SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10789-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD JAMES BURLEY Respondent

Before:

Miss J Devonish (in the chair)
Mr D Potts
Mr M C Baughan

Date of Hearing: 20th February 2012

Appearances

Iain George Miller, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were:

1.1 Contrary to Rule 1 of the Solicitors Code of Conduct 2007 ("the Code") the Respondent had done things in the course of acting as a solicitor which compromised or impaired, or were likely to compromise or impair:

1.1.1 His independence or integrity and/or

1.1.2 His duty to act in the best interests of clients and/or

1.1.3 His duty to provide a good standard of service to clients

1.1.4 His duty not to behave in a way that was likely to diminish the trust the public placed in him or the legal profession.

1.2 The Respondent acted and/or continued to act in circumstances where there was a conflict and/or significant risk of a conflict between the interests of his clients and his own interests contrary to Rule 3 of the Code.

1.3 The Respondent accepted introductions and referrals of business from other persons contrary to Rules 9.01 and 9.02 of the Code.

1.4 The Respondent failed to provide clients with the best information possible about costs contrary to Rule 2.03 of the Code.

1.5 The Respondent failed to make arrangements for the effective management of the firm contrary to Rule 5.01.

1.6 The Respondent failed to comply within the stipulated time scale with an Adjudicator's Directions made in respect of Inadequate Professional Services ("IPS") whereby he was directed to pay compensation to various complainants and costs to the Legal Complaints Service pursuant to Schedule 1A of the Solicitors Act 1974 (as amended) ("the Act") and an order pursuant to paragraph 5(2) of the Act was sought in relation to these matters where payments remained outstanding.

1.7 The Respondent submitted a false and/or misleading application to the SRA for approval to practise as a Recognised Sole Practitioner at the firm of Claim Central Solicitors in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 and Rule 20.03 of the Code.

1.8 The Respondent submitted a false and/or misleading application to the SRA for a practising certificate in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 and Rule 20.03 of the Code.

1.9 The Respondent submitted a false and/or misleading proposal form to Prime Professions for professional indemnity insurance for the firm of Claim Central Solicitors in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 of the Code.

1.10 The Respondent attempted to transfer files to the firm of Claim Central Solicitors which practice was not recognised by the SRA by purporting to obtain client authorities for such transfers contrary to Rule 1 of the Code.

Allegations 1.7 to 1.10 were put on the basis of dishonesty.

Documents

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

Applicant:

- Application dated 28 July 2011 together with attached Rule 5 Statement and all exhibits;
- Additional Bundle of Documents containing Witness Statements, inter party correspondence and an Amended IPS and Costs Award Schedule;
- Witness Statement of Clive Howland dated 4 January 2012;
- Witness Statement of Stephen Wallbank dated 4 January 2012;
- Witness Statement of Joanne Caroline Joyce dated 5 January 2012;
- Statement of Costs dated 16 February 2012;
- Updated IPS and Costs Awards Schedule.

Preliminary Matters

3. The Respondent had been served with notice of the substantive hearing by the Tribunal on 18 October 2011 and the Tribunal was provided with proof of delivery dated 19 October 2011. The Applicant submitted the Respondent had been properly served and had chosen to deliberately absent himself from the proceedings. The Tribunal was satisfied that the Respondent had been properly served and noted he had not made any application to adjourn the substantive hearing. Accordingly, the Tribunal granted the Applicant leave to proceed in the Respondent's absence.

Factual Background

4. The Respondent, whose date of birth was 28 March 1978, was admitted as a solicitor on 1 March 2004.

5. At all material times the Respondent practised as a sole practitioner as Consumer Credit Litigation Solicitors ("CCLS") from Building 5, Universal Square, Devonshire Street North, Manchester, M12 6JH, and also as Burleys Solicitors ("the firm") of 64 Balderton Gate, Newark, MG24 1LW. CCLS was described as a trading style and "division" of Burleys Solicitors.

6. The SRA intervened into the practices of CCLS and Burleys on 10 March 2010. The Respondent did not currently hold a practising certificate and was not currently practising.

7. An inspection of CCLS and Burleys was carried out by the SRA and a Forensic Investigation Report ("FIR") was produced dated 18 February 2010. A second inspection was undertaken by the SRA and a further Forensic Investigation Report was produced dated 27 August 2010.

Allegations 1.1 to 1.5

8. CARTEL was a claims management company (subsequently suspended by the Ministry of Justice on 18 March 2010) whose representatives sourced claims through extensive advertising campaigns targeting potential claimants who may have signed up to unenforceable credit, loan and mortgage agreements.

9. During the course of an interview between the Respondent and a Senior Investigation Officer of the SRA ("SIO") the Respondent advised that CCLS commenced trading in 2008 following various meetings between the Respondent and the directors of CARTEL. It had been agreed, and CARTEL guaranteed, to put all its claims through the firm.

10. Due to the anticipated volume of claims, and for logistical reasons, the Respondent agreed that CCLS would open an office in Manchester which was to be shared with CARTEL. This was done but CCLS subsequently moved to their own offices on the next floor of the same building. As at February 2010, the firm had a live caseload of 64,344 files, approximately 95% of which were sourced from CARTEL.

11. Between 22 September 2008 and 5 February 2010, the firm borrowed £3,383,323.20 from CARTEL pursuant to a Loan Facility Agreement dated 17 June 2009 which was signed by the Respondent, and by a director of CARTEL. The agreement provided inter alia:

    (i) That CARTEL would provide the firm with an unsecured term loan facility of up to £4,000,000 for the firm to utilise as working capital

    (ii) Interest would be paid at a rate of 2% above base rate, monthly in arrears on the last business day of each month. In the event of default, interest accrued daily on the unpaid amount at a rate of 4% above base rate

    (iii) The firm was to repay the loan and accrued interest on "that date falling 12 months from receipt of a written demand to do so"

    (iv) In the event of default, CARTEL could give notice that the loan, and all interest and amounts outstanding, were immediately due and payable, that any amount of the facility which remained undrawn would be cancelled, and that the firm must immediately repay the loan, interest and all outstanding amounts.

12. The Respondent confirmed to the SIO during discussions on 11 February 2010 that without the loan facility the firm would not have been able to grow or survive. He indicated that he had tried to source alternative funding to diminish the firm's reliance on CARTEL but had been unable to do so. He confirmed CARTEL obtained their fees from upfront fees charged to clients on taking on new matters, and he accepted that these sums were loaned to the firm.

13. In response to a question about whether CARTEL had asked the firm to make repayments, the Respondent stated that CARTEL had indicated they could not continue to fund the firm indefinitely.

14. A Referral Agreement dated 17 June 2009 between CARTEL and the firm provided that referral fees were calculated as follows:

    (a) If Burleys received profit costs of £750 or more for a claim, a referral fee of £500 was payable;

    (b) If Burleys received profit costs between £500 and £750 for a claim then a referral fee of £350 was payable;

    (c) If Burleys received profit costs of £499 or less for a claim, then a referral fee equal to 50% of the profit costs was payable;

    (d) CARTEL was entitled to invoice Burleys for each claim upon receipt of a notification from Burleys that profit costs had been received;

    (e) Burleys were required to establish and maintain records, and Claims information at all times. Burleys would provide claims data in the agreed format on a daily basis. They would also provide CARTEL with daily reports detailing all cases and relevant information, enter claims information into an appropriate claims management system, and record new claims.

15. The Respondent informed the SIO that the firm had not paid CARTEL any referral fees to date. He expected the firm to start paying referral fees once it began to collect regular profit costs following the successful conclusion of claims.

16. The CARTEL website sought to attract business from individuals in connection with their credit card debts. It indicated that claims could be made to have outstanding credit card balances completely written off. It further indicated as follows:

    (i) Under "Instruction" that the cost of a credit card review was £495, discounted to £175 if the client proceeded with another £495 product. Any review fee was refundable if the case was unsuccessful (subject to the Terms and Conditions)

    (ii) Under "Payment" that for successful credit card claims, a success fee of 30% of any amount recovered and/or written off by the provider would be payable

    (iii) Under "Solicitor" that, should the need arise to take the lender to court, the client's solicitor would purchase, at their cost, a legal expenses insurance policy and obtain an expert barrister's opinion where required.

17. The Respondent explained to the SIO that claimants paid a range of advance fees for the service to CARTEL depending on the type of credit agreement involved, such as £150-£175 for each credit card registered as a claim, and up to £495 for a mortgage agreement. The initial work on the claim was carried out by a CARTEL representative under a Contingency Fee Agreement and the claim would then be

forwarded to the firm for further vetting, and if appropriate, to open as a new claim which would proceed under a Conditional Fee Agreement.

18. Each claimant would sign a Contingency Fee Agreement with CARTEL which provided:

    (a) Damages comprised legal damages and legal restitution in the claimant's favour, calculated either at Court or by agreement and this included actual monies paid/refunded, and/or cancellation of a debt, or any part, and/or any favourable adjustment to the claimant's account balance

    (b) If the claimant won the case, they would pay CARTEL £250 plus 30% of their damages including VAT

    (c) If the claimant lost the case they would not pay CARTEL anything

    (d) CARTEL would refer the case to CCLS at the appropriate stage

    (e) The claimant could end the arrangements at any time but would be liable to pay any costs incurred calculated at £203 per hour

    (f) CARTEL could end the arrangement if they believed the claimant was unlikely to win and even if the claimant disagreed with CARTEL. The claimant would not have to pay CARTEL anything.

    (g) CARTEL could also end the arrangement if the claimant rejected CCLS's opinion about making a settlement with the opponent. The claimant would be liable to pay CARTEL any costs incurred up to the date the arrangement ended, calculated on the hourly rate.

19. The Respondent advised the SIO that the firm had full control of its books of account and financial management. The firm had an accounts manager and a qualified cashier operating the accounts department. The Respondent stated the firm was not subject to any interference or control from CARTEL.

20. On 10 February 2010, the SIO discussed the firm's accounts with the firm's cashier. She advised that the accounts manager had left the firm some months ago and since then, the responsibility for payment of the firm's invoices had been given to an employee of CARTEL called KT. She also stated KT was able to access the firm's client and office bank accounts via an online banking facility as he had been given the necessary permissions and passwords. CCLS bank mandates identified KT and SS, who was also from CARTEL, as authorised signatories of CCLS's accounts. It was also ascertained that the operation and payment of the firm's salaries and PAYE was undertaken by an employee of CARTEL.

21. The SIO queried this with the Respondent and he stated he was aware KT had once had authority in the initial stages of setting up the firm to operate the office bank account, but had assumed KT had no access to the client bank account. When asked who did the client to office bank account transfers in respect of costs, the Respondent said it was done by cheque paid directly into the account but he was not sure. When he was shown a copy of an inter-account transfer authorised by KT, and asked

whether it was right for a solicitors firm to allow a claims management company to have control of it's bank accounts, the Respondent replied "day one, it seemed right thing to do, not now".

22. On 10 February 2010, the SIO received information that employees of CCLS had not received their salary payments which were due on that date, and that a number of staff had left the premises and not returned to work. The SIO attended the firm's offices that day and was advised the Respondent was not present. The SIO was introduced to a director of CARTEL who explained that due to his ongoing matrimonial proceedings, he had been unable to provide funding to CARTEL as planned, and consequently the firm had not been able to draw down any further loan funding to cover salaries and other outgoings. He said that he hoped to resolve his difficulties and that staff would be paid in the following week. The SIO was informed by the practice manager that £150,000-£160,000 was required to cover staff salaries for that month. As at the date of the intervention on 10 March 2010, the staff had still not been paid.

23. After a series of test cases heard in Manchester District Registry in December 2009, the Respondent advised the SIO that the outcome of the test cases had been encouraging for the firm. He expected a fraction of cases, less than 10%, to be affected. However, when the SIO met with a trainee solicitor of the firm on 12 February 2010, she stated she was currently reviewing 600 issued cases to assess whether they were affected by the outcome of the test cases. She stated that of the 200 cases reviewed so far, she recommended 160 should be discontinued. This equated to 80% of the total.

24. The SIO sought the Respondent's comments on the position on 15 February 2010. The Respondent said that his estimate was "pure speculation" and that he did not doubt the trainee solicitor's work. He stated it would be good for the firm as there would be fewer files to progress and that clients should get their fees back from CARTEL. However, on 18 March 2010, the Ministry of Justice suspended CARTEL's authorisation.

25. On 12 February 2010 the SIO was provided with a copy of an Order dated 2 February 2010 made by His Honour Judge Wakeman QC whereby CARTEL and CCLS were joined as additional parties to three test cases for costs purposes only. The Royal Bank of Scotland, who were the defendant in the test cases, had made an application for this Order, as they were concerned about claimants having adequate After The Event ("ATE") insurance cover. The order required CARTEL and CCLS to file witness statements dealing with various issues relating to the funding, management and control of claims, ATE insurance and the claimants' knowledge of their potential liability to pay costs.

26. On 15 February 2010 the SIO discussed the issue of ATE insurance with the Respondent who said that the firm had previously self indemnified cases and would meet the costs of any failed claim, but was now in the process of negotiating an ATE policy with a commercial provider. The Respondent was asked whether the firm had failed to act in the clients' best interests by issuing proceedings without adequate ATE cover in place. The Respondent replied that he would rather not say, but he had tried his best, as the firm had tried to obtain ATE cover but could not do so, despite favourable Counsel's opinion in these matters. He added the clients were not at risk

as the firm indemnified them through income from successful costs. He stated there was an ATE policy in the pipeline which would provide retrospective cover for any adverse costs orders.

27. On 10 February 2010, the firm's cashier provided information to the SIO on the firm's current liabilities. The firm owed over £207,000, of which over £92,000 was owed to a furniture supplier, and over £72,000 to the landlord for rent and service charges. The firm's profit and loss account for 2008/2009 showed the firm was making substantial losses.

28. When discussing the firm's financial position with the SIO on 11 February 2010, the Respondent confirmed he was aware of the rent arrears but not of the sums due in respect of furniture as the firm's practice manager had dealt with the matter and not told him. However, when the SIO spoke to the firm's practice manager, the practice manager confirmed he had kept the Respondent appraised of the position.

29. The Respondent was asked whether the firm was insolvent and he stated that at the present time there was not enough money in the office account to pay what was needed. He explained that the firm had to wait for cases to conclude before receiving the benefit of any income from profit costs but agreed the firm could not pay liabilities as they fell due "at this time". The Respondent confirmed the firm needed an income of approximately £150,000 per month to break even, and he said he expected the firm to start earning more by way of profit costs in 2010. He confirmed he could not provide any funding from personal resources.

30. On 16 February 2010, Counsel who had been dealing with the firm confirmed he was no longer prepared to complete his instructions on the work for test cases, as he was owed approximately £70,000 in unpaid fees.

31. On 1 March 2010, the SIO received a copy of a letter that three solicitors from the firm, CC, AH and BE had written to the Respondent expressing their concerns about the firm. The letter raised various issues including returning files to CARTEL where there was low prospects of success, adverse costs orders, the lack of ATE insurance and insufficient information being given to clients about the risks of funding and litigation, insufficient resources to manage the work, Counsel's unavailability due to non payment of his fees and forthcoming litigation deadlines and the firm's financial circumstances including its ability to issue cheques, the lack of a firm cashier and non-payment of salaries. All three solicitors provided witness statements to the SIO.

Allegation 1.6

32. A number of complaints had been made to the Legal Complaints Service ("LCS") by various clients about the Respondent in relation to the firm's handling of these claims. The complaints were subsequently considered by an Adjudicator/Adjudication Panel and culminated in directions that the Respondent should pay various sums in compensation to claimants, and costs to the LCS. The Respondent did not pay these sums within the timeframe stipulated by the Adjudicator. His insurers subsequently settled a number of IPS awards.

Allegations 1.7 to 1.10

33. Shortly after the intervention of CCLS and Burleys on 10 March 2010, the SRA obtained information that during the week or so prior to the intervention, attempts had been made to authorise the transfer of certain client matter files from the firm to "Joanne Joyce and [AS] of Claim Central Solicitors, 25-26 South Church House, Market Place, Newark, NG24 1EA. Copies of letters from Claim Central Solicitors ("CCS") dated 6 March and 7 March 2010 to Burleys enclosing Forms of Authority for release of files, together with copy letters from CCS to clients enclosing Forms of Authority to sign were obtained.

34. SRA records indicated an application for approval to practice as a Recognised Sole Practitioner from Joanne Joyce under the firm name Claim Central Solicitors had been received. However, as at 15 March 2010 CCS was not recognised by the SRA.

35. On 15 March 2010, the SIO attended the premises at 25-26 South Church House (which was the address given on CCS letterheads) but found no evidence of CCS at this address, which was a suite of business units. There was no nameplate for CCS and a member of an accountancy firm located in the building advised she had never heard of CCS.

36. The SIO then attended a property in Newark which had been given as the contact address for Joanne Joyce in her application for approval to practice as a Recognised Sole Practitioner as CCS. The SIO was informed she did not live there and a subsequent Land Registry search showed that the proprietor was AS.

37. Joanne Joyce's application to the SRA had attached her CV, which contained other contact details, as a result of which the SIO was able to contact her and arranged to meet her at home on the same day. She confirmed she had not submitted the application to the SRA to set CCS up in her name and she had no knowledge of the attempts to transfer client files from Burleys to CCS. She confirmed she had known the Respondent since April 2007 and that she had recently received a business proposal from him in connection with him setting up a firm in her name. However she had not signed any paperwork or paid any fees in connection with the formation of CCS.

38. She explained how she had met the Respondent and worked for him briefly in 2007. He contacted her "completely out of the blue" in February 2010 with his proposal and she provided copies of various emails between her and the Respondent in which she had set out her concerns about the proposal. Rather than agreeing to the proposal, she had sought advice from other solicitors on the matter. The Respondent had sent Ms Joyce an email on 10 February 2010 which stated:

> "I hope you don't mind, but I have a proposition to make, regarding my legal practice. I need someone to front the law firm for me. I need to be able to run two law firms; Manchester and Newark, but I can only be in charge of one. I need to separate two firms, and that means someone else taking the role of Senior Partner in the Newark firm. I need to pay someone to hold the position of senior partner at my law firm. They do not need to be involved in the day to day operations. I presume there is nothing to prevent you from taking this

> role? They will be the official head of the law firm, but they won't be required to undertake anything in respect of practice management.
>
> They will receive a retainer paid into their bank account on a monthly basis, like an employee would receive…… This will facilitate SRA compliance for the firm, whilst still permitting the firm to operate separately from any other law practice. There will be no requirement to attend the office. The only requirement to be around would be if the practice had a visit from the SRA…….. I will provide a legal indemnity to you in respect of all matters pertaining to the practice."

39. In a further email sent on the same day, the Respondent requested Ms Joyce to send her CV to him so that he could include it in his proposal. These emails were all sent to Ms Joyce on the same day that the SIO attended the offices of CCLS and was advised a number of employees had not received salary payments and had left the premises.

40. On 11 February 2010, a letter was sent by the firm to the Law Society enclosing an application for approval to practice as a Recognised Sole Practitioner, Form RSP1, and an application for a practising certificate, Form RF3. The letter enclosing the applications made reference to Claim Central Solicitors as "our above named client" and stated "Should you have any questions regarding the application of Mrs Joyce (t/a Claim Central Solicitors), please contact Mr [AS] directly on …….". Both applications had been signed in the name of Joanne Joyce and were dated 8 February 2010, two days prior to the emails sent by the Respondent to Ms Joyce.

41. Ms Joyce confirmed she did not complete or sign the Form RSP1 and stated in her witness statement "Someone had forged my signature upon the form". The Form RSP1 was incomplete as there was no information in relation to a number of sections, and the Applicant was stated to be Joanne Joyce although the contact details given were for AS. The Form RF3 also showed Ms Joyce's main practising details as AS's home address. The letterhead in the name of CCS submitted with the application was different to the style of the letterhead used in relation to the client authorities for the transfer of certain client files from the firm to CCS. Furthermore, the letterhead attached to the application referred to the sole principal as ADB. The SRA records showed that ADB did not hold a practising certificate as at 3 June 2010 and she had been employed as an assistant solicitor for one month, following her admission, at a firm where the Respondent was also an assistant at that time.

42. Also attached with the application for approval to practice as a Recognised Sole Practitioner was a business statement which stated:

> "The law firm will be run and owned solely by Joanne Joyce ……. There will be one employee [AS]…….Joanne Joyce is professionally qualified ….. She will be supported by one able paralegal from the start…. We will look to employee [AS] as an experienced paralegal …."

A copy of Joanne Joyce's CV was also submitted.

43. On 1 June 2010, upon receiving information from the SRA, Joanne Joyce contacted Prime Professions Ltd and was informed a proposal form for professional indemnity

insurance dated 8 February 2010 and signed in her name on behalf of CCS had been submitted to them. The title of the practice was stated as Claim Central Solicitors and the establishment date was 10 February 2010. The address of the principal office was the home address of AS, and Joanne Joyce was referred to as the Principal.

44. During the course of the investigation the SIO met AS on 16 March 2010 to discuss the applications made in relation to CCS. AS explained he had distanced himself from the Respondent and wanted nothing further to do with him. In an email dated 25 November 2010 to the SRA, AS stated:

> "I confirm that Mr Burley told me that the practice for which I worked was to change name to Claim Central Solicitors, would also change offices. Further he said that another partner was to be appointed …… namely Mrs Joanne Joyce. I was asked to call a list of clients provided by Mr Burley to inform them of the change and to request that they sign forms giving their consent. I made the telephone calls as requested but did not send the forms. …….. Mr Burley did ask me to continue working in the practice after the change of name. I initially agreed but became suspicious when he asked me if some of the documents relating to the practice could be sent to my home address. I did agree under duress and asked for a good reason why they should be. He failed to provide one saying simply that it would be a good way to distance the practice from the negative publicity surrounding CCLS….. I confronted Mr Burley in early March, asking what he was up to. He said not to worry and that all was above board. I did not believe him and resigned my position with immediate effect. I have had no contact with him since and do not wish ever to see the man again ……."

45. On 2 June 2010 Prime Professions provided Ms Joyce with copies of email exchanges purportedly to and from her dated between 18 February 2010 and 22 March 2010 concerning the application for indemnity insurance. Ms Joyce had no knowledge of the email account to and from which these emails were sent prior to this date.

46. Ms Joyce received a telephone message from the Respondent on 25 March 2010 in which he stated:

> "….. you might recall that I took out an Insurance Policy in respect of the new practice. The new practice never started trading and so I desperately need to cancel that policy and reclaim whatever monies are outstanding on that policy…… although I took out a policy I effectively took it out in a firm in your name. So I'm suspecting that the company will want the authority to come from you in order to cancel that policy. I assume they will want (sic) to be done in writing. I'm assuming all of this, I haven't spoken to them yet as I thought that the right thing to do was to speak with you first. But of course as it's a policy is (sic) respect of professional indemnity insurance in play in respect of a firm in your name they will clearly need Authority from you. So I propose to speak with them about it but I suspect that I will need to draft a letter and ask you to sign it so I can forward through to them in respect of the policy cancellation……"

47. The SIO urgently sought to recover files where there had been an attempt to transfer those files from the firm to CCS. Notices pursuant to section 44B of the Solicitors

Act 1974 were issued. The SIO spoke to the Respondent on 15 March 2010 on his mobile phone regarding recovery of the files. The Respondent informed him the files were located in a cupboard and that he was away, and that no one else could get the files on his behalf. He would not disclose the location of the files and said he could not get to the files for another three days and then would arrange for them to be transferred the following day.

48. The Respondent was asked whether he had a part in the application to setup CCS. He replied "yes", but when asked to clarify further, said "no comment". The Respondent did not want to meet the SIO and only wanted to discuss matters via his mobile phone. The SIO contacted the Respondent again on his mobile phone on 17 March 2010. Arrangements were made to meet in Hull on 19 March 2010. This meeting took place outside the Respondent's parents' house where the Respondent provided the SIO with a box of files and explained what was in the box. At the SIO's request, the Respondent annotated the section 44B Notice and an email received from the intervention agents dated 16 March 2010 in relation to other missing files. During that meeting the Respondent refused to discuss the transfer of files to CCS. He stated that "there may be a simple explanation" for an application being made by him and signed in the name of Joanne Joyce to setup CCS, but he did not offer one.

49. When the SIO suggested the transfer of files to a non-existent firm with authorities which some clients challenged amounted to dishonesty, and he wondered if the Respondent wanted to change his stance and help the SIO understand his explanation of events, the Respondent said he did not want to change his stance and was adamant he did not want to provide an explanation. He said he had many parties trying to contact him.

Witnesses

50. The following witnesses gave evidence:

- Stephen Wallbank (Senior Investigation Officer of the SRA);
- Clive Howland (Senior Investigation Officer of the SRA);
- Joanne Joyce.

Findings of Fact and Law

51. The Tribunal had considered carefully all the documents provided, the evidence given by the witnesses and the submissions of the Applicant. The Tribunal had been referred to a letter from the Respondent's representative to the SRA dated 4 March 2010, and a letter from the Respondent to the SRA dated 3 March 2010 which provided documents and dealt with some of the issues raised. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.

52. **Allegation 1.1: Contrary to Rule 1 of the Solicitors Code of Conduct 2007 ("the Code") the Respondent had done things in the course of acting as a solicitor which compromised or impaired, or were likely to compromise or impair:**

1.1.1 His independence or integrity and/or

1.1.2 His duty to act in the best interests of clients and/or

1.1.3 His duty to provide a good standard of service to clients

1.1.4 His duty not to behave in a way that was likely to diminish the trust the public placed in him or the legal profession.

52.1 In the letter dated 4 March 2010 from the Respondent's representative to the SRA, it was stated no notice of default had been served by CARTEL on the loan arrangement, nor any demand for payment made. It was stated that although it was accepted KT had operated the firm's bank accounts to some extent, his function was purely administrative. The letter stated the firm's accounts had been run properly and were under the control of the Respondent even if administered on occasions by KT. The letter also stated the Respondent did not accept that the financial position of the firm being overly dependent on CARTEL compromised the independence of the firm in terms of advice given to clients. The letter pointed out that a high number of files had been returned to CARTEL having been classed as not worth pursuing on their merits, so fees could be refunded to clients.

52.2 The Tribunal was satisfied that the Respondent's independence and integrity were compromised or impaired, or were likely to be compromised or impaired as a result of the firm entering into a loan arrangement making it financially dependent upon CARTEL, having borrowed in excess of £3 million from CARTEL. It was clear from the evidence provided that the Respondent had allowed a member of staff from CARTEL to have access to, and operate, the firm's client and office bank accounts via an online banking facility. This was clearly not acceptable and effectively meant that the Respondent did not have full control over the firm's bank accounts. Furthermore, Mr Wallbank, in his evidence, had confirmed the Respondent had been able to provide little information on who was making decisions for the firm. It was clear to the Tribunal that the Respondent's firm relied extremely heavily upon its relationship with CARTEL, and it was particularly pertinent that, as well as the loan arrangement which was in place, the firm received approximately 95% of its work from CARTEL. In the circumstances, the Tribunal was satisfied allegation 1.1.1 was proved.

52.3 The Tribunal was also satisfied that the Respondent's duty to act in the best interests of clients had been compromised or impaired as he had failed to ensure a proper After the Event insurance policy was in place to protect clients from being liable for the costs of unsuccessful litigation. The Tribunal had been referred to the client files of Mrs L, and Mr and Mrs B, where there was no evidence of any client care letters, nor was any information provided to the clients about the Referral Agreement with CARTEL. There were no Conditional Fee Agreements on the files despite the clients' agreeing to enter into such agreements and there was no evidence on the files that information had been provided to the clients explaining how the claim was to be funded. None of the clients had been provided with any costs information advice at all. Lastly, on both cases an Adjudicator from the LCS had directed the Respondent to pay compensation to these clients as a result of a finding of inadequate professional service and the Respondent had failed to pay this award. The Respondent had informed the SIO that the firm had previously self indemnified cases and would meet the costs of any failed claim. This was reiterated in the Respondent's representative's letter dated 4 March 2010 in which they stated clients enjoyed an indemnity from both CCLS and CARTEL as to any adverse costs Orders made against them. However,

given the firm's heavy reliance financially upon CARTEL, and the fact that the firm could not pay its own staff salaries on or around 15 February 2010, the Tribunal was satisfied that the Respondent had put clients at risk. He had thereby failed to act in his clients' best interests and had failed to provide a good standard of service. The Tribunal was satisfied both allegations 1.1.2 and 1.1.3 were proved.

52.4 As a result of the Respondent's reliance upon CARTEL financially and for client referrals, his failure to exercise proper control over his client and office bank accounts, his failure to act in the best interests of his clients and to provide a good standard of service to them, the Tribunal was satisfied that his conduct had indeed diminished the trust the public placed in him or the legal profession. The Tribunal found allegation 1.1.4 proved. The Tribunal was therefore satisfied allegation 1.1 was proved in its entirety.

53. **Allegation 1.2: The Respondent acted and/or continued to act in circumstances where there was a conflict and/or significant risk of a conflict between the interests of his clients and his own interests contrary to Rule 3 of the Code.**

53.1 There was no doubt in the Tribunal's mind that as a result of the Respondent's financial reliance upon CARTEL, and the fact that he received 95% of his work from CARTEL, the Respondent had acted in circumstances where there was a conflict or a significant risk of a conflict between the interests of his clients and his own interests. The claims that he had undertaken were speculative in nature and clients did not appear to have been properly advised of this. Clients were not advised about information given on CARTEL's website, or about the amount CARTEL would be entitled to be paid from client's damages, dependent upon the amount of damages received. The Tribunal was satisfied that both CARTEL and the Respondent's wish to continue to attract claims, which would then be referred to the Respondent's firm, would have been the driving force of his conduct. The Tribunal was satisfied allegation 1.2 was proved.

54. **Allegation 1.3: The Respondent accepted introductions and referrals of business from other persons contrary to Rules 9.01 and 9.02 of the Code.**

54.1 The Respondent's firm received 95% of its work from CARTEL. It was accepted in the Respondent's representative's letter dated 4 March 2010 that referrals from CARTEL provided the overwhelming preponderance of the firm's caseload. They referred to less than 1,000 other matters coming from other referrers. It was clear to the Tribunal that the Respondent was hopelessly reliant on CARTEL for work and whilst the firm may have received work from other referrals, these were relatively few. This was confirmed by Mr Wallbank in his evidence.

54.2 Rule 9.01 of the Solicitors Code of Conduct 2007 stated that when receiving referrals of clients from third parties, a solicitor must do nothing which would compromise his independence or his ability to act/advise in the best interests of clients. Rule 9.02 of the Code provided any financial agreement with the introducer must not include any provision which would compromise, infringe or impair any of the duties set out in those rules, or allow the introducer to influence or constrain the solicitor's professional judgment in relation to advice given to the client. Furthermore, the guidance to these rules stated a solicitor must not become so reliant on an introducer as a source of work, that this would affect the advice given to clients. The rules

required the firm to conduct regular reviews of referral arrangements to ensure this was not happening.

54.3 The Respondent had clearly breached both Rules 9.01 and 9.02 of the Code. His independence had been compromised as a result of his inappropriate reliance upon CARTEL for work. In the case of Mrs L, and Mr and Mrs B, there was no evidence of client care letters, or that the clients had been advised of the existence of the referral agreement or provided with relevant information relating to it. The Tribunal was satisfied allegation 1.3 was proved.

55. **Allegation 1.4: The Respondent failed to provide clients with the best information possible about costs contrary to Rule 2.03 of the Code.**

55.1 Rule 2.03 of the Solicitors Code of Conduct stated a solicitor must give his client the best information possible about the likely overall cost of a matter and this included discussing with the client the issue of funding and whether the costs would be covered by insurance.

55.2 The Tribunal had already found the Respondent failed to provide information to Mrs L, or Mr and Mrs B, about how the claim was to be funded, or about the risks of litigation. None of the clients had been provided with any costs information advice at all and no ATE insurance policy had been taken out for them, thereby exposing them to the potential risks of being liable for costs orders made against them. Whilst the Respondent and his representative's in their letter of 4 March 2010 referred to clients being indemnified by CCLS and CARTEL, it was clear the firm could not meet its own financial liabilities. Clients had not been informed of their options in relation to costs. The Tribunal was satisfied that allegation 1.4 was proved.

56. **Allegation 1.5: The Respondent failed to make arrangements for the effective management of the firm contrary to Rule 5.01.**

56.1 Rule 5.01 of the Solicitors Code of Conduct placed an obligation on a Principal of a firm to ensure arrangements were in place for the effective management of the firm as a whole. This included adequate supervision and direction of client matters, appropriate supervision of all staff, compliance with key regulatory requirements, the identification of conflicts of interest, compliance with information on client care, costs and complaints handling, financial control of expenditure and management of risk.

56.2 The Tribunal had found the firm was financially dependent upon CARTEL and noted from the Loan Facility Agreement that the loan would be immediately repayable in the event of default. On 15 February 2010 the firm was unable to pay staff salaries as funding was not available from CARTEL. The firm's payroll was dealt with by CARTEL and an employee of CARTEL had access to the firm's online banking facility which included both client and office account. This was accepted by the Respondent's representatives in their letter of 4 March 2010. The Tribunal had been provided with evidence that client to office bank account transfers in respect of costs had been authorised by an employee of CARTEL. The firm's own staff had expressed concerns about insufficient numbers of staff being available to handle current caseloads, and there were issues about whether a large number of the cases been dealt with by the firm had reasonable prospects of succeeding. The Respondent himself

had accepted, during discussions with the SIO on 11 February 2010, that there was not enough money in the office account to meet the firm's liabilities. It was clear to the Tribunal that, in all these circumstances, the Respondent had failed to make arrangements for the effective management of the firm and the Tribunal found allegation 1.5 proved.

57. **Allegation 1.6: The Respondent failed to comply within the stipulated time scale with an Adjudicator's Directions made in respect of Inadequate Professional Services ("IPS") whereby he was directed to pay compensation to various complainants and costs to the Legal Complaints Service pursuant to Schedule 1A of the Solicitors Act 1974 (as amended) ("the Act") and an order pursuant to paragraph 5(2) of the Act was sought in relation to these matters where payments remained outstanding.**

57.1 The Tribunal had been asked to make a direction that the Directions of an Adjudicator relating to inadequate professional service on a number of cases, details of which were set out and referred to in the Applicant's Schedule headed "Burley Updated IPS and Costs Awards Schedule" should be enforceable under paragraph 5(2) of the Solicitors Act 1974 (as amended). That schedule set out 14 cases numbered 7, 9, 10, 12, 23, 27, 32, 37, 42, 45, 46, 79, 84, and 94. Three awards, namely 12, 84 and 94 made were dated after 6 October 2010.

57.2 The Tribunal was briefly referred to, and provided with a copy of, the SRA's Note on the Tribunal's Power to Make an Order under Paragraph 5(2) of Schedule 1A of the Solicitors Act 1974. This was a complicated document. The Note referred inter alia to the case of Toper Hassan [10702/2011] and to Section 157(1) and (2) of the Legal Services Act 2007, which came into force on 6 October 2010. Section 157(1) stated:

> "The regulatory arrangements of an approved regulator must not include any provision relating to redress."

Article 6 of The Legal Services Act 2007 (Commencement No 8, Transitory and Transitional Provisions) Order 2010 provides:

> "Section 157(1) and (2) does not apply in relation to proceedings which immediately before 6 October 2010 have not been determined under any provision relating to redress made by an approved regulator, and such proceedings will continue to be determined under the regulatory arrangements, including any provisions relating to redress, in force immediately before 6 October 2010."

57.3 The Tribunal having considered the matter carefully concluded that the intention of the legislation could not have been to deprive clients of compensation awarded by an Adjudicator. The Tribunal was satisfied that any proceedings for redress which were awaiting determination by an approved regulator as at 6 October 2010 would continue to be dealt with under the provisions in force immediately before 6 October 2010, and therefore those proceedings should be treated for the purposes of enforcement as if they were contained in an Order of the High Court.

57.4 The Tribunal therefore granted Orders pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974 (as amended) as requested and set out the specific Orders

granted in the Schedule attached to the Tribunal's formal Order. The Tribunal also gave the Applicant liberty to apply in relation to the three awards which were made after 6 October 2010 on the basis that if those proceedings had been awaiting determination by the SRA on 6 October 2010, they would continue to be dealt with under the provisions in force immediately before 6 October 2010. However, the Tribunal made it clear that liberty to apply was granted on the basis that if the Applicant made any further applications in relation to those three remaining awards, then the costs of those applications would be borne by the SRA as such information should have been available today. Furthermore, liberty to apply on those outstanding matters was subject to the SRA contacting the Respondent in writing to advise him of any applications the SRA intended to make on those three remaining awards.

58. **Allegation 1.7: The Respondent submitted a false and/or misleading application to the SRA for approval to practice as a Recognised Sole Practitioner at the firm of Claim Central Solicitors in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 and Rule 20.03 of the Code.**

Allegation 1.8: The Respondent submitted a false and/or misleading application to the SRA for a practising certificate in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 and Rule 20.03 of the Code.

Allegation 1.9: The Respondent submitted a false and/or misleading proposal form to Prime Professions for professional indemnity insurance for the firm of Claim Central Solicitors in the name of Joanne Joyce without her knowledge and/or agreement contrary to Rule 1 of the Code.

58.1 The Tribunal had been provided with copies of the application for approval to practice as a Recognised Sole Practitioner and the proposal form to Prime Professions Ltd for indemnity insurance which had both been made in the name of Joanne Joyce for the firm of Claim Central Solicitors ("CCS"). The Tribunal was also provided with a copy of an application to the SRA for a practising certificate in the name of Joanne Joyce. Each of those applications contained declarations which were purportedly signed by Joanne Joyce on 8 February 2010.

58.2 The Tribunal had heard evidence from Joanne Joyce. She confirmed she had not signed any of those application forms and that she had never met AS. She confirmed she had never seen the email exchanges which had purportedly passed between her and Prime Professions Ltd between 18 February 2010 and 22 March 2010, until these had been provided to her by Prime Professions Ltd on 2 June 2010. She had no knowledge of the email account that had been used for those exchanges. Ms Joyce stated she did not request or authorise the Respondent to make any application for a practising certificate on her behalf and nor was she aware that he had done so. She was shocked when she discovered what had been going on. When she had spoken to the Respondent on 10 February 2010 about the new practice she had expected him to send her a written proposal over the next few days. Ms Joyce confirmed that she had only practised in Family Law and would have wanted to continue to do so. When she had spoken to the Respondent about the new practice, he had talked about a high street practice with a Family Department. In fact the application for insurance did not include a quotation for Family Law work. The Tribunal found Ms Joyce to be an honest, straight forward and credible witness and accepted her evidence.

58.3 The Tribunal having considered all the documents provided and the evidence given by Joanne Joyce was satisfied that the application for approval to practice as a Recognised Sole Practitioner, the proposal form for professional indemnity insurance to Prime Professions Ltd and the application for a practising certificate which had all been made in the name of Joanne Joyce, had been submitted by the Respondent without her knowledge or agreement. The Tribunal found allegations 1.7, 1.8 and 1.9 proved.

59. **Allegation 1.10: The Respondent attempted to transfer files to the firm of Claim Central Solicitors which practice was not recognised by the SRA by purporting to obtain client authorities for such transfers contrary to Rule 1 of the Code.**

59.1 Rule 1 of the Solicitors Code of Conduct 2007 stated a solicitor must uphold the rule of law and the proper administration of justice, act with integrity, not allow his independence to be compromised, act in the best interests of clients, provide a good standard of service to clients and must not behave in a way that was likely to diminish the trust the public placed in him or the profession.

59.2 The Tribunal had already found the Respondent had tried to obtain the SRA's approval for Joanne Joyce to practice as a Recognised Sole Practitioner as Claim Central Solicitors without her knowledge or agreement. This application was never approved by the SRA and accordingly, Claim Central Solicitors was not a firm recognised by the SRA. The Tribunal had been provided with copies of letters from Claim Central Solicitors to Burley's Solicitors enclosing Forms of Authority for the release of client files. The Tribunal had also been provided with copy letters from Claim Central Solicitors to clients enclosing Forms of Authority to sign. Clients had been led to believe that Claim Central Solicitors was a firm regulated by the SRA as this was clearly indicated on the letterheads. These documents were dated between 6 March 2010 and 9 March 2010. As Claim Central Solicitors was not recognised by the SRA, the Respondent had failed to act in the best interests of those clients, he had failed to act with integrity and he had behaved in a way that was likely to diminish the trust the public placed in him or the legal profession. By attempting to transfer client files to a legal firm which had not been approved or recognised by the SRA, and was therefore not authorised, the Respondent had not provided a good standard of service to those clients. The Tribunal was satisfied allegation 1.10 was proved.

Dishonesty

Allegations 1.7 to 1.10 were put on the basis of dishonesty.

59.3 It had been alleged that the Respondent, by submitting an application to the SRA for approval to practice as a Recognised Sole Practitioner, by submitting an application to the SRA for a practising certificate, and by submitting a proposal form to Prime Professions Ltd for professional indemnity insurance, all of which had been made in the name of Joanne Joyce without her knowledge or agreement, had acted dishonestly. It was further alleged that he had acted dishonestly by attempting to transfer files to the firm of Claim Central Solicitors which was not recognised as a practice by the SRA.

59.4 The Tribunal had been referred to the case of Twinsectra Ltd v Yardley & Others [2002] UKHL 12 which set out the test to be applied when considering the issue of

dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest.

59.5 The Tribunal had no doubt at all that the Respondent's conduct in making an application on behalf of Joanne Joyce to the SRA for approval to practice as a Recognised Sole Practitioner, applying for professional indemnity insurance and applying for a practising certificate both in the name of Joanne Joyce, all of which applications were made without her knowledge or agreement, would be regarded as dishonest by the ordinary standards of reasonable and honest people.

59.6 The Tribunal then considered whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal particularly considered the Respondent's emails to Joanne Joyce dated 10 February 2010, which had all been sent on the same day that the SIO visited his firm and discussed the firm's accounts and received information that the firm was unable to pay staff salaries due to funding not being available from CARTEL. In those emails the Respondent had stated:

> "I need someone to front the law firm for me. I need to be able to run two law firms ……. but I can only be in charge of one …. I need to pay someone to hold the position of senior partner at my law firm. They do not need to be involved in the day to day operations ….. There will be no requirement to attend the office …. I will provide a legal indemnity to you in respect of all matters pertaining to the practice ….. If this is something that interests you, then can you please let me know as soon as possible, as I need to take things forwards (sic) quite urgently now……".

59.7 Despite having sent this email on 10 February 2010, it appeared the Respondent had already prepared various application forms relating to the proposed law firm on 8 February 2010 as this was the date given on those forms. Notwithstanding the fact that Joanne Joyce had not agreed to any such proposals or any applications being made on her behalf, the applications were submitted to the SRA and Prime Professions Ltd respectively.

59.8 Furthermore the Respondent knowing that the firm of Claim Central Solicitors had not been authorised and was not regulated by the SRA, in March 2010, proceeded to use letterheads with the firm's details to try and transfer files from his old firm, Burleys, when he knew that firm was in financial difficulties. Those letterheads referred to Joanne Joyce as the Sole Principal of the practice. She knew nothing about those letterheads or about the firm of which she was purported to be the Sole Principal.

59.9 The Tribunal also took into account the telephone message the Respondent had left on Joanne Joyce's mobile telephone on 25 March 2010 in which he clearly admitted he had taken out a professional indemnity insurance policy in a firm in her name and that he needed her help in cancelling that policy in order to allow him to reclaim whatever monies were outstanding. She had not given him any authority to do this and indeed, had no knowledge of it prior to receiving that email.

59.10 When questioned by the SIO on the phone on 15 March 2010, the Respondent had accepted he had had a part in the application to set up CCS but he had declined to make any further comment. He did not deny he had made an application and that it had been signed in the name of Joanne Joyce. He simply stated "there may be a simple explanation for it" but did not offer one. The Tribunal was satisfied that by using Joanne Joyce's name and CV, by falsifying her signature on the three application forms, and by using AS's home address as Joanne Joyce's contact details, the Respondent knew that he had made those applications without Joanne Joyce's knowledge or permission, and that therefore he knew his conduct was dishonest by those standards. The Respondent's email of 10 February 2010 clearly showed his intention to set up a practice in her name with her having very little involvement in it. Furthermore, the Respondent himself had admitted he had taken out a professional indemnity insurance policy in her name, without her knowledge or permission, and the Tribunal was satisfied that he knew this was dishonest conduct by the standards of reasonable and honest people. The Tribunal was satisfied the Respondent had acted dishonestly.

Previous Disciplinary Matters

60. None.

Sanction

61. There was no mitigation from the Respondent, indeed he had not engaged with the Tribunal at all. As well as finding a number of very serious allegations proved, the Tribunal had found the Respondent had acted dishonestly. His conduct has caused clients to suffer, his staff had suffered and he had caused a great deal of distress to Joanne Joyce, whose professional qualification had been used without her knowledge or consent. The Respondent's conduct had caused serious damage to the reputation of the profession and he had undermined the trust the public placed in solicitors.

62. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHL 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll"

In the absence of any submissions from the Respondent, the Tribunal was satisfied that there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

63. The Applicant requested an Order for his costs which were in the total amount of £60,258.06 he provided the Tribunal with a Statement of Costs in this amount dated 16 February 2012. The Tribunal was satisfied the costs were reasonable and made an Order the Respondent pay the Applicant's costs in the sum of £60,258.06.

64. The Tribunal considered the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs.

Although the Respondent's livelihood had been removed as a result of the Tribunal's Order, he was relatively young and it was possible he could gain some form of alternative employment.

65. The Tribunal also had particular regard for the case of SRA v Davis & McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

66. In this case the Respondent had not engaged with the Tribunal at all and therefore the Tribunal did not have any information or evidence of his current income, expenditure, capital or assets. In the absence of these, it was difficult for the Tribunal to take a view of his financial circumstances.

Statement of Full Order

67. The Tribunal Ordered that the Respondent, Richard James Burley, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £60,258.06.

68. The Tribunal further Ordered that the Directions of the Adjudicators of the Legal Complaints Service contained within the attached schedule made in respect of inadequate professional service be treated for the purposes of enforcement as if they were contained in an Order of the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

There be liberty to apply to the Applicant in relation to inadequate professional service awards made in favour of Mr. J. R. B., Mr. D. R. and Miss S. V.

Dated this 21st day of March 2012
On behalf of the Tribunal

J Devonish
Chairman