that the costs were paid in full as quickly as possible, and it urged her to maintain contact with the Applicant for that purpose.

Statement of Full Order

83. The Tribunal ordered that the First Respondent, [RESPONDENT 1], of Buckinghamshire HP9, solicitor, be SUSPENDED from practice as a solicitor for the period of one year to commence on the 8th day of June 2011 and it further ordered that she be jointly and severally liable with the Second Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £36,600.00, such costs not to be enforced without leave of the Tribunal.

84. The Tribunal ordered under Section 9 of the Administration of Justice Act 1985 that the recognition of the recognised body of Pinacle Law Ltd of 70 High Street, Huntingdon, Cambridgeshire PE29 3DL, be REVOKED and it further ordered that it be jointly and severally liable with the First Respondent to pay the costs of and incidental to this application and enquiry assessed in the sum of £36,600.00, such costs not to be enforced without leave of the Tribunal.

Dated this 28th day of July 2011
On behalf of the Tribunal

D. Green
Chairman