SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 10840-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
NASIR ILYAS	First Respondent
IMRAN HUSSAIN	Second Respondent
NAME REDACTED	Third Respondent
NAME REDACTED	Fourth Respondent
NAME REDACTED	Fifth Respondent
ASMA QAYUM	Sixth Respondent

Before:

Mr D. Potts (in the chair)
Mr J. C. Chesterton
Mrs L. McMahon-Hathway

Date of Hearing: 22nd April to 3rd May 2013

Appearances

Mr Timothy Dutton QC ("Mr Dutton"), counsel, of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH, instructed by Mr Robin Havard ("Mr Havard"), solicitor, of Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant.

The Second Respondent was present from 23 to 30 April and represented himself.

The Third Respondent was not present or represented but made representations in writing.

The Fourth Respondent was present on 23 April and 3 May and was represented by Mr Mohammed Afzal ("Mr Afzal"), solicitor, of HMA Law, 5 Tenby Street, Birmingham B1 3EL.

The Fifth Respondent, was present throughout and represented himself.

The Sixth Respondent, , was present throughout and was represented by Mr Tim Nesbitt ("Mr Nesbitt"), counsel, of Outer Temple Chambers, The Outer Temple, 222 Strand, London WC2R 1BA.

JUDGMENT

Allegations

1. The allegations against the Respondents (including the First Respondent – see paragraph 5 below), made in a Rule 5 Statement dated 27 September 2011, were that:

1.1 They caused or permitted non-solicitor third parties to have an inappropriate degree of control and influence over the activities of Wolstenholmes LLP ("the Firm") contrary to Rules 1.03 and 1.04 of the Solicitors' Code of Conduct 2007.

1.2 They failed to act in the best interests of their clients contrary to Rule 1.04 of the Solicitors Code of Conduct 2007 and behaved in a way that was likely to diminish the trust placed in them or the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007. This allegation was withdrawn against the Third and Fourth Respondents.

1.3 They failed to act in accordance with their management responsibilities in relation to their conduct of the business of the Firm contrary to Rules 1.04, 1.06 and 5 of the Solicitors' Code of Conduct 2007.

1.4 They failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors' Accounts Rules 1998.

1.5 The Respondents breached Rules 1, 19 and 22 of the Solicitors' Accounts Rules 1998.

1.6 The Respondents failed to cooperate with the Applicant's investigation into their Firm and into their conduct contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007. This allegation was withdrawn against the Third and Fourth Respondents.

2. The (First) Second and Sixth Respondents acted with a lack of integrity contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 in that they committed each of the breaches referred to in 1.1 to 1.6 above dishonestly.

3. The (First and) Second Respondent(s) dishonestly sought to mislead the Solicitors Regulation Authority during the investigation into the Firm contrary to Rule 1.02 of the Solicitors Code of Conduct 2007 and Rule 20.05 of the Solicitors' Code of Conduct 2007.

Documents

4. The Tribunal reviewed all of the documents submitted by the parties which included:

Applicant:-

- Application dated 27 September 2011
- Rule 5 Statement dated 27 September 2011, with exhibits
- Trial bundle comprising:
    - File A
        - Pleadings

- Witness Statement of AMT ("Ms T1"), 11 July 2012
- Witness Statement of NT ("Ms T2"), 11 July 2012
- Witness Statement of YM ("Ms M"), 11 July 2012
- Witness Statement of Ted Walsh, 23 November 2012
- Witness Statement of Delme Griffiths, 10 April 2013
- Witness Statement of Second Respondent, 22 January 2012
- Witness Statement of Fourth Respondent, 4 September 2012
- Witness Statement of Fifth Respondent, 31 August 2012
- Statement in response to Rule 5 Statement filed on behalf of the Sixth Respondent and supplementary statement, 19 November 2012
- Tribunal's Memoranda
- Schedule of Unfit Conduct to the Disqualification Undertaking given by Second Respondent, undated
- Schedule of Unfit Conduct to the Disqualification Undertaking given by Fourth Respondent, undated
- Schedule of Unfit Conduct to the Disqualification Undertaking given by Third Respondent, undated.

o File 1

- Interim Forensic Investigation Report 17 December 2009 (" the interim FIR")
- Appendices 1 to 8 to the Interim Forensic Investigation Report
- Forensic Investigation Report 16 November 2010 ("the FIR")
- Schedule of appendices to the FIR
- Appendix A1

o File 2 – Appendices C1 to G30 to the FIR

o File 3 – Appendices G31 to G79 to the FIR

o File 4

- Appendices G80 to G152 to the FIR
- Wolstenholmes Solicitors LLP Agreement 5 June 2009
- Office Copy Registration of a petition in bankruptcy against Wasim Saddique
- Individual Insolvency Register Search against Wasim Saddique

o File 5 – Schedule of Compensation Fund Payments, undated

o File 6

- Letters to Respondents from SRA 13 January 2011
- SRA briefing note June 2010

    - Responses of First and Sixth Respondents, Second, Third, Fourth and Fifth Respondent, witness statement of Third Respondent
  - File 7 – Various, including Practice Standards Report 9 September to 11 September 2009
  - File 8 - Various, including transcripts of interviews, witness statements, correspondence, affidavits and papers in matter HC10CO0988
  - File 9 – Various, including papers in HC10CO0988
  - File 10 – Correspondence
  - File 11 – Instructions and Forensic Science Report 5 April 2013, with copy cheques and other documents
  - File 12 – First CDDA affidavit of First Respondent and draft witness statement
- Trial bundle index
- Opening submissions 18 April 2013
- Chronology
- Statement of Ian Jones dated 26 April 2013
- Bundle of correspondence with Third Respondent
- Copy Bultitude v Law Society [2004] EWCA Civ 1853 ("the Bultitude case")
- Costs schedule
- Schedule of proposed costs attribution

Second Respondent:-

- Response of Second Respondent 17 March 2011
- Witness statement 22 January 2012
- Skeleton argument with exhibits (undated, received before 22 April 2013)
- Second skeleton argument 28 April 2013
- Financial statement 2 May 2013
- Mitigation statement 2 May 2013

Third Respondent:-

- Response of Third Respondent 13 March 2011
- Witness statement 16 March 2010
- Witness statement 21 January 2013
- Letter to Morgan Cole LLP 5 April 2013
- Email to Tribunal 2 May 2013 with income and expenditure form
- Email to Tribunal 2 May 2013 in mitigation

Fourth Respondent:-

- Response of Fourth Respondent 14 March 2011
- Witness statement 4 September 2012
- Report of Dr J Briscoe 23 August 2012 and letter 22 February 2013
- Mitigation statement with exhibits 2 May 2013
- Mitigation submissions of Fourth Respondent 2 May 2013

Fifth Respondent:-

- Response of Fifth Respondent 14 March 2011
- Witness statement 31 August 2012
- Skeleton argument April 2013
- Updated schedule of means, with supporting documents 3 May 2013

Sixth Respondent:-

- Response of First and Sixth Respondents 4 June 2011
- Statement in response to Rule 5 statement 19 November 2012
- Witness statement April 2013
- Skeleton argument 17 April 2013
- Statement of Susan Stewart 18 April 2013
- Statement of Abdul Qayum 1 May 2013
- Sixth Respondent's statement of means with supporting documents 3 May 2013
- Extract from "Solicitors and the Accounts Rules" Third Edition , pages 58 and 59
- Copy Rule 5 Solicitors' Code of Conduct 2007 (June 2009 edition)

Preliminary Matter (1) – Terminology

5. The Rule 5 statement contained allegations against six Respondents. The First Respondent, Mr Nasir Ilyas, did not take part in this hearing. The proceedings against him were severed and adjourned to a later date by an order of the Tribunal made on 11 March 2013. Although the First Respondent's name did not appear in the listing of the present hearing, all of the papers in the case referred to Mr Ilyas as the First Respondent, Mr Hussain as the Second Respondent and so on. It was determined that it was appropriate to maintain the same designations in the present hearing as in the case papers. Accordingly, throughout this judgment document the following shall apply:

    - Mr Nasir Ilyas is referred to as the First Respondent;
    - Mr Imran Hussain is referred to as the Second Respondent;

- NAME REDACTED - is referred to as the Third Respondent;
- NAME REDACTED is referred to as the Fourth Respondent;
- NAME REDACTED is referred to as the Fifth Respondent;
- NAME REDACTED is referred to as the Sixth Respondent.

6. The Solicitors' Code of Conduct 2007 will be referred to as "the SCC" and the Solicitors' Accounts Rules 1998 will be referred to as "the SAR". The Company Directors Disqualification Act 1986 will be referred to as "the CDDA".

7. Wolstenholmes LLP, formed in 2006, will be referred to as "the Firm". Its predecessor practice, Wolstenholmes Solicitors, will be referred to as Wolstenholmes.

Preliminary Matter (2) – Progress of hearing and participation of parties

8. The Application and Rule 5 Statement in the case were dated 27 September 2011. There had followed a series of preliminary hearings on 22 March 2012, 19 July 2012, 18 December 2012 and 11 March 2013. The substantive hearing was listed to take place in the ten working days commencing 22 April 2013. At the hearing on 11 March 2013 the time estimate was reduced to eight days as the First Respondent would not take part in the hearing.

9. The Tribunal determined that Monday 22 April would be a reading day. The Second and Sixth Respondents submitted proposed reading lists.

10. The substantive hearing began formally on Tuesday 23 April. The Second, Fourth, Fifth and Sixth Respondents were present; the Fourth and Sixth Respondents were represented. The Tribunal noted that the proceedings against the First Respondent had been severed. The Tribunal was informed by Mr Dutton that a Crown Court case against the First Respondent was pending, with issues concerning his fitness to plead to be determined.

11. The Tribunal noted that the Third Respondent was not present or represented. The Tribunal read her letter to Morgan Cole LLP dated 5 April 2013. From this letter it was clear to the Tribunal that the Third Respondent was aware of the proceedings and the hearing date. Further, it was noted that the Third Respondent had indicated she would not be able to attend the hearing for financial reasons. The Third Respondent had made some admissions – set out below – and had made submissions which she wanted the Tribunal to take into account in determining matters. The Tribunal determined that the Third Respondent was aware of the proceedings and this hearing and did not intend to appear, for reasons which she had explained. The Tribunal determined that in all of the circumstances it was just and proportionate to proceed with the hearing in the absence of the Third Respondent.

12. During the hearing on 23 April the Tribunal considered and determined applications to withdraw certain allegations, as set out more fully under Preliminary Matter 4 below. Mr Dutton opened the case for the Applicant. Mr Afzal made an application for release of both himself and his client until the matter of sanction came to be determined, in the light of the admissions made, the withdrawal of other allegations and the medical evidence provided to the Tribunal. The Tribunal considered the

application and released the Fourth Respondent and Mr Afzal until such time as mitigation, sanction and costs would be considered. Accordingly, the Fourth Respondent and Mr Afzal did not attend the hearing again until Friday 3 May. The Tribunal then heard evidence from Mr Ted Walsh, for the Applicant.

13. During the course of Wednesday 24 April the Tribunal heard evidence from the Applicant's witnesses Mr Keiran Walshe, Ms T2, Ms T1, Ms M and Mr Stephen Cosslett.

14. During the course of Thursday 25 April the Tribunal heard evidence from the Applicant's witnesses Mr Mike Shields and Mr Robert Freeman. The latter was interposed during Mr Shield's evidence, with the agreement of all parties present.

15. The Tribunal heard the conclusion of Mr Shield's evidence during Friday 26 April and the Applicant's case was closed. To avoid the Second Respondent being on oath over the weekend, the Tribunal determined, with the agreement of the Second Respondent, that it would hear opening submissions by the Second Respondent. It became clear to the Tribunal and the parties that the case would not be concluded within the eight days for which the case had been listed. The Tribunal informed the parties that it would be possible to continue the case on 2 and 3 May. It was indicated to the parties that the aim would be to conclude all of the evidence and submissions by Wednesday 1 May, with Thursday 2 May being a deliberation day; issues of mitigation, sanction and costs would be dealt with on Friday 3 May. The Applicant was asked to inform the Third and Fourth Respondents of the likely timetable for the hearing.

16. During the hearing on Monday 29 April the Second Respondent made further submissions and gave evidence. The Second Respondent's evidence concluded during Tuesday 30 April. The Second Respondent indicated that he may need to leave the hearing due to childcare commitments. The Tribunal Chair reminded the Second Respondent that if he left he would not be able to hear the evidence of the Fifth or Sixth Respondents or put any questions to them; this risked prejudicing his case. The Second Respondent indicated that he had not considered matters from that perspective. The Chair informed the Second Respondent that the hearing would continue in his absence if he were to leave and noted that the case was still within the eight day hearing window which had been allocated and notified to the parties. After the lunch retirement, it was noted that the Second Respondent was not present and it was reported that he had informed the Fifth Respondent that he would leave for the afternoon. The Tribunal noted that it had warned the Second Respondent that the case would continue in his absence and determined that the hearing should continue.

17. The Fifth Respondent then gave made submissions and gave evidence. The Tribunal then heard submissions on behalf of the Sixth Respondent and the beginning of her evidence. The Sixth Respondent's evidence was concluded during Wednesday 1 May and the Tribunal also heard evidence from Mr Abdul Qayum. The Tribunal then heard closing submissions on behalf of the Applicant and the Fifth and Sixth Respondents. The Second Respondent was not present during 1 May.

18. The Tribunal spent Thursday 2 May in deliberations and announced the findings on the allegations from approximately 5pm. On that occasion, the Applicant was

represented by Mr Langley, counsel, of Fountain Court and the Sixth Respondent by Mr Nesbitt. The other parties were not present or represented. An email was sent to those parties not present to inform them of the findings shortly after the conclusion of the hearing.

19. On Friday 3 May, the Fourth Respondent and his solicitor attended as did the Fifth Respondent and the Sixth Respondent with her counsel. Neither the Second nor Third Respondents attended, but both had submitted further documents to the Tribunal for consideration on the issues of sanction and costs. The documents noted at paragraph 4 above concerning mitigation were not considered by the Tribunal until it had made findings on the allegations. Neither the Second nor Sixth Respondent had submitted testimonials as to character, which could have been considered before determination of the issue of dishonesty. The Tribunal heard the Applicant's costs application and submissions on behalf of the Fourth, Fifth and Sixth Respondents in mitigation and on the issue of costs. The Tribunal's orders in respect of each party were read from approximately 1.45pm and the hearing concluded at approximately 1.50pm on Friday 3 May.

Preliminary Matter (3) – Burden and standard of proof

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

21. At the commencement of the hearing, the Chair noted that the Second and Fifth Respondents were representing themselves and explained to them the order in which the cases of the parties would be presented, that there would be the opportunity for them to cross examine witnesses and that it was a matter for each party to decide whether to give evidence or make submissions, or both. The Tribunal Chair informed those parties should they choose not to give evidence, of the Tribunal's Practice Direction Number 5 dated 4 February 2013 concerning the inference to be drawn where a Respondent does not give evidence. The Practice Direction was read to the parties so that they would have the opportunity to reflect on it in good time.

Preliminary Matter (4) – Withdrawal of allegations

22. Mr Dutton outlined to the Tribunal which allegations were admitted and which denied by each of the Respondents. In the light of the admissions made by the Third and Fourth Respondents, the Applicant sought the Tribunal's permission to withdraw other allegations against those Respondents.

23. The Third Respondent had indicated in correspondence that she was prepared to admit allegations 1.1, 1.3, 1.4 and 1.5 on the basis that her breaches had not been deliberate and she had not knowingly been involved in any of the alleged breaches. In a letter to the Third Respondent dated 15 April 2013 Mr Havard had confirmed to the Third Respondent that if she were to admit those allegations on the basis of the facts set out in the Rule 5 Statement and the schedule of unfit conduct in the CDDA proceedings against her the Applicant would seek permission to withdraw allegations 1.2 and 1.6

against her. The Third Respondent's reply confirmed the basis of her admissions was as set out in Mr Havard's letter.

24. The Tribunal considered the conduct admitted by the Third Respondent in the schedule contained in the CDDA proceedings. This schedule confirmed that the Third Respondent had been a director of the Firm, which went into liquidation on 9 February 2010 with assets of £14,250, liabilities of over £6.4 million and a total deficiency of over £6.4 million. The Third Respondent had admitted in the "matters of unfitness" that she had permitted non-solicitor third parties to act as members and in the management of the Firm. The Third Respondent had further admitted that in the period 5 June to 24 December 2009 she had allowed the Firm to trade with inadequate financial controls. The schedule noted that the SRA's Practice Standards Unit ("PSU") had carried out a visit from 9 to 11 September 2009 which had identified a number of breaches of the SAR. It had become apparent that accounts transactions were not being recorded correctly, that there had been a deficiency on client account of over £146,000 as at 31 May 2009 and of over £1.6 million as at 31 July 2009. A minimum £314,000 cash shortage on client account had occurred as a result of five round sum transfers where those transfers were not supported by appropriate bills to clients. The seriousness of the matters had resulted in intervention into the Firm by the SRA on 24 December 2009. The Third Respondent had confirmed that a non-solicitor third party had exercised an inappropriate degree of control over the Firm's accounting function. As a result of the investigation, it had become clear that payments totalling £27,400 which were due in respect of Stamp Duty Land Tax ("SDLT") had been improperly paid from the Firm's client account to a third party, being One Stop Car Solutions ("OSCS"). At the time the undertaking was prepared and agreed, the shortfall between client funds recovered and the sums paid out the SRA's Compensation Fund to compensate clients of the Firm was over £7.9 million. The Third Respondent had further admitted that she had failed to ensure adequate accounting records were maintained such that establishing when the shortfall occurred and the destination of various sums paid from client account could not be confirmed. The schedule set out a number of respects in which the SAR and SCC had been breached including Rules 1.02, 1.03, 1.04 and 5, the latter being in respect of management of the Firm. There had been a breach of Rule 4.01 in respect of the outsourcing of completion of SDLT returns to another body. Some of the SDLT returns had been falsified, with the property price in some conveyancing matters being understated.

25. Mr Dutton submitted that in the light of these admissions, which the Third Respondent had indicated for some time that she would make, the Applicant sought to withdraw allegations 1.2 and 1.6 against the Third Respondent. It was submitted that the admissions made, and the basis on which they were made, were sufficient to meet the public interest in the case. The admissions made included permitting non-solicitors to have an inappropriate degree of control, mismanagement of the Firm and breaches of the SAR.

26. Mr Dutton told the Tribunal that the Fourth Respondent had less involvement in the matters leading to the allegations than the Third Respondent. The Fourth Respondent admitted allegations 1.3, 1.4 and 1.5 which were the allegations relating to management of the Firm and breaches of the SAR. Mr Dutton submitted that in the case of the Fourth Respondent, the admissions made met the public interest. It was of

particular importance that the Fourth Respondent had admitted allegation 1.3 concerning a failure to manage or supervise the Firm. Although in some respects the matters alleged and admitted overlapped with the allegations against the Third Respondent, it was submitted that the cases against the two were different. In particular, the Fourth Respondent had been a member of the Firm from 21 August until 8 December 2009, a shorter period than the Third Respondent. Mr Dutton told the Tribunal that the Fourth Respondent and his solicitor, Mr Afzal, had co-operated with the Applicant and had indicated that admissions would be made at an early stage. The Applicant sought to withdraw allegations 1.1, 1.2 and 1.6 against the Fourth Respondent.

27. Mr Dutton told the Tribunal that the Second Respondent had admitted allegations 1.3, 1.4 and 1.5 for the period for which he was a member of the Firm i.e. from 1 September 2009. The Applicant would invite the Tribunal to determine the seriousness of those matters as well as to determine the allegations which were denied. The Second Respondent confirmed that he was contesting the CDDA proceedings. So far as the Fifth Respondent was concerned, he admitted allegations 1.4 and 1.5 for the period for which he had been a member of the Firm (5 June to 5 October 2009). The Fifth Respondent was not prepared to make any other admissions as the Fourth Respondent had done. As the Applicant did not consider that the admissions went far enough, the Applicant would proceed with all allegations against the Fifth Respondent; had he admitted allegation 1.3, the Applicant might have considered that the public interest had been met but admissions to the SAR breaches alone did not satisfy the public interest. In particular, it was submitted that as a member of the Firm from June to October 2009 the Fifth Respondent had been responsible for the management of the Firm for that period. The Fifth Respondent informed the Tribunal that it was on the advice of his solicitor that he had not made any further admissions.

28. Mr Dutton told the Tribunal that the Sixth Respondent was not at any point a member of the Firm; the allegations against her were on the basis that she had been in a position of management responsibility. The case would proceed against her in respect of all allegations. Mr Nesbitt, on behalf of the Sixth Respondent, indicated that the Sixth Respondent admitted allegations 1.2 and 1.5 on the basis that, as a cheque signatory, she had adopted the Firm's practice for signing cheques which meant that she had not always checked supporting documents. The Sixth Respondent acknowledged that the cheque requisition and signing process had not been appropriate and she also acknowledged a personal breach of the SAR in that she had signed two of the "round sum" transfers in question. Mr Dutton indicated that the extent of the breaches remained in issue.

29. The Tribunal considered carefully the applications to withdraw allegations 1.2 and 1.6 against the Third Respondent and allegations 1.1, 1.2 and 1.6 against the Fourth Respondent.

30. The Tribunal considered that allegation 1.1 was in many respects the core allegation in the case. It was the alleged involvement of non-solicitor third parties in the Firm which had caused or contributed to all of the other alleged breaches. Whilst there was some overlap with allegation 1.3 the two were not identical and it would be possible for one but not the other to be proved. The Tribunal noted that the Applicant

appeared to accept that the public interest would be met by allowing allegation 1.1 against the Fourth Respondent to be withdrawn, whilst it had been admitted by the Third Respondent. Whilst the Third and Fourth Respondents had been members of the Firm for different periods of time and so it was possible there were differing degrees of culpability, it was not just to allow the allegation to be withdrawn against one of the former members of the Firm and not the other. The Tribunal noted that the Third Respondent was not present or represented and it was concerned to avoid the possibility that she would be less favourably treated than a Respondent who was present and represented. The nature of allegation 1.1 was such that if it were not admitted by a Respondent it should be tried and either proved or not as the case may be. Whilst the Tribunal was content that allegations 1.2 and 1.6 should be withdrawn against the Third and Fourth Respondents, it was not content that allegation 1.1 should be withdrawn against the Fourth Respondent. The justice of the case and the public interest could be met by withdrawing allegations 1.2 and 1.6 and accepting admissions of allegations 1.1, 1.3, 1.4 and 1.5; as the Fourth Respondent did not admit allegation 1.1, that allegation had to be tried.

31. During the course of the afternoon of 23 April, Mr Afzal reported to the Tribunal that his client, the Fourth Respondent, had agreed to admit allegation 1.1. This was on the basis that he had been a member of the Firm for a limited period. The Fourth Respondent would offer mitigation, but asked to be released until that stage in the proceedings. The Tribunal noted the further admission by the Fourth Respondent and released him and his solicitor until issues of mitigation were to be considered.

Factual Background

The Respondents

32. The First Respondent was born in 1976 and was admitted to the Roll of Solicitors in 2003 and his name remained on the Roll at the date of the hearing but he did not hold a current practising certificate. The First Respondent was an assistant solicitor at Wolstenholmes from April 2003 until May 2005 when he became a partner in Wolstenholmes until 31 July 2006. From 1 August 2006 the First Respondent was a member of the Firm, which was the successor practice to Wolstenholmes.

33. The Second Respondent was born in 1973 and was admitted to the Roll of Solicitors in 2002. The Second Respondent's precise involvement with the Firm was disputed save that it was accepted that he had worked with or for the Firm from early 2009 and had become a member from 1 September 2009. The Second Respondent's name remained on the Roll and at the time proceedings were issued he held a practising certificate subject to conditions.

34. The Third Respondent was born in 1976 and was admitted to the Roll of Solicitors in 2002. The Third Respondent was an associate in the Firm from 8 December 2008 until 5 June 2009 when she became a member of the Firm. The Third Respondent's name remained on the Roll but she did not hold a current practising certificate.

35. The Fourth Respondent was born in 1974 and was admitted to the Roll of Solicitors in 2006. The Fourth Respondent was an associate of the Firm from 11 May until 20 August 2009 and was a member of the Firm from 21 August until 8 December

2009. The Fourth Respondent's name remained on the Roll and he held a current practising certificate subject to conditions at the time proceedings were issued.

36. The Fifth Respondent was born in 1979 and was admitted to the Roll of Solicitors in 2008. He was a trainee solicitor at Wolstenholmes/the Firm from May 2006 until December 2007, was an associate from 1 February 2006 to 4 June 2009 and a member from 5 June until 5 October 2009. The Fifth Respondent was then an associate with the Firm from 6 October 2009. At the time proceedings were issued he held a practising certificate subject to conditions and his name remained on the Roll.

37. The Sixth Respondent was born in 1976 and was admitted to the Roll of Solicitors in 2002. The Sixth Respondent was an associate solicitor at Wolstenholmes from 19 January 2004 to 31 July 2006, and then became an associate at the Firm from 1 August 2006. The Sixth Respondent's role in the Firm was disputed but it was accepted that she had been described at various times as the Practice Manager and Manager of the Post-completions department of the Firm. At the time the proceedings were issued, the Sixth Respondent's name remained on the Roll but she did not hold a practising certificate.

Wolstenholmes/the Firm

38. Wolstenholmes was a traditional firm with its main office at Heald Green in Cheshire. Offices in Chorlton (Manchester), Altrincham and Wythenshawe had existed in various periods and were referred to in some of the documentation in the case but were not directly relevant to this case. In late 2008 or early 2009 the Firm opened offices in Birmingham and central Manchester. The details concerning the opening of these offices were disputed; the SRA had no record of these offices until the PSU visit in September 2009.

39. From about 1 August 2006 the First Respondent took control of the Firm. The Sixth Respondent was a signatory on client account and was described as the Practice Manager of the Firm at various points and from about June 2009 was described as the Manager of the Firm's post-completions department. The First and Sixth Respondents were married in October 2004 under Sharia law and had three children together, the youngest being born in January 2013.

40. The Second Respondent became involved with the Firm; the time and manner in which he became involved were disputed with the Second Respondent's position being that he became a consultant solicitor, employed by the Firm, from about February 2009 whereas the Applicant asserted the involvement began in 2008 and was more extensive than that of an employee.

41. During the course of the SRA's investigation the First and Second Respondents made different claims as to the ownership and control of the Firm in the period from mid-2008 until the SRA's resolution to intervene in the Firm on 23 December 2009. The position appeared from the documentation to be that:

41.1 The First Respondent remained a member and beneficial owner of the majority of shares in the Firm until 1 September 2009; and

41.2 Pursuant to a Declaration of Trust dated 1 September 2009 the First Respondent purported to pass his 99.6% shareholding to the Second Respondent, who held the shareholding in the Firm on trust for the First Respondent; and

41.3 The First Respondent remained (pursuant to a Members' Agreement dated 5 June 2009 entered into between himself, the Third and the Fifth Respondent) the Chief Executive Officer of the Firm until the intervention.

42. At various material times each of the Respondents, save the Second Respondent, had signing authority in respect of the client bank account of the Firm.

43. From a point in 2008 or early 2009 three unqualified individuals became involved in the management and direction of the Firm. By the time of the hearing all Respondents acknowledged that there had been significant involvement in management and direction of the Firm on the part of the three individuals, although the date such involvement began and the date and degree of knowledge of each Respondent was not the same.

44. The first of the non-lawyers involved was Mr Waseem Saddique ("WS"), sometimes referred to as "Sid". On 18 October 2007 a petition for his bankruptcy was presented to Birmingham County Court and a further petition was presented by Lombard North Central plc on 18 December 2008. WS was made bankrupt by order of the court on 27 April 2009 and remained a bankrupt until discharged on 27 April 2010. WS had no qualifications enabling him to undertake legal practice.

45. The second of the non-lawyers was Mr Mario Cardinali ("MC") and the third of the non-lawyers was Mr Mohammed Kazi ("MK") neither of whom had qualifications enabling them to undertake legal practice.

46. The Second Respondent, in an interview by the investigation officers, stated that the Firm had a management team which comprised the First Respondent, WS and MC, each of whom worked from both the Heald Green and Birmingham offices. MK, who was described by the Second Respondent as "the Head of Sales and Marketing", undertook a sales and marketing function from the Firm's office in Manchester which was first at New Mount Street and later at Piccadilly Gardens.

47. The Third Respondent was interviewed for her position as a wills and probate solicitor at the Firm in December 2008 by the Sixth Respondent, who was introduced to her as "the Human Resources Practice Manager" and WS, who stated he was a business consultant. After taking a period of maternity leave from 31 March to 5 June 2009, the Third Respondent was made a member of the Firm at the request of the First Respondent and remained so until the intervention. After her return from maternity leave, the Third Respondent was described as the Firm's money laundering officer and the person responsible for complaints handling.

48. The Fourth Respondent was employed by the Firm from 11 May 2009 and was a member from 21 August until 8 December 2009. The Fifth Respondent became a member of the Firm on 5 June 2009, having worked for the Firm before that date as an associate.

The SRA investigation

49. A PSU visit to the Firm took place in September 2009 and a forensic investigation commenced on 27 November 2009, further details of which are set out below. An intervention order was made by the SRA on 23 December 2009 pursuant to s.35 in Schedule 1 of the Solicitors Act 1974 ("the Act") and was executed in the days thereafter, as set out further below.

50. The investigation which commenced on 27 November 2009 was conducted by Mr Mike Shields ("Mr Shields") assisted by Mr Rob Freeman ("Mr Freeman"). During the investigation, the interim FIR dated 17 December 2009 was provided to the SRA. The Applicant relied on the interim FIR in support of its case. That report revealed a book difference between liabilities to clients and the balance on client account of £19,878,466.84 as at 31 October 2009. Further, there was a minimum cash shortage resulting from round sum transfers from client to office bank accounts in respect of which there were neither proper client bills produced nor disbursements to justify such transfers, in the sum of £314,000.

51. On 23 December 2009 the SRA resolved to exercise its statutory powers of intervention. The intervention agents attempted to gain access to the Heald Green office on 24 December 2009, but were unable to do so. A High Court injunction was obtained and access was gained on 28 December 2009. The intervention agents discovered that the computer hard drives at the Heald Green office, various other documents and client files, together with the email accounts of a number of individuals, had been wiped clean of information and/or removed from the premises.

52. The investigation continued during 2010 and the final FIR was prepared and dated on 16 November 2010.

Allegation 1.1

53. The Firm was formed in 2006 by the First Respondent and a Mr B, who left the Firm in or about February 2009. When interviewed by the investigating officers on 27 November 2009 the Second Respondent told the investigators that the First Respondent was no longer connected with the practice, had "stepped down" and had relinquished management control. The First Respondent stated in an interview in November 2009 that he did not have any interest in the Firm and had not done so since late 2008. A Trust Deed dated 1 September 2009 made between the First and Second Respondents stated that the First Respondent had decided to resign as Chief Executive Officer of the Firm, that he held 99.6% of the issued share capital in the Firm and that he had decided to transfer his shares to the Second Respondent on trust for the First Respondent, with the beneficial interest in the shares vesting in the First Respondent.

54. As set out at paragraphs 43 to 47 above it was accepted that WS, MC and MK had been involved in the management and direction of the Firm in the period from 2008. Findings in relation to that involvement are set out in paragraph 85 below. It was not disputed that the evidence in the FIR showed that WS, MC and MK had given instructions to staff in relation to financial matters, that WS had been involved in the recruitment of the Third Respondent and that all three had given instructions to staff

as to the conduct of the Firm's affairs and client matters. A staff list provided by the Second Respondent to the investigating officers in May 2010 and which was said to relate to the Firm's structure as at June 2009 named WS and MC as "management". Ten examples were referred to in the final FIR of instances in which the Firm's cashier, Miss LM, Miss B (litigation and matrimonial fee earner) and Miss H (former head of human resources) sought authorisation for payments from client account or other authorisations from WS.

55. Payments made by the Firm to a number of individuals totalled over £128,000 in the period 13 February to 31 July 2009 including: seven payments to MK totalling £25,000; two payments to MC totalling £9,000; a Mr A Saddique, believed to be a relative of WS, received two payments totalling £6,400; £4,000 described as a consultancy fee was paid to "K Parker"; £5,000 was paid to WS on 24 July 2009 with WS being described as "KL Parker" on the spreadsheet; WS authorised a commission payment of £22,481.02 to Miss J. MK operated consultancy firms which invoiced and received payments from the Firm e.g. a payment of £2,500 on 10 February 2009. In total, MK and his businesses received about £174, 509 from the Firm during 2009, MC received approximately £32,316 during the last seven months of 2009 and WS received payments either in his own name, under the names of connected individuals and under the name KL Parker totalling over £114,000.

Allegation 1.2

56. From or about late 2008 the Firm expanded as a result of internet marketing schemes through a number of websites, including that of OSCS which was a business connected with WS and/or MC and at about the same time established offices in Birmingham and Manchester.

57. The conveyancing and post-completions departments of the Firm in 2009 were described by the Third Respondent as "just a mess". The post-completions department was from about October 2009 managed by a Mr Akthar, who was not qualified and who had been taken on by the Firm in about June 2009 after a period of work experience. At the time the intervention was effective (28 December 2009) there were 650-750 conveyancing post-completion files which required registering, according to the Second Respondent. A company known as "Rooney & Co" had been made responsible by the Firm for completing SDLT returns.

58. In three sample matters examined by the investigating officers, documents had been doctored so that SDLT was not paid on a transaction, and the money would be kept within the Firm.

58.1 Mr and Mrs J bought Plot 4, TB for £206,000 with the transaction completing on or about 3 August 2009 (although registration of the interest did not take place until 23 April 2010). The purchase price of £206,000 was recorded on: the completion statement, which noted that SDLT would be £2,060; the Certificate of Title; the Land Registry Transfer; the contract between the vendor and purchaser and the Land Registry application. A form of authority dated 13 May 2009 signed by Mr and Mrs J authorised the Firm to deal with and pay SDLT. A HMRC Land Transaction Return Certificate dated 29 September 2009 was addressed to Rooney & Co. This document referred to a consideration of £174,000, which was below the level at which SDLT

was then payable. On 7 September 2009 a cheque for £2,060, signed by the Sixth Respondent, was paid to OSCS when the cheque requisition slip referred to a payment to HMRC.

58.2 Miss W bought 6 EC for £248,000. A payment of £2,480 should have been made to HMRC in respect of SDLT. A Land Transaction Return form in respect of this transaction recorded the consideration was £170,000. A payment out of client account was made on 20 October 2009 in the sum of £2,480 to OSCS.

58.3 Mr W bought 18 HC for £185,000. The transaction appeared to have completed on 19 August 2009 but on 20 May 2010 neither Mr W's interest nor that of his lender had been registered. The completion statement recorded that the purchase price was £185,000 and that SDLT of £1,850 was due. A letter from HMRC on 27 April 2010 stated that no SDLT was due as the consideration was £173,000. However, a payment of £1,850 was made from client account in favour of OSCS.

59. In a number of other matters, it appeared from the client file that payments were being made to HMRC in respect of SDLT whereas in fact payments totalling £27,400 were made to OSCS. In respect of five payments between 14 July and 18 August 2009 four appeared to have been signed by the Sixth Respondent and one by the First Respondent.

60. In respect of all of the conveyancing matters referred to, the Firm also acted for lender clients and the provisions of the Council of Mortgage Lenders Handbook ("CML Handbook") applied.

61. Prior to the intervention, some personal injury files were removed from the Firm and sent to MacIntyre Clark LLP. Four out of a sample of seven clients contacted by the SRA stated that they had not provided authority for the transfer.

62. On 28 December 2009 the Second and Third Respondents informed the intervention agent that a client account cheque book had been stolen. Client account cheques written using the relevant cheque book and totalling £384,922.80 were cashed during December 2009.

63. On or about 9 December 2009, during the course of the SRA investigation, it was reported that there had been a power "surge" or other interference with the computer systems at the Heald Green office. On 28 December 2009 the intervention agents found that computer discs had been removed from the system and/or wiped clean. There were no back-up discs.

64. The allegation was further based on the matters set out at paragraphs 53 to 55 above.

Allegation 1.3

65. In the period 2008 until the intervention there was a massive loss of client money. As at 25 April 2013 the payments out of the Compensation Fund amounted to £12,370,716.84. After recovery from the statutory trust representing the proceeds of the former client account of the Firm of £4,710,849.02 the net loss to the Compensation Fund was £7,659,867.82. Twenty-four claims totalling £252,878.79

on the Compensation Fund were still under investigation. No meaningful or complete computer records were available at the time of the intervention. The allegation arose from the loss of client money and the matters set out at paragraphs 53 to 64 above.

Allegation 1.4

66. During the investigation, the SRA officers were provided with reconciliations of general client liabilities to client cash held drawn to 31 January, 31 May and 31 July 2009 which were stated to have been drawn up during 2009, together with information relating to client liabilities and funds held at 31 October 2009.

67. The reconciliation to 31 January 2009 showed liabilities to clients of £892,536.91, with client funds available of £892,683.95 and thus a surplus of £147.04. The reconciliation to 31 May 2009 produced a book difference/shortage of £146,052.25. The reconciliation to 31 July 2009 showed a shortage of client funds of approximately £1.6 million. As at September 2009 the Firm had failed to allocate approximately £4.8 million of client money to client ledgers. By 2 October 2009 there were unallocated funds of £10,620,156.46. A comparison of liabilities to clients against the balance on the client bank account as at 31 October 2009 produced a book difference, or shortage, of £19,878,466.84. The apparent shortage of just under £20 million was explained by members of the Firm as being due to incomplete and incorrect book keeping.

68. In an email exchange dated 5 June 2009 between Miss LM, the Firm's cashier, and WS the former was instructed by the latter to transfer £80,000 from client to office account.

Allegation 1.5

69. The Applicant relied on the matters set out at paragraphs 65 to 68 above, and in particular:

69.1 The shortfalls on client account and/or book differences of £146,052.25 as at 31 May and £19,878,468.84 as at 31 October 2009;

69.2 The minimum cash shortage caused by round sum transfers of £314,000 are set out at paragraph 70 below; and

69.3 The shortfall between the amounts recovered on the statutory trust and the payments made to former clients from the Compensation Fund, which shortfall was put at £7,659,867.82 with a number of claims still pending.

70. Five round sum transfers, totalling £314,000 were made as follows: £80,000 on 5 June 2009; £50,000 on 15 June 2009; £50,000 on 22 June 2009; £84,000 on 25 June 2009 and £50,000 on 6 July 2009. The transfers were made when no bills (or written intimation of costs) had been delivered to clients and no relevant disbursements had been paid. Three of the cheques by which transfers were made, being the cheques on 5 and 25 June and 6 July 2009, totalling £214,000 were signed by the Sixth Respondent. The transfer of £80,000 on 5 June 2009 was made on the direct instruction of WS as set out at paragraph 68 above.

Allegation 1.6

71. During the course of the investigation: client files were not preserved; some client files were removed to other firms; computer records were not preserved and/or were removed and/or deleted; hard copy accounting records were not maintained; access was not granted to the intervention agents on 24 December 2009.

Allegation 1.2

72. This allegation (against the Second and Sixth Respondents in this hearing) was made on the basis that each and any of the foregoing breaches had been committed dishonestly.

Allegation 1.3

73. This allegation, against the Second Respondent in this hearing, related to the period of the SRA investigation.

74. On 27 November 2009 the Second Respondent told the investigation officers that the First Respondent was "no longer connected with the practice", that he had "stepped down" and that the First Respondent did not have a practising certificate. In response to a question in the course of the investigation as to whether he had any interest in the Firm, the First Respondent replied, "no". In a witness statement in proceedings in the High Court made in March 2010 the First Respondent stated that he had withdrawn from involvement in the Firm in late 2008/early 2009.

75. Pursuant to a Declaration of Trust dated 1 September 2009 the First Respondent purported to pass his shareholding to the Second Respondent, who held the shares on trust for the First Respondent. The First Respondent remained the Chief Executive Officer until the intervention, pursuant to a Members' Agreement dated 5 June 2009 between the First, Third and Fifth Respondents. The First Respondent received regular payments from the Firm until the intervention.

Responses

76. Each Respondent responded to the final FIR and their responses are summarised below. The position of the Respondents at the time of the hearing is summarised under Preliminary Matter 4 above, paragraphs 22 to 31.

77. The First and Sixth Respondents stated that the First Respondent relinquished control of the Firm in late 2008 or early 2009, in favour of the Second Respondent, and that he had no material involvement in the Firm thereafter. The Sixth Respondent's position was that she was ignorant of any breaches and that the First Respondent devoted his time to trying to become a MP.

78. The Second Respondent contended that he did not become responsible for the Firm until September 2009.

79. The Third Respondent accepted that she was interviewed by WS and agreed certain of her terms of employment with him but denied knowledge of any breaches of the SCC.

The Fourth Respondent stated that he was not aware of any SAR or SCC breaches. The Fifth Respondent stated that he was not aware of any SAR breaches and had been reassured by the First Respondent.

Witnesses

80. The witnesses for the Applicant who gave oral evidence were:

80.1 Mr Ted Walsh, who confirmed his witness statement dated 23 November 2012 and was cross-examined. Mr Ted Walsh's evidence dealt with attending the Firm on 14 December 2009, following contact from the Third Respondent on 9 December 2009, concerning a computer problem at the Firm.

80.2 Mr Kieran Walshe confirmed his witness statement dated 2 March 2010 which had been made in case number HC10CO0138 and was cross-examined. Mr Kieran Walshe's evidence dealt with his role as the intervention agent on behalf of the SRA and the circumstances found on the intervention.

80.3 Ms T2 confirmed her witness statement dated 11 July 2012 and was cross-examined. Ms T2's evidence concerned her instruction to the Firm from August 2009 in relation to the sale and purchase of a property, the latter being due to complete on 22 December 2009.

80.4 Ms T1 confirmed her witness statement dated 11 July 2012 and was cross-examined. Ms T1's evidence concerned her instruction to the Firm in about October 2009 in relation to her proposed purchase of a property which was due to complete in December 2009.

80.5 Ms M confirmed her witness statement dated 11 July 2012 and was cross-examined. Ms M's evidence concerned her instruction to the Firm in October 2009 in relation to the sale of her property to a family member, who also instructed the Firm, which sale was due to completed on 18 December 2009.

80.6 Mr Stephen Cosslett confirmed the contents of his forensic science report dated 5 April 2013 and the exhibits to that report, and was cross-examined. Mr Colet's report concerned the authenticity or otherwise of signatures on cheques and other documents, in particular cheques which had been signed in the Sixth Respondent's name.

80.7 Mr Mike Shields, the SRA's forensic investigation officer ("FIO"), confirmed the contents of the interim FIR dated 17 December 2009 and the final FIR dated 16 November 2010, both of which he had compiled. Mr Shields was cross-examined. His evidence covered most of the factual matters on which the Applicant relied.

80.8 Mr Rob Freeman, who was a SRA investigation officer at the material time, confirmed the contents of the interim and final FIRs and was cross-examined. His evidence dealt with the investigation and the contents of the reports.

81. The Second Respondent made submissions and gave oral evidence in which he confirmed the contents of his witness statement dated 22 January 2012, which dealt with all of the allegations made against him, and was cross-examined.

82. The Fifth Respondent made submissions and gave oral evidence in which he confirmed the contents of his witness statement dated 31 August 2012, which dealt with all of the allegations made against him, and was cross-examined.

83. The Sixth Respondent gave oral evidence in which she confirmed the contents of her (undated) witness statement, which dealt with all of the allegations made against her, and was cross-examined. Mr Abdul Qayum, the Sixth Respondent's father gave evidence and confirmed the contents of his statement dated 1 May 2013.

84. In addition, the Tribunal read the witness statements of Mr Ian Jones (dated 26 April 2013) for the Applicant, the witness statement of Susan Stewart (dated 18 April 2013) for the Sixth Respondent and the documents contained within the trial bundle.

Findings of Fact and Law

85. Findings of fact - background

85.1 The Firm came into existence in 2006 and succeeded the long-established practice of Wolstenholmes. The main office of the Firm was at Heald Green in Cheshire. Wolstenholmes/the Firm had had various branch offices from time to time, for example in Chorlton in Manchester, but only the offices in Heald Green, Manchester city centre and Birmingham were in existence and relevant to the matters in issue in these proceedings. Wolstenholmes/the Firm was until some point in 2008 a traditional solicitors' practice, offering a range of mainstream services such as conveyancing, commercial property, wills and probate and litigation.

85.2 A Companies House search carried out by the SRA in October 2010 showed that the members of the Firm, in order of appointment, were: the First Respondent (5 June 2006 to 1 September 2009); Mr DPB (5 June 2006 to 7 February 2009); Mr SC (26 July 2006 to 27 February 2009); Mr MC (27 April 2007 to 8 May 2009); the Third Respondent (from 5 June 2009); the Fifth Respondent (from 5 June to 5 October 2009); the Fourth Respondent (from 21 August to 8 December 2009); the Second Respondent (from 1 September 2009). The Sixth Respondent was not at member of the Firm at any time. Where there was any discrepancy between the dates of membership given by the Applicant or Respondents and that shown on the Companies House search, the Tribunal preferred the records held at Companies House. For example, the Applicant had stated in the Rule 5 Statement that the Fifth Respondent was a member from 1 June 2009, but both the Companies House records and a Members' Agreement made between the First, Third and Fifth Respondents showed the correct date to be 5 June 2009. The Tribunal was satisfied as to the periods of membership of the LLP, and thus the periods for which the Respondents had specific duties in their capacities as principals of the Firm. The Tribunal had to consider in addition (in relation to some of the allegations) whether there were any further professional duties assumed by any of the Respondents because of their roles in the Firm, whether or not they were members at the relevant time.

85.3 By about October 2008, the First Respondent was the most significant member of the Firm. Although Mr DPB and Mr SC remained members until February and Mr MC until May 2009, they were not parties to these proceedings. The Tribunal did not have to make any findings in relation to how and why those members left the Firm but it was noted that there had been references in the papers to a dispute between the First Respondent and his former partners. For a period of about a month, until the appointment of the Third and Fifth Respondents, the First Respondent had been the only member of the Firm. By the time of the intervention, on or about 24 December 2009, only the Second and Third Respondents remained as members of the Firm.

85.4 By October 2008 a man called Waseem Saddique ("WS") had become involved in the management of the Firm. The Tribunal noted, for example, an email from the Firm's receptionist to WS dated 24 October 2008 in which she set out various ideas for improving efficiency and morale at the Firm. The email showed that WS had by then an email address at the Firm ("Waseem.Saddique@wolstenholmes.co.uk").

85.5 Each of the Respondents in their statements and oral evidence had suggested that WS's role was that of a business consultant, carrying out a number of tasks on behalf of the Firm. The position of each Respondent will be set out more fully below. The Tribunal accepted that it is legitimate for a Firm to engage the services of a non-solicitor as a business consultant or marketing expert. However, it is not acceptable to allow an unadmitted person to have a significant degree of influence and control over a firm. The Tribunal was satisfied beyond reasonable doubt that the role and influence of WS was in excess of that which was acceptable, from a date which could not be ascertained precisely. Although the fact that WS's email account had been deleted (when the Firm's computer records had been removed/destroyed in December 2009) there was sufficient evidence remaining of his role in the Firm to be confident his influence was growing from October 2008 and was well established by early 2009. The Tribunal noted in particular that on 30 November 2008 WS had sent an email to the Sixth Respondent, forwarding the email of 24 October 2008 from the receptionist, which read:

> "Asma, I sent you an email about two weeks ago asking you to implement the below suggestions. Let me know when you can realistically implement".

85.6 Further, WS had been involved in interviewing the Third Respondent for her position in December 2008. Also in December 2008, an email from the Firm's HR/Accounts Manager, Mr AW, set out a list of Mr AW's tasks for the day. WS was in contact with staff about financial and management matters in a way which showed that staff were reporting to him directly and not through a member of the Firm. The Second Respondent's witness statement at paragraph 7.4 et seq stated that he had been interviewed by WS in February 2009. The Tribunal had some doubts about the accuracy and credibility of the Second Respondent's evidence, for reasons set out below, but could accept that WS had been involved at some point in discussions with the Second Respondent about the establishment of a personal injury department at the Firm's Birmingham office.

85.7 The Sixth Respondent gave evidence that from about November 2008 WS, MC, the First Respondent, Mr DPB, Mr SC and Mr MC had held staff meetings at which billing targets had been discussed. The Fifth Respondent had given evidence, which

the Tribunal accepted, that he met with WS from time to time from about December 2008 to discuss billing and securing more commercial property work.

85.8 The Tribunal was mindful that it was not making findings against WS, or anyone who was not a party to the proceedings and this hearing. However, it could make findings about events which it was sure had taken place and documents which it accepted as being genuine. The Tribunal found that on ten occasions, shown by emails in the period July to September 2009 which had not been deleted from the Firm's system, WS had authorised or been consulted on a number of matters concerning the management of the Firm as follows:

- On 21 July 2009, WS responded "authorised" to an email from the Firm's cashier, Ms LM, which asked:

  > "Please can you authorise the attached ledger as we have been put on stop..."

- On 21 July 2009, there was a series of emails involving Ms LM, Ms RH (the Firm's HR manager) and WS concerning authorisation of payment of invoices, which WS stated should be paid over 3 months;
- Also on 21 July 2009, Ms LM sought and was given authorisation by WS to pay an invoice;
- On 22 July 2009, Ms LM sought authorisation and was given authorisation by WS to pay an invoice;
- On 30 July 2009, WS authorised payment in connections with childcare vouchers for employees;
- On 4 August 2009, WS authorised Ms LM to arrange a payment over 3 months;
- On 5 August 2009, WS was asked by a solicitor, Ms KB, to authorise attendance on CPD courses;
- On 6 August 2009, Ms LM sought authorisation from WS to pay an invoice;
- On 15 September 2009, WS authorised payment of an invoice for rubbish collection;
- On 30 September 2009, an email from a Mr SW referred to WS having given authorisation for payment.

85.9 The Tribunal also found that on 13 February 2009, in an email to Mr AW, WS authorised payment of an invoice. On 25 March 2009 WS emailed a client from his Firm email address stating that the client would not be billed for legal work done by the Firm. An email of 4 September 2009 to the First, Second, Third and Fourth Respondents and others (including MK) from the Firm's HR department asked,

> "Can you please confirm all your outstanding vacancies. Sid has confirmed his and just awaiting feedback from you..."

A list of vacancies was noted to include 9 notified by WS (2 of which were jointly requested with the First Respondent), 4 by MK, 4 by MC, 1 by "Iftab", (believed to be

the Mr IH referred to at paragraph 85.14 below), 4 by the First Respondent (of which 2 were jointly requested with WS), 2 by the Second Respondent, and 1 by the Fourth Respondent.

The Tribunal further noted an email from WS to Ms LM in the accounts department on 19 September 2009 i.e. shortly after the PSU visit which gave a series of instructions on dealing with payments from client account. This email (which was not copied to the Managing Partner or any member of the Firm) stated, amongst other points:

> "...Moving forward fee earners will not request funds to be sent out unless they can verify that funds are held on account...I will be implementing a new system within the next 7 days to eliminate this problem...I will be introducing an external team...When they come across an incoming payment that is not being claimed by a fee earner within 24 hours they will then send an email to the Managing Partner, and if it happens more than 2 times by the same fee earner for not claiming then that fee earner will be disciplined..."

This very clearly showed WS was giving instructions on financial management and did not consider that any consultation with the Managing Partner (the Second Respondent) or any other member was necessary.

85.10 The Tribunal noted that WS's email account, together with those of certain other individuals, had been deleted and so a full picture could not be formed. However, the documents which were seen were sufficient to satisfy the Tribunal that WS's influence was significant, well-known by members of staff and covered a number of areas including financial management of the Firm and recruitment.

85.11 The Tribunal found on the basis of the FIRs and exhibits that the Firm paid to WS approximately £114,000 either directly, to persons associated with him or to "KL Parker" which the Tribunal was satisfied on the documents presented was an alias of WS. The Tribunal also found that WS was declared bankrupt on 27 April 2009 and remained subject to the bankruptcy order for a year.

85.12 The Tribunal further found that MC had had a significant role in the management of the Firm from about the same period i.e. late 2008/early 2009. He had been involved in the meetings with staff at which billing was discussed from about December 2008 and by March 2009 was taking part in meetings with staff at which work in progress, billing targets and marketing were discussed. The Tribunal found that on 6 July 2009 MC authorised payment of £1,150 for the Firm (on computer monitors) and on 29 June 2009 had authorised expenses incurred by the Sixth Respondent of £65.40. The Tribunal noted and accepted that in May 2009 the Second Respondent had discussed with MC a new case management system for personal injury work, although the Second Respondent's further evidence on this point was that he believed the First Respondent would actually make the decision about the case management system. The Tribunal found, on the basis of evidence from the Second, Third, Fifth and Sixth Respondents that MC had visited the Birmingham and Heald Green offices quite regularly and had met with staff to discuss billing targets and the like. The Firm paid to MC over £32,000 from about April 2009.

85.13 MK was described as the Firm's head of marketing and the Tribunal found that he had worked from the Manchester office, at which the marketing function was carried out. The Tribunal found that a Mr BB and a number of others had also worked from that office in marketing. An exchange of emails in late August 2009 between MK and the First Respondent, following an email from the Fifth Respondent to the First, Third and Fourth Respondents concerning the Firm's client care letters showed that the team working for MK was responsible for sending out client care letters which may not have been compliant with the SCC requirements, and had not rectified the problem despite it being raised over four months before. The Tribunal also found that MK and his businesses received about £174,509 from the Firm during 2009. It noted in particular an email from MK to a Mr MK of the Firm dated 13 October 2009 with a request to pay expenses which he had incurred for the Firm and which were detailed on a spreadsheet. The Tribunal noted that those expenses included payments to Google, Yahoo and others in connection with internet marketing, payment of staff incentives and bonuses and payment. The nature of the expenses showed that MK was incurring substantial expenditure in relation to the Firm. MK had been described by the Respondents as a marketing consultant to the Firm and not as someone involved in its management; this was not consistent with the fact that MK was paying bonuses and incentives to the Firm's staff.

85.14 The Tribunal noted a staff list which was passed to the SRA by the Second Respondent which he indicated referred to the period June 2009. The names of WS and MC appeared under the title "Management" and gave an internal extension and a direct dial telephone number for them at the Heald Green office. The Second Respondent denied under cross examination that WS or MC had an office within the Firm and suggested that dialling the number would not necessarily connect a caller to WS or MC. The Tribunal found the Second Respondent's evidence on this point to be unreliable. The clear implication of stating a telephone number for WS and MC was that this was a way to contact the "management" of the Firm. On the same list MK was described as "Head of Sales & Marketing". On the list, the First Respondent was described as "Chief Executive/Commercial Conveyancer". The Second Respondent was described as "Head of Litigation and Matrimonial". In evidence, he told the Tribunal that he did not work at the Heald Green office until about July 2009 and told the Tribunal the reason he appeared to have a Heald Green office number was to give clients the feeling that they could contact him as head of the department. The Third Respondent was described on the list as a solicitor, under the title "Compliance"; the Fourth Respondent was described as an immigration solicitor; the Fifth Respondent was noted to be a solicitor in the commercial property team; and the Sixth Respondent was listed in the conveyancing team as "Department Head/Associate Solicitor". The Miss J referred to in paragraph 55 above who received a commission payment of £22,481.02 was described as a "PI paralegal" (in the Birmingham office).

85.15 The Tribunal heard evidence concerning a fourth individual concerned with the practice, a Mr IH. On the staff list referred to above, Mr IH was described as "Marketing" within the personal injury team based in the Birmingham office. A company search of OSCS showed that that company had its registered office in Birmingham, was formed on 9 February 2009 and that Mr IH was the Company Secretary, and remained so until 1 February 2010. That company was dissolved on 24 May 2011. Mr IH was also a director of a company called W Ltd, replacing WS in that role. In a letter, described by the Second Respondent as a draft, dated 19 June

2009 to a lawyer in Brazil ("the Brazilian letter"), it was stated that there was a partnership agreement between WS and Mr IH dated 5 August 2005 and it described the links between a number of companies, the shares in which were said to be held on trust for WS personally. The Brazilian letter will be referred to further below. The Tribunal was satisfied that there was a business connection between WS and Mr IH, whose role appeared to be in business development for the Firm. It appeared to the Tribunal very clear that friends and business associates of WS and/or MC and/or MK were given roles within the Firm. Indeed, in his oral evidence, under cross-examination, the Second Respondent told the Tribunal that WS had been involved in recruiting lots of the staff and some of them were his friends. This is referred to further at paragraph 87.17 below.

85.16 The Tribunal noted a document recovered after the intervention from the computer system of the company which hosted the Firm's "CRM" system, which it was understood was the "client relationship management" system. This showed the degree of access to the CRM system of about 190 individuals. The Tribunal found that, as shown by this document, the First Respondent, WS, MC, MK and others (including Mr BB and Mr IH) had "full access" whereas the Third, Fifth, Sixth Respondents had restricted access and neither the Second nor Fourth Respondents appeared on the list of those with any access rights. The Tribunal found that this document, the contents of which were not disputed, was accurate in setting out who could access the client information held on the CRM system. It clearly showed that WS, MC, MK and other non-solicitors had access to client information which solicitors and members of the Firm did not.

85.17 The Tribunal also noted and accepted the evidence in the FIR, supported by evidence from computer experts, that at the time of the intervention there had been 144 email accounts at the Firm, including those of the Second, Third, Fourth and Fifth Respondents. The computer experts had been unable to find the email accounts of the First and Sixth Respondents, WS, MC, MK and others including Mr BB and Mr IH.

85.18 The Tribunal noted and found that in or about September 2008 the Second Respondent had held some discussions with the First Respondent about purchasing/taking over the Firm. This was evidenced by an email from the Second Respondent to the First Respondent dated 8 September 2008 which read:

> "Nasir,
>
> It was a pleasure meeting you on Friday.
>
> ...I understand that you will prepare a draft Sale Agreement for comment/approval with a view to achieving exchange by 15 September 2008. Completion will take effect from 1 October 2008 or when your security is in place (whichever is sooner). It would be sensible for us all to meet again prior to exchange as I think inevitably things will crop up from the drafting which we will all need to discuss..."

and an email from the Second Respondent's adviser, a Mr AM, to the First Respondent on 8 September requesting information about the Firm. The proposed transfer of the business did not take place. In or about February/March 2009 the Second Respondent began working in the Firm; his account was that he was engaged

as an employed consultant solicitor until he became a member and the Managing Partner on 1 September 2009. This position will be explored further below. Whilst there appeared to be some temporal connection between the Second Respondent's first dealings with the Firm and WS and MC beginning their role in the Firm the Tribunal was not satisfied to the required standard that there was a causal link

85.19 By about February and certainly before April 2009 the Firm's Birmingham office appeared to have come into existence. An email exchange between WS and Mr AW, the Firm's HR/Accounts Manager, on 13 February 2009 included in the footers the Heald Green and Birmingham office addresses, and also referred to offices in Manchester and London (although the address stated for the Manchester office was not that subsequently seen or referred to on the documents). The precise dates at which the Manchester and Birmingham offices were established, and the manner in which the Firm's internet and telesales marketing operations began could not be established. However, it was clear from the documents and the evidence of the Respondents that by about March 2009 WS was attending regularly at the Birmingham office, at which the Second Respondent also worked. Further details concerning the working arrangements of the various individuals involved will be given below.

85.20 Although there were concerns about the roles and influence of Mr IH and others, the Tribunal concentrated on the three individuals named in the Rule 5 statement, namely WS, MC and MK. By a point early in 2009, WS was asking for and receiving information from the Firm's accounts department and as early as 13 February 2009 he was authorising payment of an invoice. On 25 March 2009 he informed a client that the Firm would not charge that person for legal work. From late 2008 at Heald Green and from about March 2009 at the Birmingham office, WS and MC were holding meetings with staff in connection with work in progress, billing, targets and marketing. In discussing such matters, which are central to a solicitors' practice, with the staff, WS and MC clearly had considerable influence. In and after June 2009 WS was giving instructions to accounts staff to transfer money from client to office account. MC was able to approve expenditure on behalf of the Firm, including for purchase of computer equipment and the Sixth Respondent's expenses. The emails referred to at paragraph 85.8 above show a series of examples in which the staff of the Firm sought and received authorisation from WS. WS, MC, MK and others had full access to the Firm's CRM system, whereas some of the members did not. Later in 2009, the influence of WS, MC and MK was seen in relation to dealing with client complaints and refunds to clients, as detailed more fully below when considering the knowledge of each of the Respondents of the role of these individuals. On 6 September 2009 the First Respondent emailed WS with the subject heading "Asma" (i.e. the Sixth Respondent) enquiring,

> "Are you leaving her in post comp or moving her to Practice manager so I can sort out post comp?"

to which WS replied,

> "Brother you need to take responsibility of the post completions department even though you will not be present in the office..."

This showed WS was directing the First Respondent in allocating roles to staff. What was also clear was that the Second Respondent was aware that WS was made bankrupt by the end of April 2009; the Second Respondent had confirmed in oral evidence that he had attended a meeting with the Examiner on behalf of WS's Trustee in Bankruptcy on 17 June 2009. It was not certain that the other Respondents had been aware of this.

85.21 The massive growth in the Firm's marketing campaign, based at the Manchester office, was led by MK and involved Mr BB. The marketing techniques included "pay per click" ("ppc") internet marketing and establishing a telesales/call centre operation in Manchester. There was an established business relationship between WS and Mr IH who was also involved in business development. Mr IH was also involved with OSCS, the company to which a number of improper payments were made by the Firm, as set out at paragraph 59 and more fully below. As a result of the aggressive internet and other marketing techniques used by the Firm, the Firm changed fundamentally in its nature from a traditional practice with a total complement of about 30 staff to over 100 in the period prior to the intervention. The Firm's personal injury workload increased from about 75 files in about February 2009 to about 700-800 by July 2009, according to the Second Respondent's evidence; the Tribunal accepted this evidence as it appeared consistent with documents seen and the findings of the intervention agents, although the lack of proper computer or paper records meant that no truly accurate evidence was available on this point. The evidence of the Third Respondent, amongst others, indicated that the conveyancing department was "a mess" by the later stages of 2009 and this was supported by the contents of the witness statement of Susan Stewart, submitted on behalf of the Sixth Respondent. The Tribunal also noted the evidence that files at the Heald Green office had been stored in three shipping-type containers in the car park and that parts of the Heald Green office at the time of intervention were piled up with files. Clearly, there had been a massive growth in the amount of domestic conveyancing work undertaken.

85.22 The Tribunal found on the evidence that WS, MC and MK (with others) were instrumental in changing the Firm and was satisfied beyond any doubt that these three individuals in particular exercised a degree of control and influence over the Firm which was unacceptable, given that none of them was a solicitor. The description on the staff contact list from about June 2009 of WS and MC as "management" appeared on the basis of all the evidence to be accurate. Their role went well beyond that of consultants who were merely advising the members of the Firm; rather, they exercised management functions in relation to staffing, finance and dealings with clients.

85.23 The Tribunal was not able to make any findings about how, by whom and in what circumstances WS, MC and MK had been introduced to the Firm. For reasons set out below, the Tribunal was not able to be sure if the Second Respondent was being untruthful when in the Brazilian letter (paragraph 86.6 et seq below) he stated that he had known WS for a number of years or if he was being untruthful in stating in evidence that he first met WS in February 2009. Whilst there was a possibility that the Second Respondent had introduced WS to the Firm, the Tribunal could not be sure of this and in any event did not need to make a specific finding on this point.

85.24 The findings in this section are to be taken as imported into the findings in relation to each of the allegations below. Additional matters in relation to WS, MC and MK will

be referred to where necessary and the matters above are intended simply to set out the background to the findings in relation to the Respondents.

86. Findings in relation to the Second Respondent's credibility

86.1 The Tribunal had to consider the issue of the Second Respondent's credibility in assessing whether his assertions in relation to his conduct at the Firm, some of which were inconsistent with other evidence, could be believed. There were three particular documents which could and did form the basis of the Tribunal's findings in respect of the Second Respondent's credibility.

86.2 The Tribunal noted a professional indemnity insurance ("PII") proposal form for 2009/10 signed by the Second Respondent on 15 September 2009 as "senior partner" and a covering letter dated 16 September 2009 to the insurance brokers, also signed by the Second Respondent. The Second Respondent did not dispute that these were his documents. He acknowledged in cross-examination that he understood the declaration which formed the basis of the contract of insurance was important. It was noted that the declaration included the statement:

> "I/we declare that after full enquiry of all partners and staff, all claims and circumstances which may give rise to a claim have been reported to SIF and/or any previous and/or current insurers and that statements in this proposal form (and attachments if any) are true and complete and shall form the basis of any contract of insurance effected thereupon. I/we undertake to inform insurers of any material alterations to the information provided or any new fact or matter arising before completion of the contract of insurance, which may be relevant to the contract of insurance".

86.3 It was put to the Second Respondent that there were a number of matters in the PII proposal form which were untrue. Neither the PII form nor the covering letter referred to the huge increase in the volume of personal injury and conveyancing work during 2009 and the letter referred to the First Respondent no longer having any connection with the Firm. The form indicated that personal injury work accounted for about 10% of the work of the Firm, as it had in 2008/9, and residential conveyancing was not listed as an area of practice of the Firm. The form was clearly incorrect in those respects. In the "risk management" section of the form, the Second Respondent had answered "yes" to the question "Is the work of assistant solicitors supervised by a partner and subject to regular review meetings...?" but in his evidence to the Tribunal he confirmed that there had been no solicitors in the personal injury department apart from himself. It was not revealed on the form that the paralegals carrying out the bulk personal injury work were not supervised fully. The form did not reveal or state explicitly the huge increase in the number of fee-earners in the Firm during 2009, although it appeared that a staff list was submitted which listed 17 solicitors and 102 other permanent members of staff. The Tribunal noted that whilst MK was listed as an employee of the Firm, neither WS nor MC were mentioned in any respect in the documents submitted with the proposal form. Although the Second Respondent's position remained that these individuals had been consultants, it was clear that they spent a lot of time at the Firm and had had a significant role in its growth during 2009. It was also stated on the form that the client account was brought to trial balance monthly. It had become clear during the PSU visit just a few days before the form

was signed that no client account reconciliations had been carried out since January 2009. The form further stated that no principal or employee was able to issue cheques under their sole signature. In fact, the First and Sixth Respondent could each be a sole signatory on cheques. The Tribunal was satisfied to the highest standard that the form was untrue in a number of material respects, as set out above.

86.4 The Second Respondent told the Tribunal that he had filled in the form to the best of his knowledge, information and belief and that in relation to the cheque signatories issue he had assumed what the position was, and no-one had told him otherwise. Most importantly, the Second Respondent told the Tribunal that the proposal form was a "draft document" and protested that it was "not fair" when it was put to him that the form and covering letter had in fact been sent. The Tribunal had no hesitation in finding that the PII proposal document, which was a very important document which would form the basis of an insurance contract, was untrue and that the Second Respondent knew that in a number of material respects it was untrue and inaccurate. Clearly, there were no monthly trial balances of client account, the fundamental change in the nature of the Firm was not revealed and the cheque signatory position was not true. Further, the form did not reveal that at the time the form was completed the Second Respondent knew that a significant number of complaints (over 40) had been made to the SRA. The Second Respondent's attempted explanation that this was a draft document was neither credible nor acceptable. The annual insurance proposal form must be accurate and declare all relevant information; the Second Respondent clearly and materially failed to submit an accurate and truthful PII form to the brokers.

86.5 The second document to which the Tribunal had regard was a letter to Mr NC dated 14 May 2009. The document seen by the Tribunal was a draft, concerning the Firm's charges. On the draft it could be seen marked by hand that there were corrections to two typographical errors. The word "done" was also handwritten on the document. Under the Second Respondent's name was the word "Partner". The Second Respondent's position throughout the case was that he was not a partner in the Firm at that time and did not hold himself out as a partner. He told the Tribunal that he would have given the letter back to the secretary with an instruction to remove the word "partner". The Second Respondent told the Tribunal that lots of the secretaries thought he was a partner. The Tribunal did not find it credible that the Second Respondent would have corrected the two "typos" in pen without also striking through the word "partner" if that was not how he was content to be described. The Second Respondent indicated he thought it "unfair" that a draft letter was being put to him in this way. However, the Tribunal found it was entirely fair to test the Second Respondent's credibility on this point. The Tribunal found that the Second Respondent had allowed himself to be held out as a partner in that he failed to correct what he now said was an incorrect part of the letter when he had corrected in manuscript other parts of the same letter.

86.6 Even more significant than the letter of 14 May 2009 referred to above was a document dated 19 June 2009 – noted above and referred to as the Brazilian letter. As with the letter of 14 May, the Second Respondent sought to persuade the Tribunal that the Brazilian letter was a draft. He appeared to suggest thereby that it did not matter if it contained untruthful statements. This was an untenable position for a solicitor. Whilst drafts would not necessarily be as complete and well expressed as the final

version, there was no justifiable reason to include matters which the writer knew to be untrue in a draft. The Tribunal also noted that in giving evidence in relation to the letter, the Second Respondent's evidence shifted to a significant degree.

86.7 The Brazilian letter, the intended recipient of which appeared to be a Brazilian lawyer, and was headed "E Limited ("E"), "W Limited ("W"), H do B ("H"), Waseem Saddique Property", included the following statements:

> "I confirm that I have acted for Waseem Saddique and his Companies for a number of years."
>
> "Please note, I am a Partner in this Practice, specialising in Commercial Litigation matters."
>
> "I enclose herewith a Partnership Agreement dated 5th August 2005 and entered into between Waseem Saddique and (Mr IH)...At all material times Waseem Saddique Property was a trading Company that bought and sold property via its Partners. I confirm that the Partners were Waseem Saddique and (Mr IH)...Please note, for the avoidance of any doubt, Waseem Saddique Property continues to exist as a Partnership created by its Partners, Waseem Saddique and (Mr IH). It has not been placed in any form of administration or liquidation and nor has any Receiver been appointed over any of its assets or undertakings..."
>
> "I should also add that, having acted for Waseem Saddique over a number of years, I can confirm that Mr Saddique is of the utmost good character and I know of no reason to doubt his honesty or integrity. I am more than happy to provide a Witness Statement or Affidavit confirming Mr Saddique's good character and also the fact that I know of no reason to doubt his truthfulness or honesty. Should you require such an Affidavit or Witness Statement I will be more than happy to give one".

86.8 In his written skeleton argument and in oral submissions before giving evidence, the Second Respondent told the Tribunal that he had not sent the letter, which was a draft and unsigned and did not bear the address or contact details of the intended recipient. The Second Respondent told the Tribunal that the letter was important to WS, who had invested in Brazilian property but had become involved in a dispute about the property. As the Second Respondent did not know anything of Brazilian law, the letter was intended to give some information to WS's Brazilian lawyer. The signature section of the letter did not describe the Second Respondent as a partner in the Firm, as had been in the case in the letter referred to at paragraph 86.5 above. The Second Respondent further submitted that at the time he wrote the letter he knew WS was bankrupt. In response to a question from the Chair, the Second Respondent went on to say in his submissions that he wrote the letter and the words were his. He added that WS had access to all the passwords of the practice and all of the documents and that a secretary, Ms AW, could access documents. The Second Respondent then suggested that his words had been changed.

86.9 Under cross-examination, whilst on oath, the Second Respondent accepted that it would be dishonest to say something false in a letter if he sent the letter but he did not

accept it would be dishonest if the letter was not sent. The Second Respondent gave evidence that he prepared "the first draft" of the letter and that it was in respect of a matter on which he was acting in about May/June 2009 but for which there did not appear to be a file. The Second Respondent told the Tribunal that he thought there had been about 4 or 5 drafts of the letter going back and forth as it was a complicated matter. He told the Tribunal that he did not recall writing that he had acted for WS and his companies for a number of years, and that such a statement would be untrue; he did not recall seeing this particular draft of the letter. The Second Respondent told the Tribunal that at the date of the document it was true that he specialised in commercial litigation but it was not true that he was a partner and he was not noted to be a partner underneath his signature. The Second Respondent told the Tribunal that false information could have been put into the letter by WS as he had access to the Firm's word processing systems. The Second Respondent told the Tribunal that if he had read this document, he would have amended it. When it was put to the Second Respondent that at such a point he would have realised that WS was dishonest, the Second Respondent replied that he "would have raised it" and when the same point was put to him again the Second Respondent told the Tribunal he "would have taken the words out". On the issue of being described as a partner, the Second Respondent told the Tribunal that staff sometimes assumed he had seniority which he did not have. He further told the Tribunal that he did not think a secretary, Ms AW, would have created false information in the letter. Whilst the Second Respondent could not recall the details of a matter on which he was instructed in about June 2009, he believed that the statements in the letter about a partnership between WS and Mr IH were true. It was put to the Second Respondent that as WS had been made bankrupt on 27 April 2009, all of his assets (including those in the partnership) would have vested in the trustee in bankruptcy. The Second Respondent stated that he was not an insolvency practitioner and he had not understood that the trustee in bankruptcy would collect in the bankrupt's assets. The Second Respondent told the Tribunal that the Applicant had found only two letters in which he appeared to be held out as a partner; it was clear that the letter dealt with at paragraph 86.5 was a draft. He stated that the Applicant did not know he had not simply dictated that he was a solicitor; the only person who benefited from the statement that he was a partner was WS; if the Brazilian letter stated that he was a partner, that had been done by WS or a secretary. Whilst Ms AW did not think the Second Respondent was a partner, the Second Respondent told the Tribunal that lots of secretaries did and that they often made assumptions when typing. However, the Second Respondent stated that he could not give an explanation about how the letter came to say that he was a partner in the Firm and went on to say that he could not remember writing that he was a partner. The Second Respondent became somewhat agitated as he told the Tribunal that he had not held himself out as a partner but that if it was to WS's advantage WS might have tinkered with the letter, but that was only an assumption. The Second Respondent stated that WS had access to whoever typed the letter. He referred to fighting the allegations of dishonesty against him on principle. With hindsight, the Second Respondent realised that WS had more control than he had thought at the time; he had not known at the time that WS could alter letters. The Second Respondent told the Tribunal that it did not have the final, notarised version of the letter and that the untrue insertions in the letter were not written by him.

86.10 The Tribunal was conscious that there was no allegation made in respect of the Brazilian letter. However, the Second Respondent's credibility could properly be

assessed in considering how he responded to the points put to him concerning the clearly untrue statements in the document. Firstly, as at the date of the letter, the Second Respondent was not a partner/member of the Firm – although the issue of his influence in the Firm will be considered further below – so the statement , "I am a Partner in this Practice", was false and the Second Respondent knew it to be false. The Tribunal found it incredible to suggest that a secretary would have inserted such a statement into the body of a letter. Further, the letter stated that the Second Respondent had acted for WS and his companies for a number of years, something which the Second Respondent asserted in his evidence to the Tribunal was not true. The letter further asserted that WS was a person of good character without reporting also that he was bankrupt, which was something the Second Respondent knew. The Tribunal found it impossible to believe that a commercial litigation solicitor of several year's experience, as the Second Respondent asserted he was, with a First Class Honours degree from Liverpool University would not know that on bankruptcy the bankrupt's assets vest in the trustee in bankruptcy. To have written anything in any letter intended to go to the Brazilian lawyer stating anything other than that WS was bankrupt and any queries should be directed to his trustee in bankruptcy was clearly inappropriate. To assert, as the Second Respondent did that the letter was simply a draft was disingenuous at best. He had acknowledged that he wrote the letter, then partly resiled from that position by suggesting that someone may have altered the letter. He asserted in evidence that the letter was important to WS and went through a number of drafts, but did not recall if the letter had been sent or what the final version had said. The Second Respondent appeared reluctant to say that, if the letter had been altered, WS had done this; the Tribunal considered that this reluctance was due to the fact that the Second Respondent would have to admit that WS had access to the word processing/computer systems, which was inconsistent with his case that WS had not had control of the Firm. Throughout his oral evidence in relation to the Brazilian letter the Second Respondent had presented as evasive, defensive, at times aggressive and in all respects unreliable. It appeared to the Tribunal that he shifted his story in relation to the letter depending on what question was asked and what answer he thought would cause him least trouble.

86.11 The Second Respondent's explanations for the three documents (the Brazilian letter, the PII proposal form and the draft letter of 14 May 2009) were simply implausible. It was clear to the Tribunal that the Second Respondent was an unreliable witness whose evidence should only be accepted when corroborated by other, independent evidence.

87. **Allegation 1.1: They caused or permitted non-solicitor third parties to have an inappropriate degree of control and influence over the activities of Wolstenholmes LLP ("the Firm") contrary to Rules 1.03 and 1.04 of the Solicitors' Code of Conduct 2007.**

87.1 This allegation was made against all the Respondents. It was admitted by the Third and Fourth Respondents, in respect of the periods for which they were members of the Firm, and was denied by the Second, Fifth and Sixth Respondents. The factual background to the allegation is set out at paragraphs 53 to 55 above.

87.2 The Tribunal determined that in order to prove this allegation against a Respondent the Applicant had to establish not only that the Respondent knew enough of the role

and influence of WS, MC and MK but also that that Respondent had the authority to prevent such control and influence. A solicitor in the Firm who did not have the power to prevent an inappropriate degree of control and influence could not be said to have "caused or permitted" the third parties to act as they did. The Tribunal was satisfied that during their respective periods of membership, each Respondent was in a position in which they had the capacity to "cause or permit" the third parties to exercise inappropriate control and influence. As members, each had a responsibility to ensure that the Firm was appropriately managed. Whilst further details will be set out in relation to each Respondent in turn, the Tribunal was satisfied that each of the Second to Fifth Respondents, as members of the Firm at various relevant times, permitted WS, MC and MK to act as they did. The position of the Second Respondent prior to his membership of the Firm and that of the Sixth Respondent, who was never a member of the Firm, were also considered. The findings set out at paragraph 85 concerning the background to the Firm and the roles of the various third parties are to be read as incorporated into the findings in relation to this allegation.

Second Respondent

87.3 There was no doubt that the Second Respondent was a member of the Firm from 1 September 2009 and on his own account he was the Managing Partner from that date. The terms on which the First Respondent had apparently transferred his interest to the Second Respondent, with the former retaining a beneficial interest, did not detract from the fact that the Second Respondent had been a member of the Firm at all relevant times on and after 1 September 2009. Although the Fifth Respondent had indicated in his evidence that he was surprised to learn of the Second Respondent's appointment as Managing Partner, as the Second Respondent had not been a member until that point, all of the Respondents confirmed that they understood the Second Respondent was the Managing Partner from (at the latest) 1 September 2009. The Sixth Respondent, in her Defence prepared for use in separate court proceedings and dated 15 July 2010, had supported the First Respondent's contention that the Second Respondent had been managing the Firm from 31 January 2009. Under cross-examination, her position was that she had been relying on information given to her by the First Respondent and that she had not checked the dates stated in the Defence. In short, her evidence in relation to the Second Respondent in the course of this hearing was that he had not become the Managing Partner until September 2009.

87.4 In the light of the differing information about when the Second Respondent assumed some control of the Firm the Tribunal had to consider carefully what his role had been and the history of his involvement with the Firm. The Tribunal also had to consider carefully the Second Respondent's case and evidence, which were to the effect that he did not know or appreciate that unqualified third parties had any management role in the Firm and so he could not have "caused or permitted" such control. The Second Respondent maintained in his submissions and evidence that he believed that WS, MC and others were advising the Firm in a consultancy role and that their role was proper and normal.

87.5 There was no dispute that the Second Respondent had been involved in discussions about a possible purchase of the Firm in the autumn of 2008, as set out at paragraph 85.17 above. The Second Respondent's evidence was that he had first met the First Respondent in or about late 2007 in connection with some litigation being conducted

by Mr RM of the Firm. The Second Respondent told the Tribunal that his best recollection was that in late June or early July 2008 the First Respondent contacted him about a possible sale of the business and there was further contact in September 2008. The "go-between" in the discussions was a Mr AM. The Second Respondent told the Tribunal that at the same time he was also looking to purchase the business of FD solicitors; in his witness statement at paragraph 11 he explained that he established his own firm, AIM Legal Limited with another in 2007. From June 2008 he had acted as a consultant solicitor to GB Solicitors then in November 2008 GB was acquired by H Solicitors, which in turn acquired FD. The Second Respondent told the Tribunal that he became a partner in H Solicitors and formally left AIM Legal Limited. The Second Respondent stated at paragraph 11(v) of his statement that he wanted to concentrate on commercial litigation work and left H Solicitors on 31 January 2009 as the other partners worked in criminal law.

87.6 The Second Respondent told the Tribunal that about that time i.e. late January 2009 the First Respondent approached him to ask him to establish a personal injury department for the Firm. The Second Respondent told the Tribunal that he was interviewed by WS, which was the first time he had met WS, and that this interview took place in about the second week of February 2009. It was put to the Second Respondent in cross-examination that the fact WS interviewed the Second Respondent for a position indicated he was in a position of influence. The Second Respondent denied this, but went on to say that WS was introduced to him as a business consultant whose role was to drive the Firm forward and that the point of the interview was to find out how the Second Respondent would interact with him. This was inconsistent with the Second Respondent's assertion that WS was not known by him to be in a position of influence or control. It also appeared to the Tribunal to be a somewhat unusual position that someone who a few months earlier had been a potential owner of the business was being approached to work as an employed consultant solicitor, to set up a department which was not within that solicitor's field of expertise; indeed, it appeared from the evidence that the Second Respondent had no direct experience of personal injury work and, on his own evidence as at January 2009 he had intended to concentrate on commercial litigation work. The Tribunal noted that the Second Respondent's assertion that he first met WS in February 2009 was inconsistent with certain statements in the Brazilian letter, set out at paragraph 86.7 above.

87.7 The Tribunal noted that in evidence the Second Respondent acknowledged that he had accompanied WS to a meeting with the trustee in bankruptcy on 17 June 2009 and indeed that he had written the date of the meeting on the first page of the statement which was taken at that meeting. This was just two days before the date of the Brazilian letter. The Second Respondent told the Tribunal that he had played no active part in the meeting and had not taken in much of what was said and was not acting for WS in the bankruptcy matter. The Tribunal noted that the statement taken at the meeting did not deal in any respect with the partnership with Mr IH but that it contained the specific statements: "I am currently working as a self employed business consultant and I have been in this role for approximately 3 months. My earnings have varied and I believe I have earned between £500 – 700 per calendar month. This is my only income to date". Given that the Second Respondent had been interviewed by WS in February 2009, it would have been clear that WS's statement was inaccurate as to the length of time he had been working at the Firm. Further, the

Tribunal noted that in July 2009 WS was paid a consultancy fee of £5,000 and the Second Respondent told the Tribunal in evidence that at about the same time the First Respondent indicated to him that WS and MC should be paid £5,000 per month each i.e. at a rate of about £60,000 per annum each. The Tribunal noted that whilst the Second Respondent appeared to accept that £60,000 per annum would be a reasonable figure to pay WS, he had not queried with WS his statement to the trustee in bankruptcy that he was paid £500-700 per month. Further, the Tribunal found it unusual that the Second Respondent had accompanied WS to the meeting on 17 June 2009 if he had not known WS for very long, particularly where the Second Respondent on his own evidence knew nothing of bankruptcy law and where he was not instructed by WS to give legal advice.

87.8 The Tribunal noted what the Second Respondent stated with regard to his understanding of the role of WS, MC and others and the contact he had with them. The Second Respondent's evidence was that his diary for 2009 had gone missing, probably in the course of the intervention, which was his explanation for not being able to be sure of the dates of certain events. The Second Respondent told the Tribunal that he joined the Firm towards the end of February 2009. He denied the account contained in the Sixth Respondent's Defence to certain High Court proceedings that he had been managing the Firm from the beginning of February 2009. The Tribunal noted the Second Respondent's oral evidence that he had been responsible for establishing the Birmingham office, presumably from about March 2009 onwards, whereas an email of 13 February 2009 (referred to at paragraph 85.18 above) appeared to show that the office existed as at that date. The Tribunal noted that in an email to the SRA's regulatory investigations team dated 22 September 2009 the Second Respondent stated that the Birmingham office was opened in April 2009. The Second Respondent's oral evidence was that he worked mainly in the Birmingham office throughout March to May 2009 then worked from the Heald Green office from Monday to Wednesday and in Birmingham on Thursday and Friday each week and worked from Heald Green from July 2009. There were some inconsistencies in the evidence surrounding the establishment of the Birmingham office; the timing was made more difficult to establish as the Firm did not appear to have notified the SRA of this office until the PSU visit in September 2009. The Second Respondent told the Tribunal that WS would work in the "lounge" area of 1 Victoria Square, being a communal area and not part of the Firm's office; WS would be there about 2 or 3 times per week, usually with MC (whom the Second Respondent said he first met in March 2009) and usually on Mondays, Wednesdays and sometimes Fridays. The Second Respondent told the Tribunal that WS and MC would hold business meetings in the lounge and would look at spreadsheets of WS's own devising, concerning the trajectory of profitability of files. The Second Respondent denied that any client confidential information had been included on those spreadsheets and told the Tribunal that they contained financial modelling information, provided to WS on the authority of the First Respondent. As set out at paragraph 85.13 above, the Second Respondent denied that WS or MC had an office or desk at Birmingham and he stated that the phone number given on the staff contact list would not have been effective to reach them.

87.9 The Second Respondent's evidence to the Tribunal was that he was the head of the litigation and matrimonial department as at about June 2009 but did not have a wider management role. He told the Tribunal that his role in Birmingham was to supervise

the running of the personal injury files but he had no role in generating or supervising the sources of work or marketing and that he did not know if any referral fees were paid, e.g. to OSCS. The Second Respondent acknowledged in evidence that the Firm's personal injury caseload grew from about 75 cases in February/March 2009 to 700-800 by July 2009. The Second Respondent was aware that Mr IH was an expert in "buying in" cases, and by June 2009 was aware of the business connection between Mr IH and WS. He told the Tribunal that most work was generated through pay per click internet advertising and that most personal injury work was channelled through a Miss B in the Heald Green office. The Second Respondent told the Tribunal that until he became Managing Partner on 1 September 2009 he had no role in supervising the marketing operation and campaigns undertaken by Mr BB. The Tribunal found that the workload of the Firm in personal injury increased about ten-fold in the first five months in which the Second Respondent was apparently managing the department, through a variety of marketing techniques and the introduction of work via OSCS. As the solicitor ostensibly in charge of the personal injury department, the Second Respondent should have understood the marketing methods being used and whether or not referral fees were being paid; not to do so would be an abdication of his duties as a solicitor. For reasons set out in paragraph 87.10, the Tribunal did not accept that the Second Respondent knew as little as he claimed.

87.10 The Second Respondent told the Tribunal that he was in discussions with the First Respondent from about June or July 2009 in connection with becoming the Managing Partner of the Firm. In the course of those discussions, for example, he had established that WS and MC expected to be paid £60,000 per annum each. The Tribunal also noted the Second Respondent's role in "Addison Reed Solicitors Limited", in particular that he was appointed as a director of that company on 12 August 2009. The Second Respondent told the Tribunal that in the summer of 2009 the First Respondent had discussed with him the PII premiums for the Firm which were likely to be £15-20,000 per month, partly as a result of claims arising from the conduct of a former employee of Wolstenholmes. The Second Respondent had shared with the First Respondent his knowledge of the practice undertaken by some firms of hiving off their bulk conveyancing arms into separate bodies. He told the Tribunal that the First Respondent had asked him to form a company to undertake the personal injury work; in the High Court proceedings the First Respondent had indicated that this idea had been generated by the Second Respondent. The Second Respondent told the Tribunal that a) the company never traded and b) that he had been a nominee director, for the First Respondent. The Tribunal was satisfied on the evidence presented that the Second Respondent's role in the formation of Addison Reed Solicitors Limited showed that he played an important role in the Firm prior to becoming the Managing Partner. There was no clear reason why the Second Respondent should have been a nominee director; if the First Respondent was in control of the Firm at that point, as the Second Respondent asserted, there was no reason he should not have been the director of Addison Reed Solicitors Limited. From at least June/July 2009 the Second Respondent was clearly involved in the Firm in a significant role and this was clearly shown by his establishment of the company, even if it was then decided not to trade through that company. Further, the Second Respondent had been in charge of the personal injury department during a period of massive growth and must have played a significant part in that expansion and managing the work of the department.

87.11 Further, the Tribunal noted that on the Second Respondent's own evidence he had taken responsibility for dealing with a number of professional indemnity claims against the Firm from the Sixth Respondent by about late March/early April 2009. This task in itself went beyond the usual role to be expected of a recently engaged employed consultant solicitor. It was not surprising that, as the Second Respondent said in evidence, a number of the secretaries assumed he was a partner or otherwise held a senior position; indeed, this appeared to be one of the several explanations the Second Respondent had given for his description in two letters in May/June 2009 as a partner. The Second Respondent had been a potential purchaser of the Firm as at the autumn of 2008 and it appeared to the Tribunal highly unlikely that he would have taken a position at the Firm in early 2009 simply as an employed solicitor without some realistic prospect of advancement and influence in the Firm. Whilst the Sixth Respondent had resiled from the position she had set out in the High Court proceedings (to the effect that the Second Respondent had been managing the Firm from about February 2009), the Tribunal was not able to find her evidence reliable, for reasons set out below. Whilst the Tribunal could not put a definite date on the point from which the Second Respondent had had a controlling or managing influence (whether shared or not) or responsibility in the Firm, it appeared to the Tribunal highly likely that the Second Respondent had such a role from about February 2009 and in any case that he had that role beyond any reasonable doubt by about June/July 2009. Accordingly, the Tribunal was satisfied that the Second Respondent was in a position to be able to "cause or permit" the third parties to exercise influence and control in the Firm from at least that point. He was at least by then a de facto member, or "shadow partner" if not a member or partner in name.

87.12 The Tribunal went on to consider whether the Second Respondent knew of the true extent of the role of WS, MC, MK and others, this being a necessary ingredient of the allegation.

87.13 The Tribunal noted that, on his own evidence, the Second Respondent must have been aware from early in 2009 that WS had an important role in relation to the Firm, given that WS carried out the interview in February 2009 and that part of the point of the interview was to see how the Second Respondent would interact with WS – see paragraph 87.6. Further, again on his own account, the Second Respondent knew that: WS had been involved in setting up the Birmingham office (from which premises he worked 2 or 3 days per week); WS was receiving information on the Firm's finances and workload (paragraph 87.8); the Firm expanded enormously during 2009 with the involvement of WS, MC, MK and others. The staff list which appeared to relate to the period June 2009 referred to WS and MC as "management". The Second Respondent had told the Tribunal that there had been a number of versions of the staff lists and he had not necessarily seen this version. Nevertheless, the fact that this document came into existence suggested that within the Firm it was known that WS and MC exercised management functions. It was simply incredible that the Second Respondent would not have been aware of the general and widespread perception by staff of the influence of the third parties.

87.14 As early as February 2009 WS was authorising payments and in the period from July 2009 it was clear he authorised a number of payments (as set out in paragraph 85.8 above), including round sum transfers from client to office account. In June and July 2009 MC had authorised an expenses claim and purchase of computer equipment –

paragraph 85.11 above. Also in about June 2009 the Third Respondent had liaised with WS concerning her working hours and in or before May 2009 WS had interviewed the Fourth Respondent for his position in the Firm. Whilst the Second Respondent maintained that he was not copied into any of the relevant emails and so did not know what WS and/or MC were doing, the Tribunal found it implausible and incredible on his part that a key member of staff such as the Second Respondent would not know that employees of the Firm were deferring to WS and MC; in particular, the Tribunal noted that on 5 August 2009 Ms KB, a solicitor in the litigation and family team of which the Second Respondent was head sought WS's authorisation in relation to CPD (paragraph 85.8). On 20 August 2009 the Second Respondent had emailed a client, M Estates Ltd, with a draft Defence in a matter in which he had been instructed. That email, with its attachment, was copied to WS. The Second Respondent told the Tribunal that WS had been copied in as WS had a close personal relationship with the directors/shareholders of M Estates Ltd. The Tribunal considered this was an unusual reason to give for sending an email to someone who was not a client. In all of the circumstances set out above, it was not credible that the Second Respondent had been unaware of the influence of WS and others.

87.15 The Tribunal further noted that, on his own evidence, from June/July 2009 the Second Respondent was engaged in discussions with the First Respondent about becoming Managing Partner of the Firm and in the course of those discussions became aware that WS and MC would expect payments of about £60,000 per annum. Any due diligence in relation to the Firm before becoming a member/Managing Partner would have shown the substantial payments made to WS, MC, MK and others throughout 2009 – see in particular paragraphs 55 and 85.11 above. The Tribunal could not be sure, but considered it highly probable, that the Second Respondent did not undertake any due diligence because he already understood the nature of the Firm and the role of WS and the others. The Tribunal was, however, sure that in the period prior to becoming a member/the Managing Partner the Second Respondent knew enough of the role and influence of WS, MC and MK to be aware that they were continuing to exercise a degree of influence and control which was inappropriate; in particular, they were the driving force behind the massive expansion of the Firm.

87.16 Further on the Second Respondent's own case – and this evidence was supported by other Respondents – he was the Managing Partner of the Firm from 1 September 2009 and hence should have been in control. In the period after he became Managing Partner, the Tribunal noted in particular the following matters:

- On 6 September 2009 the First Respondent sent an email to WS, set out at paragraph 85.20 above, asking if the Sixth Respondent was to stay in post-completions or move to Practice Manager, to which WS replied,

  > "Brother, you need to take responsibility of the post-completions department even though you will not be present in the office..."

  On 9 September 2009 the Second Respondent engaged in an email exchange with WS concerning the salary of a newly recruited solicitor, Mr CH, complaining that the salary agreed by the First Respondent was too high

- Also on 9 September 2009 the Second Respondent emailed WS enquiring,

  "...has Nasir (the First Respondent) finished his handover now?"

  to which WS responded,

  "Friday will be his last day".

- Authority was sought from WS and MK by the Fourth Respondent to make refunds to clients on 11 September 2009;

- On 13 October 2009 MK sought payment of substantial sums in expenses by making a request to a Mr M Khan, not copied to any member of the Firm;

- On 6 December 2009 the Second Respondent emailed WS with regard to money which the Firm owed and on which the creditors were chasing for payment, asking,

  "...Are we now going to pay it otherwise we will receive a winding-up petition?..."

- On 11 December 2009 a Mr JA, who was apparently at that time head of the conveyancing department, sent an email to the conveyancing team at Birmingham to inform them that the office would continue until 23 December 2009 but thereafter there were no guarantees about the future after the Christmas break. The letter went on to say,

  "...Should you wish to speak to Sid (WS), he is available to clarify our position..."

- On 18 December 2009 a Mr JH emailed to the Second Respondent a draft email to the SRA which he indicated would be sent at 4.30pm if he did not hear back. The email, which was later sent as drafted, stated amongst other matters with regard to the Second Respondent:

  "...he's had to resolve a number of pre-existing problems. The first of which has been to remove two former advisors from the business. This has now happened."

87.17 It was clear on this evidence that WS and others continued to exercise power in the Firm after 1 September 2009. The Second Respondent indicated in evidence that the email of 11 December 2009 mentioned WS as he had recruited many of the staff and some of them were his friends and pointed out that the email also mentioned that there was the opportunity for staff to speak to him (the Second Respondent). However, the Tribunal found it highly unusual that staff would be referred to anyone other than a partner/member with any queries about the future of the Firm. he Tribunal also noted that WS, MC, MK and others had full access rights to the CRM system whereas some of the members did not. The Tribunal noted the Second Respondent's evidence in his witness statement that he did not have access to the accounts department as he did not have the security code necessary to gain access. The Second Respondent also gave

evidence that he did not have keys to the Heald Green office and it was clear he was not a signatory on client account; the Tribunal considered it extraordinary that the Managing Partner of a Firm would not have a set of keys, full access to all computer systems and the accounts department and client account signing rights. The Tribunal found it particularly compelling that the Second Respondent had worked in close proximity to WS at the Birmingham office and that after becoming Managing Partner, he sought confirmation from WS and not from the First Respondent that the First Respondent had completed the handover; this clearly indicated WS's controlling influence in the Firm and the Second Respondent's knowledge of and acquiescence in it.

87.18 Given the degree of control and influence being exercised by WS and others the allegation that the Second Respondent caused or permitted unqualified third parties to have an inappropriate degree of control and influence was clearly proved after 1 September 2009. Further, the Tribunal found that the Second Respondent had been in a position of influence and control within the Firm from at least the summer of 2009 and knew of the role of WS and others. He had sufficient knowledge and influence in the Firm that he could properly be found to have permitted WS and other unqualified persons to have exercised an inappropriate degree of control. The email of 18 December from Mr JH, which on its face indicated had been based on information provided by the Second Respondent, and which he did not correct, suggested that the Second Respondent had by 18 December 2009 removed WS and another; the fact was however that he had not. What this email illustrated was that the Second Respondent knew that he ought to remove WS and others from the Firm.

87.19 The Tribunal then considered whether or not the conduct dealt with above amounted to the breaches of the SCC alleged. Rule 1.03 SCC required solicitors not to allow their independence to be compromised and Rule 1.04 required solicitors to act in the best interests of each client. The Second Respondent had acknowledged in evidence that he was aware of his professional duties under the SCC. It was clear that in allowing key decisions to be made by non-solicitors, the Second Respondent had allowed his independence to be compromised. In particular, the Firm had made significant payments to the individuals who had been responsible for driving the expansion in the workload of the Firm, the members had allowed those individuals to authorise client to office account transfers and other matters which should have been the responsibility of the solicitor members of the Firm. The fact that by the end of October 2009 there was a book difference on client account of about £19 million and that a net payment of over £7 million had been required from the Compensation Fund showed beyond any doubt that the Firm had been very badly run, such that intervention was essential. The Tribunal was satisfied beyond reasonable doubt that this allegation had been proved against the Second Respondent both for the period after 1 September 2009 and for a prior period commencing at the latest in June/July 2009.

<u>Third Respondent</u>

87.20 The Third Respondent had admitted this allegation in relation to the period for which she was a member of the Firm, i.e. from 5 June 2009 until the intervention. The Tribunal was satisfied that, as a member, the Third Respondent was in a position that she could have exercised management control in the Firm and was therefore possible

to conclude that she had permitted WS, MC, MK and others to exercise an inappropriate degree of control.

87.21 The general circumstances in relation to the exercise of inappropriate influence by the third parties are set out at paragraph 85 above. It was clear that WS and others had exercised inappropriate control, including in particular giving instructions to the accounts department in the period July to September 2009 as set out at paragraph 85.8 above. The Third Respondent had liaised with WS concerning her working terms and conditions on 22 July 2009; the Tribunal noted that it was WS who had informed her of an increase in her salary. The Tribunal noted the basis of the Third Respondent's admission of this allegation, set out at paragraph 24 above. On the evidence presented it was clear that the Third Respondent knew that WS and others exercised considerable power in the Firm. Permitting non-solicitor third parties to exercise a significant degree of control of the Firm had, in all the circumstances, amounted to a breach of Rules 1.03 and 1.04 of the SCC. The Tribunal was satisfied to the required standard on the evidence, and on the admission, that this allegation had been proved against the Third Respondent for the period of her membership of the Firm.

Fourth Respondent

87.22 The Fourth Respondent had admitted this allegation in relation to the period for which he was a member of the Firm, i.e. between 21 August and 8 December 2009. The Tribunal was satisfied that, as a member of the Firm in that period, the Fourth Respondent was in a position where he could have exercised management control in the Firm and it was therefore possible to conclude that he had permitted WS, MC, MK and others to exercise an inappropriate degree of control.

87.23 The general circumstances in relation to the exercise of inappropriate influence by the third parties are set out at paragraphs 85, 87.14 and 87.16 above. A number of the instances in which WS had given instructions to the accounts department occurred whilst the Fourth Respondent was a member of the Firm. The Tribunal noted in particular that the Fourth Respondent had been interviewed by WS for his position at the Firm. It further found that on 11 September 2009 the Fourth Respondent had sent an email to WS, copied to MK, requesting permission to give refunds on 11 files; and in emails of 18 and 24 September, 4, 7 and 12 November 2009 there had been communications between the Fourth Respondent and WS which dealt with refunds, a complaint and other matters concerning the immigration department. The email exchange demonstrated that the role of WS went beyond a normal consultancy role and that the Fourth Respondent was aware of his influence. Permitting non-solicitor third parties to exercise a significant degree of control of the Firm had, in all the circumstances, amounted to a breach of Rules 1.03 and 1.04 of the SCC. The Tribunal was satisfied to the required standard on the evidence, and on the admission, that this allegation had been proved against the Fourth Respondent for the period of his membership of the Firm.

Fifth Respondent

87.24 This allegation was denied by the Fifth Respondent. The Applicant relied on the degree of control and influence over the Firm exercised by WS, MC, MK and others and the fact that for the period 5 June to 5 October 2009 the Fifth Respondent was a

member of the Firm and so was in a position in which he could, and should have prevented that degree of control and influence. As set out above, the Tribunal found it proved beyond reasonable doubt that inappropriate control and influence had been exercised by non-solicitor third parties. A number of those findings relate specifically to the period for which the Fifth Respondent was a member of the Firm, for example the instructions given by WS to the accounts department and other authorisations he gave (paragraph 85.8 above), the authorisation by MC of expenses including some incurred by the Sixth Respondent (paragraph 85.12) and the matters set out at paragraphs 87.14 and 87.16 above.

87.24 The Fifth Respondent gave oral evidence and made oral submissions, and these were considered carefully by the Tribunal. The Fifth Respondent told the Tribunal of his understanding that WS, MC and others were business consultants to the Firm, acting under the authority of the First Respondent; the Fifth Respondent told the Tribunal he believed the First Respondent was managing the Firm until September 2009, at which point he learned that the Second Respondent had become the Managing Partner. The Fifth Respondent told the Tribunal that he was unaware of the degree of influence being exercised by the third parties; for example, he was unaware of the instructions being given by the third parties, did not have any contact with them concerning financial matters and was not given any instructions by them. His evidence was that he was not involved in the management of the Firm, for example in relation to financial management but ran his own caseload (in commercial property) with no problems or complaints. The volume of work he carried out during 2009 did not increase substantially, as happened with other types of work, since internet marketing campaigns were not appropriate ways to secure commercial property work. The Fifth Respondent told the Tribunal that the systems of management and control in place when he became a member were effective and so he did not need to overhaul those systems. He had had no doubt that the accounts systems were being operated properly and he deferred to the First Respondent, who maintained that he was running the Firm. The Fifth Respondent told the Tribunal that he had little contact with or knowledge of the Manchester or Birmingham offices. He further gave evidence that whilst he had had meetings with WS until about June 2009 about billing and efficiency he did not see WS thereafter and had was not asked to supply any marketing information to him after that time. The Fifth Respondent's evidence was that his knowledge of WS, MC and others tallied with them being advisers and consultants to the First Respondent and, later, the Second Respondent.

87.25 The Tribunal considered the documentary evidence, noting that the deletion of the email accounts of WS, MC, the First Respondent and others meant that the documentation was not complete. It further took account of the comments made by the Fifth Respondent in the course of an interview with the SRA investigation officers on 23 February 2010.

87.26 The Tribunal noted an email exchange concerning a Mr KK (also known as Mr ZL) which involved the Fifth Respondent**.** On 3 September 2009 the Fifth Respondent emailed the First Respondent, copying the email to the Third and Fourth Respondents, whom the Fifth Respondent understood to be the other members of the Firm at that time, raising a question concerning the position in the Firm of Mr KK/ZL which noted, "I am being told negative things about our colleague and the history of KK..." It appeared from the documents that that email was forwarded to WS by the First

Respondent and the same day WS emailed the Fifth Respondent, copied it to the First Respondent. The email read,

> "Salaam Bilal.
>
> Which staff members are asking questions?
>
> What kind of questions are they asking?"

The Fifth Respondent replied and copied his email to the First Respondent, in an email which read,

> "Sid,
>
> K(B) has taken a couple of calls regarding K(K) and has expressed concern. These are real concerns that need to be dealt with can you clarify the position".

WS responded.

> "Will be in Heald Green next week on Monday so will discuss further.
> In the meantime, just tell K(B) that he fulfils the role of a sales advisor on a consultancy basis."

The Fifth Respondent copied that email to the First Respondent for information.

87.27 The Fifth Respondent told the Tribunal under cross examination that this email trail showed that he had raised an issue with the First Respondent who had delegated dealing with it to WS. The Tribunal accepted that the exchange did not show that the Fifth Respondent had deferred to WS.

87.28 The Tribunal considered a further email exchange from 27 August to 6 September 2009 i.e. immediately prior to the PSU visit took place. On 27 August, the Fifth Respondent emailed the First Respondent and copied the email to his fellow members, the Third and Fourth Respondents, raising a concern that the client care letters being sent out by the marketing team had not been amended in accordance with instructions and stating:

> "I asked for a copy of the current client care letter to be sent to me and I was sent the attachment. The amendments that MK was asked to effect weeks ago have not been implemented.
>
> Surely this cannot continue. Marketing must not send out any further letters until this amendment is effected."

The First Respondent forwarded that email to MK, who responded to the First Respondent on 27 August:

> "We are working on it on the new system, as we no longer have our previous developer. Let (the Fifth Respondent) know he can pay everyone's wages if we stop marketing".

The First Respondent replied, also on 27 August, concerning some amendments and referring to the imminent PSU visit. On 6 September MK emailed the First Respondent and copied the email to WS and the Fifth Respondent concerning an amendment to the client care letters. The Fifth Respondent responded to MK and the First Respondent, copying his email to the Second and Third Respondents, stating:

> "The members of the firm are penalised if there is a regulatory breach so you must take requests of this nature seriously. There is no need to make comments like the ones you have made below they are very unprofessional. In future, I suggest any requests I make (are) responded to in a timely fashion, if you have a problem with this please let me know. This point was first raised over 4 months ago, you told me at one point this matter had been resolved however through my own investigations I discovered this was not the case. The marketing department must take compliance seriously.
>
> Marketing are the first point of call you are sending client care letters as well as taking payments. I am aware that most of your team have had no training at all and that there is a high turnover of employees in your department. For these reasons I would strongly suggest the marketing department undertakes regular training on client care and money laundering."

87.29 The Tribunal found that this email exchange indicated that the Fifth Respondent was trying to ensure regulatory compliance, although it appeared that since the issue of the client care letters had been raised several months before there had been no effective action. Further, the Tribunal found that the Fifth Respondent was aware that the marketing department, whose staff appeared to be unqualified and untrained, was sending out client care letters. The Fifth Respondent told the Tribunal that the marketing department was being supervised by the First and then the Second Respondent but could not say that he knew this to be the case. Indeed, the Tribunal noted that in an email of 4 September 2009 to the First Respondent the Fifth Respondent said,

> "I strongly suggest a solicitor is allocated the role of supervising the marketing department".

In the same email, which was copied to the Second, Third and Fourth Respondents, the Fifth Respondent raised concerns about SDLT forms being sent to the Birmingham office rather than being completed at the Heald Green office. It further stated, in relation to the failure to implement changes to the client care letter,

> "I have been lied to on a number of occasions and told the changes have been implemented".

The Fifth Respondent could not confirm to the Tribunal who had lied to him.

87.30 The Tribunal found that the emails referred to above indicated that the Fifth Respondent was aware of certain problems within the Firm. He was also aware that the marketing department, which he knew was being run by MK, was not being supervised properly in particular since changes required to the client care letter had not been implemented. The Tribunal found on the basis of these emails that the Fifth

Respondent had a degree of knowledge about the role of the non-solicitor third parties.

87.31 The Tribunal also noted the terms in which the Fifth Respondent had described WS, MC and others in the course of his interview by the SRA. The Tribunal noted the Fifth Respondent's contention that the Applicant had selectively quoted from that interview and had taken certain comments out of context so the Tribunal took particular care to read all of the relevant parts of the transcript fully and to consider the Fifth Respondent's evidence in relation to the interview.

87.32 The Tribunal found that in the course of giving the interview the Fifth Respondent had sought to be helpful and had given information to the SRA in good faith. The Tribunal further noted that the Fifth Respondent accepted that the interview transcript was an accurate record of what was said. The key statements made by the Fifth Respondent in the interview, relevant to this allegation were, in relation to WS, MC and MK:

> "They were basically management in terms of figures and business strategy, that kind of thing. Implementing – what they used to do was basically make us more target-driven and more efficient as a practice"

and in relation to who spoke to staff, WS, MC and/or the First Respondent,

> "It was – it was all of them on a collective.
>
> No-one operated independently, they were – but (the First Respondent) was calling the shots. (The First Respondent) was the – you know the – you know without doubt the chap who was the chief executive".

87.33 The Tribunal noted that the Fifth Respondent had maintained in his evidence that these statements showed that he understood WS and MC to be working with and for the First Respondent, for example in making the Firm more efficient. However, for the reasons set out at paragraph 85 above, the Tribunal was satisfied that WS, MC and others in fact exercised an inappropriate degree of control of the Firm. Further, the Tribunal found that the Fifth Respondent knew that WS was exercising managerial influence. As a member of the Firm for a 4 month period in 2009 he had permitted the inappropriate control to continue. However, the Fifth Respondent's involvement was minimal. The Tribunal found that he had expressed his concerns to his fellow members, including the First Respondent and left it to the First Respondent in particular to resolve those issues. There was no direct evidence showing that the Fifth Respondent deferred to WS or the others. However, the Fifth Respondent had not taken any steps to control WS or the others; it was not enough for a member of the Firm to express concerns and do nothing more.

87.34 Permitting non-solicitor third parties to exercise a significant degree of control of the Firm had, in all the circumstances, amounted to a breach of Rules 1.03 and 1.04 of the SCC. The Tribunal was satisfied to the required standard on the evidence that this allegation had been proved against the Fifth Respondent for the period of his membership of the Firm.

Sixth Respondent

87.35 This allegation was denied by the Sixth Respondent. The Applicant relied on the matters demonstrating the degree of influence exercised by WS, MC, MK and others, in relation to which the Tribunal's findings are set out at paragraph 85 above. The Applicant also asserted that the Sixth Respondent was a person who was capable of "causing or permitting" that influence to be exercised. As the Sixth Respondent had not been a member of the Firm at any point, the Applicant's case was predicated on her position as "Practice Manager" which, it was asserted, in this Firm indicated a degree of management responsibility. The Sixth Respondent's position was that although she had at some point been given that title, and also the title of head of the post-completions department, she had not had a real management role or responsibility. The Tribunal noted that the Sixth Respondent was and remained the First Respondent's wife, under Sharia law, and that together they had three children born between 2006 and January 2013. The Tribunal could understand the suspicion raised by the Applicant that the Sixth Respondent would have had a degree of control and influence in the Firm by reason of her relationship with the First Respondent. The Tribunal considered the evidence presented. It could not be the case that simply because the Sixth Respondent was married to the First Respondent she had a particular role or knowledge; specific evidence would be required to prove the Sixth Respondent's role and knowledge.

87.36 The Tribunal did not find it proved to the required standard that the Sixth Respondent was aware that an expenses claim she made in June 2009 was approved by MC. Nor was it proved that she knew of the email exchange on 6 September 2009 in which the First Respondent asked WS if he was leaving the Sixth Respondent in post-completions or moving her to being the Practice Manager. However, she nonetheless knew of the general influence of WS and the others. She had been aware of WS and MC from about October/November 2008 when they began to hold meetings with staff about billing targets but told the Tribunal that such meetings also involved the First Respondent and the others who were at that point members of the Firm. The Tribunal noted a number of emails including: an email from WS to the Sixth Respondent dated 30 November 2008 concerning implementation of certain suggestions made in an email by the office receptionist (see paragraph 85.4); an email concerning utility bills from WS; and an email from the Sixth Respondent to WS concerning a tax bill. The Tribunal was satisfied that in the light of these emails and the Sixth Respondent's own evidence about the meetings conducted by WS, MC and others, she had known something of the role and influence of those individuals in the Firm. Given that the accounts staff and various solicitors in the Firm were seeking permissions from WS and others, the Sixth Respondent knew that they had a role which went beyond that of business consultants; it would not be possible to work in an environment where those heading up business development and work generation were expanding the workload of the Firm enormously without having knowledge of their influence. However, the Tribunal had to consider whether the Sixth Respondent was in a position to control that influence at all.

87.37 The Tribunal noted that the allegation that the Sixth Respondent had been in a managerial role was based on emails which showed her involvement in matters such as the storage of the Firm's papers by a company called Dataspace, in particular some emails around 5 November 2009 and the evidence of a Mr B of Dataspace in High

Court proceedings to the effect that he had dealt with the Sixth Respondent as well as the First Respondent**.** The staff contact list of about June 2009 described the Sixth Respondent as "Department Head/Associate Solicitor". There were some further emails e.g. concerning utility bills and client care letters, such as that to a Mr W dated 29 May 2009 which indicated that the Sixth Respondent was head of the conveyancing department. The Sixth Respondent was a signatory on the Firm's client account. The Applicant also referred to the statement made by the First Respondent to the investigators on 9 December where, in answer to a question about whether he had any interest in the Firm replied, "No, but [my] wife is [the] practice manager".

87.38 The Tribunal also considered two documents prepared by the Sixth Respondent in or about September 2008. Both documents appeared to relate to the Sixth Respondent's application for a job with Rochdale Metropolitan Borough Council ("Rochdale") as Assistant Borough Solicitor. The application form stated, amongst other matters:

- "I manage a team of 30 including solicitors, paralegals and support staff..."
- "...I have been entrusted with the responsibility of managing the firm's budget as I have been responsible for recruiting staff from partners down to office assistants and have been responsible for organising staff training requirements and ensuring all relevant employees meet their CPD requirements"
- "I have managed the integration of a Case and Matter Management System thus improving business continuity, financial control, case turnaround, client service and the firm's reputation. I have experience in advising staff in relation to standards issues as I am at the forefront of the staff meeting held on Monday mornings whereby I ensure that SRA requirements are followed stringently by all staff members".

The CV stated, amongst other matters, that her role from 2004 (to 2008) was "Associate Solicitor and Practice Manager" and that her experience included:

- "Running a branch office and managing a team of 30 junior solicitors paralegals and support staff extremely successfully as well as ensuring the smooth day to day running of the practice"
- "Managing a personal caseload of 300 files at any one time"
- "Managing the office budget in terms of training expenses and stationary ordering and decreasing office expenditure by 50%"

87.39 The Tribunal heard from the Sixth Respondent that the application form and CV were exaggerations and that her true role in the Firm was less than described in those documents. The application form and CV undermined the Sixth Respondent's credibility, as it was clear that she now resiled in significant respects from the description of the duties set out in those documents. However, none of the Tribunal's findings concerning the Sixth Respondent were dependent on making a specific finding about her credibility. In relation to this allegation the Tribunal found that even if the Sixth Respondent's duties were as described above, she did not have enough power to "permit" the actions of the third parties. Unlike the Second

Respondent, the Sixth Respondent was not a de facto partner. The fact that she was a signatory to cheques was relevant to other allegations, but was not in itself significant with regard to this allegation; the Sixth Respondent had told the Tribunal in evidence that, for convenience, she had been a signatory whilst working at a branch office and that had continued when she had worked from the Heald Green office. The emails concerning storage and the like showed that the Sixth Respondent carried out various administrative tasks but were not sufficient to show that she exercised any real influence over the Firm.

87.40 The Sixth Respondent's evidence to the Tribunal was that her role in the Firm had been changed a number of times, without her involvement in those decisions; it was submitted on her behalf that she was a "dogsbody" who was assigned to carry out various tasks. The Sixth Respondent's evidence that her role in the Firm was limited was supported by the other Respondents, none of whom appeared to have considered that she was a key person in the Firm. Indeed, the Sixth Respondent told the Tribunal that her reason for making the job application referred to at paragraph 87.38 above was that the First Respondent had told her that he was thinking of selling the Firm and she may be made redundant. This confirmed that she had very little power in the Firm. The SRA's investigation officer, Mr Shields, in oral evidence confirmed that during the investigation, no-one suggested to him that the Sixth Respondent was an important person to whom he should speak.

87.41 The Tribunal determined that, for the reasons set out above, the Sixth Respondent knew of the influence of WS and others, but was not in a position to control that influence and so could not have "caused or permitted" the exercise of that influence; accordingly, the allegation was not proved against the Sixth Respondent to the required standard.

88. **Allegation 1.2: They failed to act in the best interests of their clients contrary to rule 1.04 of the Solicitors' Code of Conduct 2007 and behaved in a way that was likely to diminish the trust placed in them or the legal profession contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007.**

88.1 This allegation was withdrawn against the Third and Fourth Respondents and was denied by the Second and Fifth Respondents; the Sixth Respondent made a limited admission. The factual background to this allegation is set out at paragraphs 53 to 55 and 56 to 64 above.

88.2 It was the Applicant's case that the source of the Firm's failure to act in the best interests of clients arose from the actions of WS, MC and others in controlling the Firm. The use of OSCS, a company connected with WS and Mr IH, to generate work and the establishment and expansion of the Birmingham office with little supervision by solicitors and the marketing operation run from the Manchester office, again with little solicitor involvement had not been in the interests of clients. On a number of occasions cheques which had been requisitioned to pay SDLT were made out to OSCS instead. It was further alleged that the Firm's conveyancing department was "just a mess" and not meeting the interests of clients. The Applicant called as witnesses three clients affected by events in the conveyancing department and the intervention into the Firm. The payment of SDLT was outsourced to Rooney and Co, without clients' authority. Personal injury files had been transferred to other firms

without authority. The Firm's client account cheque book was stolen in or about December 2009 and it was alleged that the Firm had failed to keep it secure. There was no back-up to the Firm's IT systems such that, in the course of the SRA investigation, most significant information about clients and their matters was deleted/removed and not recovered. Further, the Firm was not able to account to clients for their money. As at January 2009 the Firm's client bank account balance and liabilities to clients were about balanced, but by October 2009 there was a book shortage of more than £19 million and after the intervention, as at the date of the hearing, over £7 million had been paid from the Compensation Fund, being the difference between the claims and the amount recovered from client account.

88.3 The Applicant's evidence in support of the allegation was largely contained in the interim FIR and the final FIR, both of which were confirmed in evidence by Mr Shields and Mr Freeman. The Tribunal found that their oral evidence was measured, reasonable and credible and was appropriately supported by documents. The Tribunal also heard from Ms T2, Ms T1 and Ms M, three of many clients whose conveyancing transactions had been handled by the Firm. Again, the Tribunal found their evidence to be credible and measured, particularly given the personal distress each had suffered as a result of the Firm's conduct of their matters.

Second Respondent

88.4 The Second Respondent relied in his defence on the fact that he did not become a member/the Managing Partner until 1 September 2009 and that the PSU visit shortly after his appointment established that there were at that point substantial regulatory breaches and a back-log of incomplete registrations etc which he worked hard to rectify. The Second Respondent in his submissions used the analogy of an out of control lorry careering downhill and that when he became the driver he did not know that the brakes had been cut. He told the Tribunal that he did not know anything of OSCS, had not known of the round sum transfers and had relied on information given to him by Ms LM and the accounts department. The Second Respondent acknowledged in his witness statement that there were not enough fee-earners to do the work and that fee-earners were resigning in large numbers. He acknowledged in his submissions that he had not carried out proper enquiries before becoming the Managing Partner of the Firm. The Second Respondent also told the Tribunal that his commercial litigation work was well-run and was fully compliant with professional requirements.

88.5 The Tribunal had already determined that the Second Respondent's role in the Firm was significant before as well as after 1 September 2009. As a de facto member or partner and then as full managing partner of the Firm the Second Respondent had responsibilities to all of the clients of the Firm, not just those whose cases he handled within his department.

88.6 Whilst being cross-examined, the Second Respondent confirmed that he understood his duties as a solicitor under the SCC and SAR and in particular confirmed he knew of his duty to act in the best interests of clients and not behave in a way which would diminish the trust placed in him or the profession.

88.7 The Second Respondent denied in evidence that he knew anything of OSCS at the relevant time and told the Tribunal that the growth in the Firm's workload was linked to pay per click internet marketing. However it was clear that the Firm's workload was expanding enormously and was not being carried out or supervised adequately. For example, in connection with the personal injury department, which the Second Respondent told the Tribunal he set up and supervised, the number of cases increased from about 75 in March to 700-800 in about July 2009. However, the Tribunal noted that the staff list from about June 2009 listed only 5 names at the Birmingham office, being a trainee solicitor, someone described as "PI credit control" (whom the Second Respondent stated in evidence was a secretary who also undertook some credit control work), Mr IH, who was described as "marketing", and two PI paralegals. There was no mention of a supervising solicitor. In oral evidence, the Second Respondent told the Tribunal that there were two solicitors in the Birmingham office, Ms KN and another whose name he could not recall, but at the time he completed the PII proposal form he told the Tribunal there were no solicitors apart from himself in the personal injury department. The Tribunal was satisfied to the required standard that within the personal injury team there were inadequate staff to deal with the caseload and they were inadequately trained and supervised.

88.8 In any event, there was no doubt that the Firm's residential conveyancing department was in a state of chaos. The Tribunal heard the evidence of three clients of the Firm whose conveyancing transactions had been handled by the Firm.

88.9 Ms T2 told the Tribunal that she had contacted the Firm in August 2009 having learned of them through the internet and found their charges were competitive; she had received a quote for the sale of her property dated 28 August 2009. Thereafter, Ms T2 had instructed the Firm in relation to the proposed purchase of a property. The sale proceeded without incident and completed on 27 November 2009. On the advice of the conveyancer at the Firm Ms T2 left the net sale proceeds of over £167,000 with the Firm pending the purchase. Of that, £17,500 was released to the vendor's solicitors as the deposit on the purchase, leaving a little under £150,000 on the Firm's client account which was intended to go towards the purchase price, with completion scheduled for 22 December 2009. On 15 December 2009 Ms T2 received an email informing her that the Birmingham office, with which she was dealing, was to close on 18 December; her attempts to contact either the Birmingham or Heald Green offices were unsuccessful. Ms T2 told the Tribunal she had been very worried that her £150,000, being her life-savings, would be lost. Ms T2 had instructed other solicitors, who completed the purchase with the use of Ms T2's mother's savings. On 15 March 2010 Ms T2 had received compensation from the SRA of £150,063.62 (including interest).

88.10 Ms T1 told the Tribunal that she had contacted the Firm after carrying out an internet search for conveyancing solicitors. The Firm's website had appeared professional, the Firm appeared to have been established for nearly 200 years and it appeared that the Firm specialised in conveyancing; all appeared "above board" and the Firm's rates were competitive. Ms T1 received a quote in September 2009 for dealing with her proposed purchase of a property for £268,000 and instructed the Firm. Ms T1 began to have some concerns that what she was told by the Firm did not match what was being said by the vendor, with whom she was in contact. The conveyancer at the Firm told Ms T1 that it was proposed contracts would be exchanged in the week

commencing 7 December with completion on 14 December. Ms T1 sent the Firm £26,800, being the proposed deposit, on about 5 December 2009. On 8 December 2009 the completion statement showed that a further £50,322.63 was needed for completion and this figure was transferred by Ms T1's mother on 8 December. Together with a sum paid on account of costs, the Firm had received £77,422.63 from Ms T1/her mother. After the transfer had been made, Ms T1 had been unable to contact the Firm and had received an automated "out of office" reply to an email. Ms T1 had become concerned that her transaction would not complete and that she may have lost her money. On 16 December the conveyancer at the Firm told Ms T1 that the file had been transferred to Sterling Law; Ms T1 told the Tribunal she had not given her consent to such a transfer. Ms T1 had instructed another solicitor who was able to obtain the file. The purchase was completed as her parents were able to cash in various investments. In January 2010 the SRA had paid her compensation of £77,454.13 including interest.

88.11 Ms M told the Tribunal that in 2009 she decided to sell her property to her son and daughter-in-law and a price of £148,000 was agreed, which would be part-funded by a mortgage of £132,000. Ms M told the Tribunal that she carried out an internet search and found the Firm, whose prices she considered to be very good. Ms M told the Tribunal that she checked that the Firm was registered with the SRA and would not have gone ahead with instructing the Firm if it had not been registered. Ms M instructed the Firm in connection with the sale of her property and purchase of a new home at £209,000 in October 2009. It was important to Ms M that the sale transaction should complete by 31 December 2009 as after that date SDLT would be payable. On 18 December the sale completed; Ms M was informed that part of the proceeds had been used to redeem her existing mortgage but the balance, of over £88,000, could not be credited to her client account due to a timing issue. Ms M had no further contact from the Firm. On 4 January 2010 Ms M had learned that the Firm had been shut by the SRA and was very worried about what had happened to her £88,000. On 5 February 2010 the SRA paid Ms M compensation of over £88,300 and she was able to complete the purchase of her new home on 17 March 2010.

88.12 The Tribunal had no hesitation in accepting the evidence of the three clients, outlined above, which was credible and measured. The Tribunal recognised the great distress that the Firm's handling of their transactions and the subsequent intervention had caused to them. It was clear that the Firm's client account had been so badly run and recorded that the funds belonging to these clients could not be easily traced and that substantial payments from the Compensation Fund had been required. The Tribunal further recognised that they had heard from only three of the hundreds of clients who had been affected by the Firm's poor handling of conveyancing and the intervention. The Tribunal did not criticise the SRA for choosing to intervene when it did; the cash shortage shown in the interim FIR was such that it would have been irresponsible to allow the Firm to continue, putting yet further client funds at risk. The Tribunal was pleased to note that the SRA had investigated and made prompt payments from the Compensation Fund and so had mitigated the losses and distress of many clients, but that distress should not be understated. The Tribunal noted that moving house can be a stressful experience for most people, even when all goes as smoothly and professionally as possible; the additional worry caused by news of the closure of the Birmingham office, transfer of files to unknown firms and, in particular, concern that large sums of money had gone missing was substantial.

88.13 The Tribunal further found that in addition to the financial chaos in the conveyancing department, there was physical chaos as well. It heard that files were stacked up without being filed properly. The Tribunal noted that the Firm used three containers in the car-park to store various papers, and that the local council had complained about this. The Tribunal found that there had been a lack of proper supervision of the conveyancing and personal injury departments. It found on the basis of the Third Respondent's evidence, recorded in the FIR that the post-completions department was at one stage being run by Mr NA who, following a period of work experience had been taken on by the Firm in June 2009; by October 2009 he was undertaking post completion work and then became head of the department. The Tribunal also found that some work on payment of SDLT had been outsourced to Rooney & Co, without the permission of clients. On a number of occasions – further details of which are set out below – cheques which had been requisitioned in favour of HMRC to pay SDLT had instead been paid to OSCS. A number of personal injury files were transferred to another firm, without the authority of clients, at a time when the Second Respondent was in charge of the personal injury department and, indeed, was the Firm's Managing Partner. Also whilst he was Managing Partner the Firm's client account cheque book was either stolen or misused. Client information was not protected adequately or at all on the Firm's computer system, such that it was possible for one or more individuals – and the Tribunal did not have to make any findings about who was involved in this – to remove computer disks and delete almost all of the information which should properly have been stored. There was no data back-up system.

88.14 Each and every one of the findings of fact set out at paragraph 88.13, together with the specific findings in relation to conveyancing matters at paragraphs 88.9 to 88.12 above showed beyond any doubt a failure to act in the best interests of the Firm's clients.

88.15 Moreover, the collapse of the Firm in the circumstances in which this occurred proved there had been a failure to act in the best interests of clients. The Firm's client account had not balanced – indeed, it had not been reconciled after January 2009 – and a substantial shortfall had been shown. There had been a failure to complete client matters and the conveyancing department had been in a state of chaos, which escalated. Files had been transferred without authority to other firms. There had been a failure to institute a proper procedure for production of cheques. Improper round sum transfers had been made from client to office account totalling £314,000 during the summer of 2009. There had been a failure to secure the computer system and ensure it was backed-up. There had been a total failure of proper management such that the Compensation Fund had been required to pay out a net amount of over £7 million. The Tribunal noted that the Second Respondent had submitted and given evidence that he had tried to take various steps to put matters right. However, it was undoubtedly the case that throughout 2009 and whilst the Second Respondent was the Managing Partner the interests of clients were not served and the reputation of the profession was not protected. The damage caused to the profession was vividly demonstrated by the three clients from whom the Tribunal had heard, all of whom had matters of great importance to them and had suffered at the hands of the Firm. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent, as a de facto member, as a member and as Managing Partner had conducted himself in

such a way that clear breaches of Rules 1.04 and 1.06 were established. Accordingly, this allegation had been proved.

Third Respondent

88.16 This allegation was withdrawn against the Third Respondent.

Fourth Respondent

88.17 This allegation was withdrawn against the Fourth Respondent.

Fifth Respondent

88.18 The Tribunal had found, for reasons set out at paragraphs 88.4 to 88.15 above that the situation which pertained in the Firm for much of 2009, and in particular in the months prior to the intervention, were such that those responsible for the Firm must be in breach of Rules 1.04 and 1.06 of the SCC.

88.19 The Fifth Respondent's position and evidence, which the Tribunal accepted as true, was that he had confined himself to carrying out his own workload properly and providing a good service to his clients and he had not been involved in wider management in the Firm. The Fifth Respondent told the Tribunal that before he became a member there were provisions in place for effective management of the Firm and he had no reason to doubt the credibility of the people running the Firm. The Fifth Respondent told the Tribunal that the First Respondent was the Chief Executive and it was to him that he deferred. The Fifth Respondent told the Tribunal that he was regularly billing over £10,000 per month. His workload had not been affected by the internet marketing undertaken by the Firm in 2009. The Fifth Respondent also told the Tribunal that he had been surprised to learn that the Second Respondent had become the Managing Partner and that the First Respondent was stepping aside. He further told the Tribunal that he had been unaware of the PSU visit in September 2009.

88.20 The Tribunal noted that the Fifth Respondent was a member of the Firm from 5 June to 5 October 2009, a period of four months. It found that he had been present in the Firm for all but about 2 weeks during that period. The Tribunal noted that whilst Ms T2 and Ms T1 had instructed the Firm whilst the Fifth Respondent was a member, their transactions did not encounter any problems until after the Fifth Respondent ceased to be a member. The Tribunal accepted the Fifth Respondent's evidence that he had not been involved in management of the Firm; indeed, the fact he was unaware of the PSU visit suggested he had a very limited role in the eyes of the First and/or Second Respondent. Nevertheless, as a principal of the Firm in the period 5 June to 5 October 2009 the Fifth Respondent had responsibilities to all of the clients of the Firm, not just those whose cases he handled within his department. The Tribunal had no reason to doubt that the Fifth Respondent had conducted his own caseload appropriately and professionally and there were no specific allegations made concerning the interests of commercial property clients. It was significant that he closed his mind to what was happening elsewhere in the Firm, including the growing chaos and the black hole which was developing in the Firm's client account. As a principal of the Firm he could not confine himself to his own workload; failing to

involve himself in management when the Firm was clearly failing – something he would have realised if he had asked for and obtained any information about the Firm's finances or had observed the physical chaos at the Heald Green office - was in itself a failure to act in the best interests of the clients of the Firm and also amounted to a failure to protect the reputation of the profession. The Tribunal found the allegation proved against the Fifth Respondent, for the period for which he was a member of the Firm i.e. 5 June to 5 October 2009.

Sixth Respondent

88.21 The Sixth Respondent admitted this allegation insofar as it related to the drawing of cheques but not in other respects. The Sixth Respondent acknowledged that the Firm's procedures for drawing and signing cheques, which she had adopted, was inadequate and in signing cheques as she did she had failed to act in the best interests of clients and had behaved in a way which would damage the trust the public would place in her or the profession.

88.22 For the reasons set out at paragraphs 87.35 to 87.41 above, the Tribunal was not satisfied that the Sixth Respondent played a significant role in the management of the Firm. The Sixth Respondent had worked in the conveyancing department at various stages, and it appeared that at one point she was the head of the post-completions department which, on all the facts of the case was clearly in a state of chaos. However, the Tribunal was not satisfied on the evidence presented that she had had sufficient role in the management of the Firm or the department that she could be said to have been responsible for the failures of that department. For that reason, the Tribunal was not satisfied to the required standard that the various and significant defaults set out at paragraphs 88.4 to 88.15 above could be said to be breaches by the Sixth Respondent, save to the extent that she had personally been involved in the acts of omissions in question.

88.23 The Tribunal accepted the evidence in the interim and final FIRs concerning a number of cheques issued and transfers made from client to office account during 2009. The Tribunal further accepted the evidence of Mr Cosslett, a hand-writing expert, concerning the signatures on a number of cheques; indeed, that evidence was not disputed by the Sixth Respondent.

88.24 There was no dispute, and the Tribunal was satisfied on the documents and evidence presented, that the Sixth Respondent had signed a number of cheques which she should not have signed. As set out at paragraph 58.1, the Sixth Respondent signed a cheque for £2,060 in favour of OSCS in the matter of Mr and Mrs J, when that sum should have been paid to HMRC for SDLT. Between 14 July and 18 August 2009 the Sixth Respondent signed a further four cheques made out to OSCS when payment should have been made to HMRC as set out at paragraph 59 above. Further, the Sixth Respondent authorised the transfers of £80,000 on 5 June, £84,000 on 25 June and £50,000 on 6 July 2009 from client to office account when those transfers were not supported by bills issued to or disbursements incurred on behalf of clients. Indeed, the Sixth Respondent confirmed that she had not seen documents which supported either the cheques or the transfers. Her evidence was that she believed that at an earlier stage in the process of issuing the cheques the relevant checks had been made. The Tribunal considered this further in relation to allegation 2 below.

88.25 In any event, there was no doubt that in signing cheques and transfer authorisations when there was no documentation to support those cheques and, indeed, the cheques had been made payable to parties who should not have received those payments, the Sixth Respondent had failed to act in the best interests of clients. She had allowed clients' money to be used for purposes other than those intended by the client; this was necessarily a breach of both Rules 1.04 and 1.06 and the allegation had been proved beyond reasonable doubt.

89. **Allegation 1.3: They failed to act in accordance with their management responsibilities in relation to their conduct of the business of the Firm contrary to Rule 1.04, 1.06 and 5 of the Solicitors Code of Conduct 2007.**

89.1 This allegation was admitted by the Second, Third, and Fourth Respondents, in respect of their periods as members of the Firm, and was denied by the Fifth and Sixth Respondents. The factual background to the allegation is set out in particular at paragraph 65 and also at paragraphs 53 to 64 above.

89.2 The Tribunal noted that in addition to alleged breaches of Rules 1.04 and 1.06, it was alleged that the Respondents had breached their duties under Rule 5 of the SCC. The Tribunal noted that under Rule 5 managers of a recognised body were required to make arrangements for the effective management of the Firm as a whole. On the basis of the interim and final FIRs, confirmed in evidence by Mr Shields and Mr Freeman, the Tribunal was satisfied to the required standard that: there was no proper system for the supervision of staff and conduct of client matters; neither documents nor electronic records concerning client business (or the business of the Firm) were safeguarded and backed-up; there was no proper management or training of employees, most of whom were unqualified. There had been a failure to control the activities of WS, MC, MK and others and the marketing operations which they were running. As a result of the failures to properly manage the Firm, there was a massive loss of client money. At the time of the intervention, there were no meaningful computer or hard copy records available. The Tribunal was satisfied beyond reasonable doubt that in addition to breaches of Rules 1.04 and 1.06 there had been a clear breach of Rule 5 SCC. The Tribunal had to consider the roles of each Respondent in those matters.

<u>Second Respondent</u>

89.3 As noted under paragraph 87.11 above, the Tribunal found that the Second Respondent's responsibility as a manager in the Firm pre-dated his appointment as a member/becoming the Managing Partner. His responsibility as a manager of the Firm increased throughout 2009. As the sole solicitor at the Birmingham office in the period from about March to June/July 2009 the Second Respondent had a particular responsibility to supervise fee-earners and the operation of that office. On becoming Managing Partner, even after being aware of the PSU visit and then the forensic investigation, the Second Respondent failed to take any steps to preserve and protect the Firm's client or business records. The accounts department was acting on the instructions of WS and others; the Second Respondent either did not know this or knew of it and failed to stop it and in either event had failed in his duties to ensure the Firm had proper systems of management.

89.4 The Tribunal found the allegation proved after 1 September 2009 on the Second Respondent's admission and on the evidence found it proved to the required standard for a period prior to September 2009.

Third Respondent

89.5 The Third Respondent admitted the allegation for the period for which she was a member. In addition to noting the matters set out at paragraph 89.2 above, the Tribunal noted that the Third Respondent had had restricted access to the Firm's CRM system, little access to information about the Firm's accounts system and was a signatory on client account when the cheque signing system was clearly inadequate and open to misuse. The Third Respondent was aware of the PSU visit and subsequent forensic investigation but, like the Second Respondent, failed to take any effective steps to preserve and protect the Firm's computer or record-keeping system. The Tribunal was satisfied to the highest standard that this allegation had been proved against the Third Respondent both on the admission and on the facts for the period after 5 June 2009.

Fourth Respondent

89.6 The Fourth Respondent admitted the allegation for the period for which he was a member. In addition to noting the matters set out at paragraph 89.2 above, the Tribunal noted that the Fourth Respondent had had restricted access to the Firm's CRM system, little access to information about the Firm's accounts system and was a signatory on client account when the cheque signing system was clearly inadequate and open to misuse. The Tribunal was satisfied to the highest standard that this allegation had been proved against the Fourth Respondent both on the admission and on the facts for the period from 21 August to 8 December 2009.

Fifth Respondent

89.7 As noted above, the Tribunal had no hesitation in finding that there had been widespread and catastrophic failures of management within the Firm during 2009. The Fifth Respondent denied the allegation on the basis that he had not personally been involved in any of the defaults in issue.

89.8 The Tribunal found that the obligations of Rule 5 applied to all managers of the Firm, which undoubtedly included the Fifth Respondent from 5 June to 5 October 2009. On the Fifth Respondent's own case, he had confined himself to concerns within his own department. Although he had expressed concerns to the First Respondent and others – see paragraphs 87.26 and 87.28 – about the Firm's client care letters and the employment or role of Mr KM he did not discharge his management responsibilities during the period for which he was a principal of the Firm. It was telling that he was content with restricted access to management information. The Fifth Respondent was a member of the Firm for four months out of the period of about ten or eleven months during which the Firm collapsed. The Tribunal found the allegation proved to the highest standard against the Fifth Respondent for the period 5 June to 5 October 2009.

Sixth Respondent

89.9 For the reasons set out at paragraphs 87.36 to 87.41 above, the Tribunal did not find that the Sixth Respondent was a manager of the Firm at any point and so was not liable for the general failures of management in the Firm. However, she was one of a small number of signatories on client account and as such bore some responsibility for ensuring that the system of cheque production and signing provided adequate safeguards. The Sixth Respondent was party to a wholly inadequate system of cheque signing, such that there was no system in place to enable a signatory to ensure that the payee of a cheque was properly identified and that the money was properly payable. The system used was open to flagrant abuse of clients' money and such abuse took place. Accordingly, whilst the Sixth Respondent could not be liable for a breach of Rule 5 SCC, she was guilty of breaches of Rules 1.04 and 1.06 in that she had a responsibility as a cheque signatory which she failed to discharge, thus enabling significant misuse of client funds. The Tribunal found the allegation proved to the required standard with regard to Rules 1.04 and 1.06 SCC.

10. **Allegation 1.4: They failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors Accounts Rules 1998.**

90.1 This allegation was admitted by the Second, Third, Fourth and Fifth Respondents for the periods for which each was a member. It was denied by the Sixth Respondent. The factual background to this allegation is set out at paragraphs 66 to 68 above.

90.2 The Tribunal was satisfied on the evidence contained in the interim and final FIRs and on the oral evidence of Mr Shields and Mr Freeman that: client account reconciliations had not been completed regularly after January 2009; significant book differences were shown when reconciliations to various dates were carried out; the inadequacy of the Firm's records meant that the Respondents could not explain the shortfalls on client account which became apparent during the PSU visit and during the forensic investigation; client accounts information was not available and indeed was deliberately removed or deleted by someone prior to the intervention becoming effective; the intervention agents concluded that the records kept at the Firm were in no proper order or system; as at September 2009 the Firm had failed to allocate £4.8 million of client money to client ledgers; by 2 October 2009 there were unallocated funds of over £10 million. These matters were sufficient to show beyond any doubt that the Firm was in breach of Rule 32 of the SAR. The Tribunal was also satisfied that each member of the Firm must have been responsible, as a principal of the Firm, for compliance with the SAR.

Second Respondent

90.3 The Tribunal noted the Second Respondent's admission which was made on the basis that as a principal he was strictly liable for any breaches of the SAR which occurred whilst he was a member, although he denied that he had personally been in any default or responsible for misconduct in failing to maintain proper books of account. The Tribunal noted that in evidence the Second Respondent had confirmed that he was aware of the duty to keep proper books of account. The Tribunal further noted the contention by the Second Respondent and other members given in the course of the investigation that the shortfall of nearly £20 million which appeared as at the end of

October 2009 could be explained by incomplete and incorrect book-keeping**.** It was clear on the admission and on the facts contained in the interim and final FIRs that this allegation had been proved against the Second Respondent to the highest standard for the period from 1 September 2009.

Third Respondent

90.4 The Tribunal noted the Third Respondent's admission. For the reasons and on the facts noted above, the Tribunal was satisfied to the required standard that this allegation had been proved against the Third Respondent for the period from 5 June 2009.

Fourth Respondent

90.5 The Tribunal noted the Fourth Respondent's admission. For the reasons and on the facts noted above, the Tribunal was satisfied to the required standard that this allegation had been proved against the Fourth Respondent for the period from 21 August to 8 December 2009.

Fifth Respondent

90.6 The Tribunal noted the Fifth Respondent's admission. For the reasons and on the facts noted above, the Tribunal was satisfied to the required standard that this allegation had been proved against the Fifth Respondent for the period from 5 June to 5 October 2009.

Sixth Respondent

90.7 The Tribunal found that the Sixth Respondent was at no stage a member of the Firm and nor did she exercise any power or control over the other Respondents. As she was not a principal of the Firm, this allegation was not proved against the Sixth Respondent.

91. **Allegation 1.5 The Respondents breached Rules 1, 19 and 22 of the Solicitors' Accounts Rules 1998**.

91.1 This allegation was admitted by the Second, Third, Fourth and Fifth Respondents for the periods for which each was a member of the Firm. The Sixth Respondent admitted the allegation to the extent that she had signed a number of cheques which had allowed improper transfers from client to office account. The factual background to this allegation is set out in particular at paragraphs 69 to 70 above. In particular, the Applicant relied on: the book differences/client account shortfalls of £146,052.25 as at 31 May and £19,878,468.84 as at 31 October 2009; the minimum cash shortage of £314,000 caused by round sum transfers; and the shortfall of over £7 million between the amounts required to be paid in compensation to clients of the Firm and the amounts recovered on the statutory trusts. The facts, which were substantially undisputed, showed that there had been significant breaches of each of Rules 1, 19 and 22 of the SAR.

91.2 The Tribunal was satisfied that each member of the Firm must be liable as a member for the breaches of Rules 1, 19 and 22 of the SAR for the period for which each was a member. The Sixth Respondent's position was different.

Second Respondent

91.3 This allegation was proved against the Second Respondent for the period from 1 September 2009. Further, as set out at 87.3 to 87.19 above, the Second Respondent was complicit in allowing the significant influence of WS and others in the Firm. A series of round sum transfers, totalling £314,000, took place in June and July 2009 at the instigation of WS. It was significant that the timing and amounts of these transfers were such as to prevent the Firm exceeding its office account overdraft limit. Although the Second Respondent was not a member at that time, he was by that time complicit in permitting WS to exercise the influence he did. His involvement in the management of the Firm pre-dated his membership. With regard to this allegation, the Tribunal noted in particular that WS and the Second Respondent worked in close proximity at the Birmingham office. The Second Respondent's de facto partnership position meant that it was inconceivable that these transfers happened without his knowledge and approval. Accordingly, the Tribunal found the allegation proved against the Second Respondent both for the period after 1 September 2009 and in respect of breaches of Rule 22 prior to that date.

Third Respondent

91.4 This allegation was admitted by the Third Respondent and the Tribunal found it proved on the evidence presented for the period from 5 June 2009.

Fourth Respondent

91.5 This allegation was admitted by the Fourth Respondent and the Tribunal found it proved for the period on the evidence presented from 21 August to 8 December 2009.

Fifth Respondent

91.6 This allegation was admitted by the Fifth Respondent and the Tribunal found it proved on the evidence presented for the period from 5 June to 5 October 2009.

Sixth Respondent

91.7 The Sixth Respondent did not have any liability as a member or quasi-member of the Firm. However, she signed three of the round sum transfers, on 5 June, 25 June and 6 July 2009 which totalled £214,000. When giving evidence the Sixth Respondent suggested that she had had documentation before her, such as bills, which justified the transfers. However, she conceded that the bills were not actually created until some months later, so at the time of signing the transfers she could not have seen proper supporting documents. Although theoretically possible there was no real prospect in practice of a number of bills, on three separate occasions within a short period, adding up to round sums save in the most unusual of circumstances. A request to a solicitor to sign transfers in round sums is, and should be, a warning sign that money was being incorrectly transferred from client account. To sign such transfers without

ensuring that they were justified amounted to a serious breach of Rules 1, 19 and 22 of the SAR and accordingly the allegation was proved on the facts and on the admission.

92. **Allegation 1.6: The Respondents failed to cooperate with the Applicant's investigation into their Firm and into their conduct contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007. This allegation was withdrawn against the Third and Fourth Respondents.**

92.1 This allegation was denied by the Second, Fifth and Sixth Respondents. The factual background to this allegation is set out at paragraph 71 above.

92.2 The Applicant's allegation, based on matters set out in the final FIR, was that the Respondents: failed to preserve client files; caused or permitted client files to be removed from the premises occupied by the Firm and to be sent elsewhere; failed to preserve computer records; caused or permitted computer records to be removed from the system; failed to maintain hard copy accounting records so as to assist the investigation; and failed to permit the Applicant to gain entry to the Heald Green offices on 24 December 2009. It was noted that by the time access was granted, accounting information and client files had been removed or destroyed.

92.3 In order to prove the allegation, the Applicant was required to show that the Respondents knew or believed that there was an investigation under way which required their cooperation and that they failed to cooperate. There had been a PSU visit in September 2009 and the forensic investigation began on 27 November 2009.

<u>Second Respondent</u>

92.4 The Tribunal found, and indeed it was admitted, that the Second Respondent was aware of both the PSU and FI unit investigations. He had become the Managing Partner of the Firm on 1 September 2009. The Second Respondent's evidence was that he had become aware of the PSU visit only a few days before it occurred, perhaps on 4 or 5 September, the notice of the visit having been sent by letter of 17 August 2009 to the First Respondent. However, it was clear from all of the evidence, including that of the Second Respondent that he had spoken to the PSU team during that investigation. His first contact with the PSU team had been by telephone on 8 September 2009 and the monitoring visit took place from 9 to 11 September 2009. During the visit the Second Respondent had spoken to the PSU team. The Second Respondent's evidence was that he had prepared a response to the PSU report on which he had consulted with other Respondents. At that point, the Second Respondent's basic position (set out in some detail in the response document) had been that the problems with the Firm's accounts were largely due to a backlog, which he had inherited. The Second Respondent told the Tribunal that it was not until Mr Shields' inspection that it became apparent to him there were major problems with the Firm's accounts.

92.5 The Second Respondent had spoken to both Mr Shields and Mr Freeman during the investigation from 27 November 2009 and had been in email contact with Mr Shields during December 2009. There was no doubt that he was aware of the investigation. Indeed, the Second Respondent asserted in his evidence that he had cooperated with

the FIO and Mr Shields had confirmed that the Second Respondent had throughout displayed a civil and cooperative manner. However, the Tribunal had to consider not just the Second Respondent's manner but also the substance of what he had or had not done.

92.6 With regard to the preservation of client files and the issue of files being removed from the Firm, the Tribunal noted the contents of the FIR which in this respect were largely unchallenged. The FIR recorded that on 17 December 2009 the Firm had entered into an agreement with another firm, SL, under which about 300-400 files were initially transferred to that firm; post-intervention, another 800-900 files were delivered to that firm. Another firm, MIC, was sent a number of conveyancing and personal injury files. A former head of the commercial property took a number of commercial property files. A number of immigration files were sent to another firm, D & Co, on or about 16 December 2009. Approximately 120 personal injury files had been removed by Ms J, who attempted to transfer them to another firm during January 2010. Boxes of documents, containing approximately 550 wills, codicils and powers of attorney were delivered from an unknown source to the Third Respondent's home in or about August 2010. Approximately 1000 live files were in archive storage with a company called Dataspace as at December 2009. Where files were transferred to other firms, it was clear that in many cases no authority had been given by the relevant clients. The Tribunal found on the evidence presented that a substantial number of files had not been preserved and protected and, indeed, that they had been sent elsewhere. Whilst this issue could be relevant to matters of client confidentiality and the like, with regard to this allegation it was sufficient to note that there had been a substantial and widespread failure to preserve files and records during the course of the investigation. The Second Respondent was the Managing Partner of the Firm at the relevant time. He had not given any instructions to staff to protect and preserve client files and records and did not inform the FIO that files were being disposed of and to which firms.

92.7 Despite being aware of the investigation from at least 27 November 2009 – and aware of the SRA's interest in the Firm in the light of the PSU visit in September 2009 – the Second Respondent did not take any steps to ensure the Firm's computer systems were backed-up. The Tribunal noted the evidence of Mr Ted Walshe to the effect that it was unusual for a firm not to have all key records backed up securely and as an expert tribunal was able to find that a solicitors' business should have secure systems which are backed-up regularly. The Tribunal noted that there appeared to have been an issue with the Firm's computer system on or about 9 December 2009. Mr Walshe's evidence that this was highly unlikely to have been caused by a power surge was accepted by the Tribunal. By 14 December, it was clear that data had been deleted from the Firm's servers and that there were no back-ups. There was no suggestion in any of the evidence seen or heard that the Firm's computer systems had failed prior to the start of the investigation. Further, it was clear that by the time the intervention was effected on 28 December 2009 data had been deliberately deleted and disks removed; the systems had been accessed by someone during Christmas Day. The Tribunal did not need to find who had carried out or caused the deletion of the data; it was sufficient that it was clear that no effective steps had been taken to protect the Firm's computer systems, client and accounts information. The Second Respondent told the Tribunal that it had not been possible to prevent the act of

destruction and that the computer servers had been locked up, alarmed and the office closed. He had had no reason to think the computer records would be destroyed.

92.8 With regard to access to the Heald Green office on 24 December 2009, the Second Respondent told the Tribunal that he had not been served with notice of the intervention. The Tribunal noted that none of the witnesses had been able to give direct evidence of the methods used to effect service as this was not the role of either the FIO or the intervention agents. The Firm's offices had closed on 18 December 2009 and the Second Respondent gave evidence that the FIO was aware of this. Mr Shields' evidence was that the Firm's bank had been served with notice of the intervention on 23 December. An email from the Second Respondent to the intervention agent timed at 19.31 on 24 December 2009 stated, amongst other matters,

> "Our bank (Lloyds TSB) explained at close of business yesterday that they had received a notice from the SRA "freezing" our client account."

The Sixth Respondent gave evidence, which the Tribunal accepted, that she had been contacted by the bank on 23 December 2009 and had visited the bank that day in connection with the stolen client account cheque book. Further, the Tribunal accepted the evidence of the intervention agent, Mr Kieran Walshe, concerning events at the Heald Green office on 24 December 2009. Mr Walshe told the Tribunal that he and his team attended the Heald Green office at about 10am on 24 Christmas Eve. The office was locked, with no-one present and no sign of activity. However, an employee of the Firm – believed to be a Mr NA – attended. In an email to the Second Respondent timed at 17.59 on 24 December, Mr Walshe had written,

> "...We were, however, unable to gain access to the Heald Green premises in order to give effect to the Committee's resolution. We spoke, at approximately 10.40am this morning outside the Heald Green premises with a gentleman who gave his name as [N] and who indicated that he worked in the "post-completions" dept of Wolstenholmes. He indicated you were aware of our planned attendance and that he had, in fact, been asked by you to help us with retrieving the files and documents from the premises but that you had since sent a message to him to say that you could not attend as your wife had been taken into surgery. [N] did not have keys to the Heald Green premises but assured us that you had told him that (the Fourth Respondent) would soon be arriving with keys in order to facilitate entry. In fact, despite further such assurances from [N] at various points during the course of the morning, no-one had arrived with keys by 1pm".

In response to the Second Respondent's email of 19.31 on 24 December, Mr Walshe wrote at 20.14,

> "...I note what you say about Mr [A], though would repeat that he arrived at more or less the pre-arranged time for the intervention visit today, and then introduced himself by confirming that he and his three colleagues with him had been asked to attend in order to help us find and remove the documents we were looking for. He gave every appearance, therefore, of knowing precisely why we were in attendance and he was also informed of the identities of each of the lead representatives present".

92.9 The Tribunal noted that the reported comments of Mr NA concerning the Second Respondent being at a hospital with his wife corresponded with the Second Respondent's own account of why he had not been available on that day. It was therefore clear that the Second Respondent had been in contact with Mr NA and was aware of the presence of the intervention agent near the office.

92.10 Because of the contact from the bank with the Second and Sixth Respondents on 23 December 2009, in the context of an investigation which was clearly dealing with extremely serious matters, the Tribunal was satisfied that even if not formally served with notice of the intervention, the Second Respondent had sufficient information to know that he would need to arrange access to the premises and/or otherwise cooperate with the SRA. Further, the Tribunal was satisfied that the contact via Mr NA showed that, even if not aware of the intervention before the morning of 24 December 2009 the Second Respondent became aware of it during that morning. The Tribunal noted the Second Respondent's evidence that he did not have keys to the office; indeed, he was not in a position to grant access immediately when he was present on 28 December 2009. The Second Respondent had not made arrangements, via Mr NA or anyone else who may have held keys, for the intervention agent to gain access.

92.11 The Tribunal found that the Second Respondent, who on his own account was the Managing Partner of the Firm at all relevant times after 1 September 2009, had failed to preserve client files and/or had caused or permitted client files to be removed from the premises occupied by the Firm and to be sent elsewhere, in that the evidence (set out at paragraph 92.6) showed that a large number of client files had been removed from the Firm's offices between the start of the investigation and the intervention. Some of these files had been sent to other firms, albeit in a number of cases no proper client authorities had been obtained for the transfer. Other files had appeared at the offices of other firms after the intervention, or in one case had been delivered from an unknown source to the Third Respondent. Further, the Second Respondent had failed to preserve computer records and caused or permitted computer records to be removed from the system. The Tribunal did not find that the Second Respondent had been directly involved in the removal or destruction of computer records, there being insufficient evidence to make such a finding. However, he had failed to ensure that the Firm's computers were securely backed-up, something which was essential in day to day practice and was vital where a Firm was under investigation. The Second Respondent had not himself had keys to the office and so must have been reliant on unnamed others to permit him access to the Firm of which he was the Managing Partner. He had not exercised any control over who had access to the office and had keys. The Second Respondent had failed to maintain hard copy accounting records so as to assist the investigation. This was self-evident; the computer systems had been interfered with and there were no hard copy records from which details of client matters and monies held could be gleaned. Further, the Second Respondent had failed to permit the Applicant to gain entry to the Heald Green offices on 24 December 2009. The Tribunal was satisfied that the Second Respondent was aware of the intervention and/or that he was aware that representatives of the SRA were present at Heald Green on 24 December and required access. Even if not able to attend himself the Second Respondent should have ensured that someone holding a set of keys would permit access.

92.12 The Tribunal was satisfied to the required standard that the Second Respondent had failed to cooperate with the SRA investigation in all of the ways set out above. Accordingly, the Tribunal found the allegation proved.

Fifth Respondent

92.13 The Tribunal had found that the Fifth Respondent was a member of the Firm between 5 June and 5 October 2009. He was a member of the Firm at the time of the PSU visit but not by the time of the forensic investigation unit's inspection or the investigation. The Tribunal accepted that the Fifth Respondent had not taken any part in the PSU visit or its aftermath. The Tribunal noted that, having heard all of the evidence, the Applicant did not forcefully pursue this allegation against the Fifth Respondent.

92.14 Whilst any solicitor has a duty to cooperate with the SRA in any investigation, the specific allegations in this matter related to the period from 27 November 2009, by which point the Fifth Respondent had no managerial role in the Firm and no responsibility as a principal of the Firm. Whilst the Tribunal was satisfied that the Firm had failed to secure client files and computer records, as set out above, and that there had been a failure to permit access on 24 December 2009, the Fifth Respondent was not a member at the relevant time. Nothing had been proved against him to the required standard which showed he had failed to cooperate. Indeed, the Tribunal noted that the Fifth Respondent had volunteered to take part in an interview with the SRA, which had taken place in February 2010. The Tribunal found the allegation not proved against the Fifth Respondent.

Sixth Respondent

92.15 For the reasons set out at paragraphs 87.36 to 87.41 above, the Tribunal was not satisfied that the Sixth Respondent had any managerial role in the Firm. She had not been asked by the investigators to play any particular role during the investigation; indeed, Mr Shields had not been informed at any point that she was someone who ought to be interviewed. The Sixth Respondent was not someone who would have been served with notice of the intervention. The Tribunal was not satisfied that, in the absence of a specific request for assistance, it could be said that the Sixth Respondent had failed to provide access on 24 December. There was nothing to suggest she had obstructed the investigation. There was insufficient evidence to show that the Sixth Respondent was responsible for the failure to secure files or computer records. Accordingly, the Tribunal found this allegation was not proved against the Sixth Respondent.

93. **Allegation 2. The (First) Second and Sixth Respondents acted with a lack of integrity contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 in that they committed each of the breaches referred to in 1.1 to 1.6 above dishonestly**.

93.1 The Tribunal applied the test for dishonesty set out in Twinsectra v Yardley and others [2002] UKHL 12 ("Twinsectra") in considering this allegation.

Second Respondent

93.2 The Tribunal had found proved allegations 1.1 to 1.6 inclusive against the Second Respondent, so the Tribunal had to consider in respect of each allegation whether the Second Respondent had acted dishonestly.

93.3 With regard to permitting unqualified third parties to exercise inappropriate control in the Firm (allegation 1.1), the Tribunal had found that the Second Respondent's culpability dated from about mid 2009 and not just from 1 September 2009 when he became a member and the Managing Partner. The Tribunal did not believe that the Second Respondent was unaware of the role of WS, MC, MK and others for the reasons set out at paragraphs 87.3 to 87.19 above. The Second Respondent had confirmed in evidence that he was aware of his duties as a solicitor. Nevertheless, he had permitted WS and others to exercise managerial control. WS was not only unqualified to run a solicitors' firm but was also bankrupt. The Second Respondent had permitted a state of affairs in which WS and others had full access to the Firm's CRM system and gave instructions to accounts staff such that they were allowed control over client and office account. The Firm made substantial payments to WS and others for their "consultancy" services; indeed, the Second Respondent had told the Tribunal that he thought a payment of £60,000 per annum each to WS and MC was about the right level of remuneration but he exercised no control over these consultants.

93.4 The Tribunal noted in particular that in completing the PII proposal form on 16 September 2009, as described at paragraphs 86.2 to 86.4 above, the Second Respondent had not disclosed anything of the role of WS and others. The Tribunal was satisfied that the Second Respondent knew that permitting WS and others to be in positions of power in the Firm was wrong and he took steps to conceal it from the insurers. Further, the Second Respondent did not inform either the PSU team or the FIO of the role of WS and others and thereby sought to conceal these individuals from the insurers and the regulator. The Second Respondent was aware that he and possibly others were in breach of Rules 1.03 and 1.04 – for all the reasons set out at 87.3 to 87.19 above – but took no steps to dismiss WS and others, even after the PSU visit or during the FIO's inspection.

93.5 With regard to allegation 1.2 the Tribunal found that the Second Respondent had been involved in the management of the Firm and then had been its Managing Partner during a period in which a large hole in client account (of around £1.6 million) became a huge shortfall (over £19 million). The Firm had continued to receive money into client account when there were no proper procedures in place to ensure that money would be secure. SDLT had not been paid as required, work had been outsourced without client authority, payments were made to OSCS (linked to WS) instead of HMRC and there had been dozens of complaints raised by clients. The collapse of the Firm, in circumstances where millions of pounds of client money could not be accounted for, showed clearly that there had been a failure to act in the best interests of clients. The Second Respondent failed to stop the Firm from taking in further client monies and failed to stop it taking new instructions when it was apparent that the Firm could not cope with the volume of work generated through the marketing activities of WS, MC, MK and their associates.

93.6 As set out at paragraphs 89.3 to 89.4 above, the Tribunal had found that the Second Respondent had failed to act in accordance with his management responsibilities. The Firm had been controlled by unqualified persons and had a massive book shortage, which grew through 2009. The involvement of the Second Respondent, and others, had given the appearance that the Firm was being properly run by solicitors, which gave it an edifice of respectability and security when the reality was that client money was at great risk.

93.7 It was clear that the Firm had not maintained proper books of account (allegation 1.4). Indeed, the Second Respondent had relied, to some extent, on the fact that the Firm's accounts were in a mess in setting out what he had tried to do to put matters right after the PSU visit. It was noted that the Second Respondent had told the PSU team that he would be "gobsmacked" if the £1.6 million shortfall they identified arose from anything other than there being inaccurate or delayed postings. No reconciliations had been carried out after January 2009. This was a serious breach of an important obligation on solicitors' firms which allowed problems with client account to be identified and put right reasonably promptly. The Second Respondent had told the PSU team that reconciliations had been done for August 2009 and were being done for September 2009 when no such reconciliations were actually done.

93.8 The matters found in relation to allegation 1.5, set out at paragraph 91.3 above, demonstrated that the Second Respondent was responsible for widespread and substantial breaches of the SAR. With regard to allegation 1.6 the Second Respondent had avoided his obligation to cooperate with the SRA in all of the ways set out at paragraphs 92.4 to 92.12 above. As Managing Partner of the Firm he was obliged to cooperate with the regulator and the intervention agents. Whilst he could not be found responsible for the theft of the client account cheque book and the deletion of material from the Firm's computers, he had failed to secure the Firm's systems and data against those who had an interest in deleting materials. This was a serious failure to cooperate with the SRA, which had permitted the destruction of information material not only to the investigation but also to the profession's ability to mitigate the effect of the Firm's collapse and recompense clients promptly.

93.9 The Tribunal noted that Mr Dutton had put to the Second Respondent the proposition that if a solicitor acted in circumstances where there were clear breaches of the SCC, in particular the duty to act in the best interests of clients, those breaches could cross the line into dishonesty. The Second Respondent had stated in evidence that whilst this might be the case in relation to matters of integrity it would not necessarily be the case with regard to other breaches of the core duties. The Second Respondent told the Tribunal he had not considered, at the relevant time, that the more serious or flagrant the breach of duty, the closer to dishonesty one became. The Second Respondent had stated under cross examination that if one knew there was a flagrant breach, whether or not one was dishonest would depend on what was being done to remedy the breaches, but it would not necessarily be dishonest if nothing was done to rectify the breaches. The Second Respondent had vigorously denied that he was dishonest in relation to what he had done at the Firm.

93.10 The Tribunal had already taken into account the Second Respondent's lack of credibility as a witness in determining the findings in relation to allegation 1.1 to 1.6. The allegations of dishonesty were linked to the specific allegations and not to

whether or not the Second Respondent had been a truthful witness. The Tribunal was able to discount the Second Respondent's assertions in evidence that he had not been dishonest and considered instead simply the facts which had been found and the irresistible inferences which could be drawn from those facts.

93.11 The Tribunal was satisfied that in some circumstances, where flagrant and persistent breaches of professional obligations were committed, a solicitor could cross the line to dishonesty. However, it did not rely on that general proposition and instead considered what had been found against the Second Respondent.

93.12 The Tribunal found that the Second Respondent was aware of his professional duties as a solicitor. It further found that in:

- Permitting unqualified and, indeed, unsuitable people to have managerial control of the Firm and concealing that involvement;
- Permitting those individuals to exercise control over client account;
- Permitting a significant cash shortage on client account to develop and continuing to receive client money where there were no adequate safeguards in place to protect that money;
- Projecting to the public and the regulator that the Firm was properly managed and regulated when it was not so managed;
- Failing in major respects to comply with duties under the SAR such that client money was not safeguarded and, indeed, was subject to systematic exploitation; and
- Failing to cooperate with the regulator and intervention agents such that the investigation and intervention were impeded

the Second Respondent had been dishonest by the standards of reasonable and honest people. The Tribunal further found that in all of the respects set out above, the Second Respondent knew of his obligations as a solicitor, was aware of the fundamental breaches of his obligations and failed to rectify or report those breaches and in so doing knew that he was being dishonest by those same standards. Accordingly, this allegation had been proved to the required standard.

Sixth Respondent

93.13 The Tribunal had found proved allegations 1.2, 1.3 and 1.5, and so had to consider in respect of each of these allegations whether the Sixth Respondent had acted dishonestly. All of these allegations related to the fact that the Sixth Respondent had signed cheques without supporting documents and in particular had authorised round sum transfers on 5 and 22 June and 6 July 2009 which totalled £214,000, when there was no proper reason for doing so.

93.14 The facts found by the Tribunal are set out at paragraphs 88.23 to 88.25, 89.9 and 91.7above. The Tribunal had regard to the case of Bultitude v Law Society [2004] EWCA Civ 1853 ("Bultitude") where, at paragraph 36 Kennedy LJ stated:

> "...Mr Bultitude signed a cheque for £50,000 transferring his clients' funds to his office account without any supporting documentation and thus, it must be inferred, without knowing or caring whether his firm was entitled to be paid those funds. That, to my mind, satisfied both legs of the Twinsectra test..."

At paragraph 37 it was noted that Mr Bultitude's actions did not arise from a momentary error of judgment.

93.15 The Sixth Respondent's position had been that she had adopted a cheque signing procedure which she now accepted was inadequate. On five occasions, the Sixth Respondent had signed cheques which caused payments to be made to OSCS when the cheque requisition slips referred to payments which were properly due to pay SDLT, as set out at paragraphs 88.24 above. The Sixth Respondent had not seen any documents when signing the cheques which could have showed that payments were properly due to OSCS since no such payments should have been made from client account in respect of those client matters. The Tribunal noted that one of the matters, that of M, was one in which the Sixth Respondent had been the fee earner. In evidence, she told the Tribunal that although she could not recall the matter, it was probably her signature on the chitty requesting a cheque for £2,500 payable to HMRC. On the same day, the Sixth Respondent had signed a cheque payable to OSCS for £2,500. The Sixth Respondent told the Tribunal that she had not made any connection between the cheque request and the cheque presented for her signature. The Sixth Respondent told the Tribunal that she had been asked to sign a lot of cheques every day. She also told the Tribunal that she had trusted people in the Firm. The Sixth Respondent had understood that on receipt of a cheque request, the accounts department would check if the money was available to pay that sum then present the cheques to a signatory. The Sixth Respondent acknowledged that there was a gap in the system as no-one was checking if the cheque was made out to the right payee, or in the sum requested by the fee-earner. As the Firm's workload had increased during 2009, she had been under pressure; the Sixth Respondent's evidence to the Tribunal was that as a result she could not check if the cheques she was asked to sign were correct. So far as the OSCS payments were concerned, the Sixth Respondent told the Tribunal that she would have assumed that payments to OSCS were something to do with the personal injury department. The Sixth Respondent had admitted under cross examination that she had signed cheques to OSCS with no clear idea why payments were being made to that company from client account as she had not seen any vouchers or other supporting documents to explain or justify the payment.

93.16 So far as the three round sum transfers were concerned, the Sixth Respondent told the Tribunal she had signed the transfers on the basis she believed they had been authorised by members of the Firm. She could not recall if there had been supporting documents but suspected the transfer requests were accompanied by a pile of bills. The Sixth Respondent relied on information she was given. The Tribunal found that at the time of the three transfers signed by the Sixth Respondent there were no bills to justify those transfers; indeed, a number of bills were created some months later in relation to those transfers. In any event, it was beyond any doubt that the Sixth Respondent had signed the transfers without sight of appropriate and sufficient evidence that the transfers were justified.

93.17 In considering the allegation of dishonesty, the Tribunal also noted that the Sixth Respondent had confirmed that the Firm had grown and changed substantially during 2009. Just after telling the Tribunal that she signed cheque requests on trust, she told the Tribunal that the staff were changing. Accordingly, the system was not a proper system to safeguard client money and it was being operated by people new to the Firm and who were not known to the Sixth Respondent. It was obvious that a system in which the cheque signatory did not invariably see and check supporting documents was open to misuse; it was further obvious that where the Firm's staff were new and did not have any track-record of being trustworthy and reliable the system was open to abuse.

93.18 The Sixth Respondent had told the Tribunal in evidence that she knew that client money should not be transferred to office account until either a bill or written intimation of costs had been delivered or the transfer was necessary to pay a disbursement and client money should not leave client account unless a payment was properly due.

93.19 The Tribunal found that in signing cheques and transfers in the circumstances described above, where there was no documentary evidence to justify the payments and the payments were not proper the Sixth Respondent had been dishonest by the standards of reasonable and honest people. It further found that the Sixth Respondent knew that signing cheques and transfers in these circumstances was dishonest by those same standards. The Tribunal noted that in the light of Bultitude a solicitor could not have had an honest belief that payments were proper payments without sight of supporting documents. Either the Sixth Respondent had not requested the supporting documents, which she knew she should do, or she knew there were no documents to support the transfers. The Tribunal was satisfied that she knew she should see the documents; she could not and did not believe the transfers were honest in the absence of supporting documents. An honest solicitor would always require sight of documents to justify payments from client account; the Sixth Respondent's default in this regard was compounded by the fact that she did not know the fee-earners or staff members dealing with the cheque requests. Whilst the Tribunal did not consider the Sixth Respondent's breaches and dishonesty to be at the same level as that of the Second Respondent, it was nevertheless dishonesty. The Tribunal was satisfied beyond any reasonable doubt that this allegation had been proved against the Sixth Respondent.

94. **Allegation 3: The (First and) Second Respondent(s) dishonestly sought to mislead the Solicitors Regulation Authority during the investigation into the Firm contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 and Rule 20.05 of the Solicitors' Code of Conduct 2007**.

94.1 For the purposes of this hearing, the allegation was concerned with the Second Respondent only. The Second Respondent denied the allegation, the factual background to which is set out at paragraphs 73 to 75 above. The Applicant's case was based on the interim and final FIRs and the evidence of Mr Shields and Mr Freeman. The Second Respondent denied that he had intended to mislead the investigators.

94.2 Mr Shields recorded in the interim FIR, dated 17 December 2009 i.e. about three weeks after the first relevant events that in a meeting on 27 November 2009 the Second Respondent had told him that, after discussions with the First Respondent in July and August 2009, he became the Managing Partner and sole equity member of the Firm with effect from 1 September 2009. The Tribunal was shown a copy of Mr Shields' handwritten, contemporaneous note of that meeting which, so far as relevant to this allegation, stated:

> "Became managing partner 1/9/09.
> Nasir Ilyas – no longer connected with practice. No PC. He stepped down."

The interim FIR also recorded that at a meeting between the Second Respondent, Mr Shields, Mr Freeman, the First Respondent and others, Mr Shields asked the First Respondent if he had any interest in the practice to which he replied,

> "No, but [my] wife is [the] practice manager."

94.3 In an email from Mr Shields to the Second Respondent on 14 December 2009, Mr Shields wrote,

> "The Professional History Form that you completed for us states that you are a salaried partner (point 2) and that you are not a signatory on client or office bank account..."

In an email to Mr Shields on 16 December 2009, the Second Respondent wrote, amongst other matters,

> "The equity in the practice (amounting to just over 98%) is held in trust for the former Senior Partner Nasir Ilyas. He resigned on 1 September 2009. The intention being that we would review the trading performance and profitability of the practice after three months...
>
> ...The nominal 2% has always been historically held by the remaining Partners subject to their Partnership Agreement. I did not sign the Partnership Agreement. However, my understanding is that it is made clear that Mr Ilyas holds the equity and any other Partners were simply salaried..."

94.4 On 17 December 2009 the Second Respondent sent to Mr Shields a copy of a Trust Deed dated 1 September 2009 under which it was recited that the First Respondent was the CEO of the Firm and had decided to resign from that role and relinquish his duties and that he was the majority shareholder, with his equity stake being 99.6% of the issued share capital of the company. It further stated that the First Respondent had decided to transfer his shares. The document stated that the Second Respondent irrevocably and unconditionally warranted, represented and undertook:

- That the shares in the capital of the company held by the First Respondent transferred to him would be held in trust absolutely for the First Respondent upon such terms and conditions as he may direct from time to time;

- The beneficial interest in the shares would vest absolutely in the First Respondent and he would be entitled to the value of such shares whether by transfer, sale, disposal or otherwise;

- In the event of the First Respondent's death the declaration of trust would cease and determine and the shares would be deemed to be transferred back to the First Respondent.

94.5 The Second Respondent cross examined Mr Shields in particular on the notes he had made; Mr Shields told the Tribunal that he had made a contemporaneous note of the salient points but had not sought to record, for example, the explanation he had given about the purpose of the visit. In the course of cross examination, the Second Respondent referred to paragraph 232 of his witness statement, which was later submitted as evidence in chief. That paragraph includes the following:

> "What I meant by the words, "no longer connected with the practice" was that:
>
> (i) The First Respondent had resigned as CEO
>
> (ii) He had signed and submitted Form 288b at Companies House
>
> (iii) He would no longer undertake any fee earning work
>
> (iv) He would relinquish control as at 1 September 2009
>
> (v) He would not renew his Practising Certificate
>
> (vi) He would no longer manage the firm"

Mr Dutton had fairly suggested to the Second Respondent that he could put to Mr Shields that these words were said as it appeared to be suggested in the Second Respondent's cross examination that Mr Shields may not have recorded fully what the Second Respondent had said. Further, the Tribunal Chair pointed out to the Second Respondent that he might want to put this point to the witness. The Tribunal noted that in his witness statement the Second Respondent stated that he had achieved higher rights of audience in 2009, which suggested he had a degree of skill and experience as an advocate. The Second Respondent did not put to Mr Shields that the matters set out above had been said.

94.6 Mr Freeman's evidence concerning what the Second Respondent had said about the ownership of the Firm and its management corroborated that of Mr Shields.

94.7 In his submissions, the Second Respondent argued that if there had been any ambiguity in what he had meant in saying that the First Respondent had stepped down had been resolved by the email exchange on 16 and 17 December 2009. He submitted that he had not had a dishonest state of mind and was not thinking coherently as the Firm was disintegrating. His witness statement, including the matters set out at paragraph 94.5 above was admitted as evidence in chief.

94.8 In cross examination, the Second Respondent was asked about a note prepared during the PSU visit which recorded,

> "...[The Second Respondent] confirmed that he now had sole ownership of the firm and provided completed forms for Companies House which were dated 7/9/09..."

The Second Respondent confirmed in evidence that the note was accurate and that by "sole ownership" he meant he was in control of the LLP.

94.9 Further, under cross examination, the Second Respondent agreed that he must have said that the First Respondent was no longer connected with the practice and maintained that he "would have" said that the First Respondent had resigned as CEO, did not do fee earning work and was not renewing his practicing certificate. The Second Respondent denied that he had tried to give the impression that he owned the Firm when the Deed of Trust made it clear this was not the case. The Second Respondent denied that he had every opportunity in the meeting of 27 November 2009, which he thought lasted over an hour, to say that he was holding the equity on trust for the First Respondent. He went on to say that by "sole equity" he meant to convey that he was in control of the Firm and making the decisions.

94.10 The Tribunal noted that there was no agreed note of the meeting on 27 November 2009. However, it had no doubt that the note was substantially accurate and recorded the main points under discussion. In addition to the points noted above, the note recorded on its fifth page that the Second Respondent had referred to the Third and Fourth Respondents as "salaried" and himself as "full equity" and on the sixth page recorded, "1 equity partner – me", referring to the Second Respondent. The Tribunal had heard from Mr Shields that as a result of that discussion, he believed initially that the Second Respondent had held the equity in the Firm and he was unaware of the First Respondent's continued connection with the Firm. It was not until the Second Respondent provided his professional history form, dated 9 December 2009, which indicated he was a salaried partner that any questions arose as to the real ownership and structure of the Firm. The Second Respondent did not indicate what appeared to be the actual position, being that the First Respondent remained the beneficial owner of the Firm, until 16 December 2009.

94.11 There was no doubt at all that the Second Respondent knew the true position. Indeed, his evidence was that he had drafted the Declaration of Trust document. He knew that he was not, in reality, the "sole equity partner" of the Firm. He knew that the First Respondent continued to be connected with the Firm after 1 September 2009; indeed, the First Respondent continued to receive substantial payments from the Firm up to and including December 2009. The Second Respondent was asked on more than one occasion on and after 27 November 2009 about the ownership of the Firm. The Tribunal did not accept that the expressions he used meant what he now said they meant. It was not until 16 December 2009 that anything approaching the true position was conveyed to the FIO. Completely honest responses were required to all enquiries by the investigation officer but the Second Respondent made plainly untrue statements, which were designed to deceive and hide something he did not want to disclose.

94.12 The Tribunal was satisfied to the required standard that in making plainly untrue statements to Mr Shields and Mr Freeman, the Second Respondent was dishonest by the standards of reasonable and honest people. Further, the Second Respondent knew

that in making untrue statements he was dishonest by those same standards. The Tribunal was satisfied to the highest standard that the allegation had been proved.

Previous Disciplinary Matters

95. There were no previous disciplinary findings against any of the Second to Sixth Respondents.

Mitigation

Second Respondent

96. The Second Respondent was not present in court on Friday 3 May, when the Respondents had the opportunity to present their mitigation. However, the Second Respondent had sent to the Tribunal on 2 May a statement of financial means and a statement of personal mitigation, both of which were considered by the Tribunal after findings had been made. The Tribunal also took into account matters it had heard in the Second Respondent's evidence and witness statements.

97. The Second Respondent included the following matters (which are summarised below but were considered in their full form by the Tribunal) in his statement in personal mitigation:

97.1 He had attended the hearing for a week but was unable to attend from Wednesday 1 May due to childcare commitments, having been unable to make alternative arrangements; no disrespect was intended to the Tribunal;

97.2 He had apologised publicly for the collapse of the Firm and had not sought to blame anyone else for the period for which he was a partner/member of the Firm. The Tribunal noted with regard to this point that the Second Respondent had given an interview to BBC Radio 4 in January 2010 in which he apologised to the public;

97.3 It was clear that the Firm had serious regulatory and financial issues that had not been disclosed to him. The Second Respondent stated that the PSU visit was not disclosed to him or the other partners. He had done his best to put in place proper policies and procedures to mitigate risk and had tried to sort out the accounts reconciliations and ledgers. The Tribunal noted in relation to this point the Second Respondent's evidence that he became aware of the PSU visit only a few days before it began;

97.4 It was clear with hindsight that the accounting exercise was impossible to redeem but he had thought at the time it could be retrieved. He had not been responsible for any round sum transfers or any payment to OSCS. It was clear that the accounts department (in particular Ms LM) took instructions from WS throughout 2009 when they should not have done so. Email exchanges between LM and WS were hidden from him and the other partners so that none of them were aware of the true position;

97.5 He had believed that WS and MC acted as business or management consultants to the Firm, as he had said in evidence. The Second Respondent stated that WS and MC were introduced to the Firm by the First Respondent and he had assumed that their roles would remain when he became a member;

97.6 The Second Respondent stated that he had not been involved in the management of the Firm until September 2009. The Firm was owned and operated by the First Respondent during this period. The Second Respondent had been asked about commercial matters such as setting up a company to run conveyancing so as to reduce indemnity premiums but this was in line with his role as a consultant and nothing more;

97.7 From February 2010 until March 2013 the Second Respondent practised without any issues or concerns as an in-house litigation solicitor for two separate companies. Prior to these proceedings, he had had an exemplary background and was selected to sit examinations to become a Deputy District Judge. The Second Respondent stated that he had never been in any regulatory trouble or subject to disciplinary issues;

97.8 The Second Respondent stated that his credibility had been attacked on the basis of two draft letters and an indemnity proposal form. The latter was submitted via a broker and there was no intent to not fully or accurately disclose the Firm's position. In September 2009 he had assumed reconciliations would be done on assurance of the accounts department and he had no reason to doubt what he was told. The Tribunal noted that this point related to findings which had already been made;

97.9 The Second Respondent stated that he did not mislead the regulator. He was not in a fully coherent state of mind during the forensic investigation as the Firm was collapsing around him, with key staff resigning. If there had been any confusion, he corrected the position and sent detailed emails to Mr Shields regarding the ownership of the equity in the practice and what steps were being taken to remedy the accounts and ledgers. He had given the investigators additional information, including the staff list, after the intervention which he submitted was not indicative of a dishonest individual. The Tribunal noted that this point related to findings which had already been made;

97.10 The Second Respondent now believed the First Respondent had duped him and the other members into accepting senior positions when he knew the Firm was in serious trouble; he had been passed a poisoned chalice with devastating consequences for his career and family;

97.11 Despite everything, the Second Respondent wanted to continue with his career and could resume his role as an in-house solicitor if given the opportunity. He had gained higher rights of audience for both civil and criminal courts and there were opportunities to conduct advocacy in the Magistrates' Courts on a locum basis so he could earn some income in future;

97.12 If the Tribunal did not accept that position, he asked that a period of suspension from practice be considered and submitted that this would sit with the Tribunal's Guidance Note on Sanction and would act as a deterrent.

98. The Second Respondent concluded by thanking the Tribunal for its diligence in reading an enormous amount of documentation and being scrupulously fair in the proceedings. He had been given the opportunity of a fair hearing and considerable forbearance and direction had been given by the Tribunal during the course of the proceedings.

Third Respondent

99. No oral mitigation was presented for the Third Respondent. However, the Tribunal had read and considered her witness statement dated 21 January 2013, her letter to the Applicant dated 5 April 2013, a copy email to the Applicant dated 23 April 2013, with information about means, and two emails to the Tribunal sent on the evening of 2 May 2013.

100. The Third Respondent stated that she had been unable to attend the hearing for financial reasons, that no disrespect was intended to the Tribunal and that she took the issues seriously but had been unable to defend herself the way she would have wished. As a non-contentious solicitor, the Third Respondent was not familiar with court processes.

101. The Third Respondent stated that she was aware of the seriousness of the Firm's situation and had learned a lot of lessons from the events. The Third Respondent stated that she would not want to be a member of a Firm again, whether salaried or otherwise, and did not want to have anything to do with the management of a firm. This position was shown by the fact she had not disputed the CDDA proceedings and had signed the undertaking referred to at paragraph 24 above.

102. The Third Respondent stated that she deeply regretted the events at the Firm and found it hard to cope with mention of the Firm. She had tried to help former clients of the Firm, who had contacted her at home to ask for help to resolve the problems which had occurred. The Third Respondent stated that she had been upfront with clients for whom she had worked since 2011 about what had happened, but the clients had remained with her and indeed referred other work to her as they were happy with the work she did for them. By being open, clients were able to make an informed decision whether or not to instruct her; she hoped to be able to redeem her name slightly, her reputation having been damaged due to the Firm.

103. The Third Respondent told the Tribunal that she wanted to be able to work for a living to support her young family of three children under four and stated that her partner was currently not working. Since the intervention, the Third Respondent had had to enter into arrangements with creditors and had a county court judgment and walk in possession order over her assets such as her car. The Third Respondent stated that she had been in receipt of state benefits from May 2009 to August 2009 as she had been unable to find work due to the restrictions placed on her certificate before the Tribunal proceedings had been determined. The Third Respondent stated that she had been pregnant with her second child at the time of the intervention and was unable to find work as she was in the late stages of pregnancy.

104. The Third Respondent stated that the consequences of events at the Firm had been jeopardising her family's financial stability and her career for the past four years and would no doubt continue to affect her for many years to come. The Third Respondent accepted that she should not have been as naive as she had been during her time at the Firm. The Third Respondent stated that in the relevant period she had worked part-time hours and so was not part of running the office to a major extent, due to family commitments after the birth of her first child in mid-April 2009.

Fourth Respondent

105. Mr Afzal presented mitigation on behalf of the Fourth Respondent. He referred in particular to the Fourth Respondent's mitigation submissions and mitigation statement, with exhibits, both dated 2 May 2013. Mr Afzal also referred to the report of a Dr Briscoe dated 23 August 2012, an addendum report dated 1 May 2013 and a related letter dated 22 February 2013.

106. Mr Afzal reminded the Tribunal that the Fourth Respondent had been a member of the Firm for the shortest period. He had joined the Firm as an employee on 11 May 2009, became a member on 21 August and resigned as a member on 8 December 2009 i.e. before the intervention. The Fourth Respondent had been trying to leave the Firm from September 2009 and he had contacted recruitment agents at that point, as shown by documents exhibited to the mitigation statement. The Fourth Respondent's involvement with the Firm had been for a very short period. The Fourth Respondent had qualified as a solicitor in July 2006 and had no experience in running a legal practice. His involvement in these proceedings had arisen from his decision to become a member of the Firm, for which he had paid a heavy price. It could be seen from a document exhibited to the mitigation statement that the Fourth Respondent had been concerned about becoming a member and had sought advice, thus showing a cautious approach. He had received advice on the day he signed the membership agreement; it was submitted that it was clear from the Fourth Respondent's evidence that he had been put under a lot of pressure to sign the agreement.

107. Mr Afzal submitted that it was clear that there had been misconduct and deception by others, including some solicitors. There was no causal link between the Fourth Respondent becoming a member and the collapse of the Firm. The Firm's financial problems arose before the Fourth Respondent became a member and the round sum transfers had also occurred prior to his membership.

108. The Tribunal was told that there was no motive for misconduct by the Fourth Respondent. He had been put under pressure to become a member and had received no financial gain; his salary remained at £30,000 per annum and he had no direct control over any of the circumstances which arose. The Fourth Respondent had also been a victim of the collapse of the Firm. It was correct that the Fourth Respondent should have refused to become a member and he accepted that he bore responsibility with other members for what had happened. His difficulty in 2009 was that in the absence of a strong track record as a solicitor, and in a difficult market for immigration solicitors, it was hard to find another job and he had feared losing his job with the Firm if he did not become a member.

109. The Tribunal was told that the Fourth Respondent had never shirked from his responsibility. He had made admissions before the proceedings started and had co-operated fully in his meetings with the SRA's officers.

110. Whilst the Fourth Respondent admitted he was responsible for management of the Firm, the reality was that control had rested with other members. The Fourth Respondent had continued to undertake his immigration work and he had a peripheral and fleeting role in the Firm as could be seen by the limited references to him in the papers. The Fourth Respondent, against a background set out in the report of Dr

Briscoe, had been passive and non-confrontational such that he had been unable to stand up to WS and others. The Fourth Respondent accepted that what had happened was improper, but at the time he did not appreciate the extent of the impropriety. For example, it was only after the events in issue that the Fourth Respondent had learned that WS was bankrupt.

111. There had been no allegation of dishonesty or lack of integrity against the Fourth Respondent and it was submitted that in his case there were no aggravating factors as outlined in the Tribunal's Guidance Note on Sanction. The Tribunal was referred to Dr Briscoe's report and its addendum, which the Tribunal agreed to treat with sensitivity in the written judgment.

112. The Tribunal noted the Fourth Respondent's inability to find full time work in the profession as he was tainted by association with the Firm and his concern that as a result of these proceedings he had lost his dignity and the respect which is attached to being a member of the profession.

113. The bundle of references produced for the Fourth Respondent from solicitors, barristers, doctors, dentists and family friends referred to his honesty, integrity and probity and it was submitted that there was nothing to suggest anything against the Fourth Respondent to the contrary. Integrity was essential to a solicitor and it was submitted that the Fourth Respondent has this quality.

114. It was submitted that the Fourth Respondent was passionate about remaining a member of the profession and providing for his family, which would help with his recovery from illness, and he sought the opportunity to continue to work in the profession. It was submitted that striking off was not proportionate and that as there was no lack of probity on the part of the Fourth Respondent the Bolton principles did not apply. The Tribunal was referred to decisions of other divisions of the Tribunal on facts which bore some similarities to the issues in this case relating to the involvement of solicitors who were salaried members of a LLP for a short period; in one such case, a solicitor had been reprimanded. It was accepted that each case before the Tribunal is assessed on its own facts and that the Tribunal would reach its own views on the Fourth Respondent's degree of culpability. In response to a question from the Tribunal, Mr Afzal submitted that the case against the Fourth Respondent had been on the basis of his strict liability as a member for breaches and that the breaches of his management responsibilities had been technical breaches, with no element of recklessness.

Fifth Respondent

115. The Fifth Respondent referred in his mitigation to his updated additional statement which dealt with his financial position and a bundle of testimonials, all of which were read by the Tribunal after findings had been made.

116. The Fifth Respondent told the Tribunal that at the time of the events at the Firm, he had been relatively inexperienced, having qualified in February 2008. He had become a member when he had been qualified for a little over a year. His seniors had created the situation in the Firm.

117. There had been no previous complaints or disciplinary problems arising from the Fifth Respondent's conduct. The Fifth Respondent told the Tribunal that he had been co-operative with the SRA and had tried to assist them, for example by attending at an interview in February 2010, but he did not feel the SRA had accepted his position.

118. The Fifth Respondent told the Tribunal that he had always practised diligently and respected the rules of professional conduct. There were no personal faults which would affect his position as a solicitor and this was demonstrated by the testimonials he had produced which demonstrated that he was trustworthy and reliable, which were the characteristics solicitors must display. The Fifth Respondent submitted that he was both competent and capable to continue in practice.

119. The Fifth Respondent told the Tribunal that the damage to his reputation had been very great, particularly as he had many family and friends in the area in which the Firm had operated. He had suffered a punishment in the last three years and more in particular as he had faced allegations almost amounting to dishonesty; this had been a very testing time for him.

120. The Fifth Respondent told the Tribunal that he had a dependent child and lived with his widowed mother; his younger sister was at university and he was the head of the household, with a responsibility to her. For example, he would be the father figure for her when she came to get married. The Fifth Respondent submitted that it was imperative he should be able to practice to develop his career and provide for his family.

Sixth Respondent

121. Mr Nesbit made oral submissions in mitigation on behalf of the Sixth Respondent. The Tribunal had also heard evidence from the Sixth Respondent and her father which were taken into account in mitigation.

122. Mr Nesbit stated that he was grateful for the indication given by the Tribunal in its oral report on the findings that the Sixth Respondent was in a different category to the Second Respondent. He asked the Tribunal to consider that this case may fall within the exceptional category of cases in which a finding of dishonesty need not lead to a striking off order. That said, his client was under no illusion concerning the types of sanction which the Tribunal would consider.

123. The Tribunal had accepted that the Sixth Respondent had no central management role in the Firm and any decision on sanction should be approached on that footing. The Sixth Respondent was not responsible for introducing WS, MC and others to the Firm and allowing them to operate as they did. The responsibility for the descent to criminality in the Firm rested with others.

124. The Sixth Respondent recognised that the Firm's cheque signing procedures were not sufficiently secure. The only mischief in which the Sixth Respondent was concerned arose from signing cheques and the finding made by the Tribunal was on the basis that she could not honestly have believed the cheques (and/or the procedure) were proper, particularly with regard to the cheques to OSCS and the round sum transfers. It had not been the Applicant's case that the Sixth Respondent had known there was

any fraud. The Sixth Respondent was in a more global sense an honest and decent person and her dishonesty was limited to not following proper procedures when signing cheques.

125. The Tribunal was reminded that in those instances where the Sixth Respondent had requisitioned a cheque to HMRC then signed a cheque payable to OSCS instead, the Sixth Respondent would not have linked those cheques to her requisition. Her dishonesty had arisen where there was a large volume of cheques, to parties she had not heard of, where there were no underlying documents to show that the cheque was properly required.

126. The Sixth Respondent had experienced devastation in her personal life. Her marriage, under Sharia law, to the First Respondent may now be ended by divorce which would bring shame on her and her children. In practical terms, the Sixth Respondent had lost the support of the First Respondent who had in any event not given her much support. These points in particular had been confirmed by the Sixth Respondent's father. The First Respondent had been willing to use her not only as a dogsbody but also as a fig leaf when it was convenient in order to make the Firm appear more professional e.g. by designating her as the Practice Manager or HR Manager.

127. It was submitted that a solicitor should display robustness but in this instance the Sixth Respondent had been used by others. The Sixth Respondent and her children were victims. The events at the Firm had been personally catastrophic for the Sixth Respondent; she had suffered shame, humiliation and embarrassment, which was in itself a significant sanction. It was submitted that because of the wider circumstances, this was an exceptional case which warranted no more than a long suspension for the Sixth Respondent.

Sanction

128. The Tribunal had regard to its Guidance Note on Sanctions (August 2012). It noted in particular the purposes of sanction as set out in Bolton v The Law Society [1994] 1 WLR 512 ("the Bolton case"). It was clear from the Bolton case that,

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him..."

It was further noted that the purposes of sanction included punishment, preventing any repetition and,

> "...most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, or whatever standing, may be trusted to the ends of the earth..."

129. With regard to the Firm's client account the Tribunal also noted the judgment in Weston v Law Society [The Times Wednesday July 15 1998] which made it clear that client money was sacrosanct and must be handled with the utmost care; this had clearly not happened in the Firm. In this case, the evidence of Mr Jones showed that payments out of the Compensation Fund arising from the losses of client money from

the Firm amounted to £12,370,716.84 to date and after recovery on the statutory trust the net loss to the Compensation Fund was currently £7,659,867.82. There were 24 claims still outstanding which, if paid, would amount to a further £252,878.79 loss to the Compensation Fund. This represented a significant cost to the profession and, even more importantly, represented a large number of clients whose money had been lost or, in the circumstances of this particular case, deliberately disbursed in breach of the SAR.

130. The Tribunal had had the benefit of hearing from three such clients. Moving house was often a stressful experience, even if all went smoothly, but these three clients – representative of many others – had had the significant worry that their money had been lost. The harm to the profession was enormous. The SRA's prompt action and payments out to affected clients had mitigated the loss but this did not detract from the fact that the collapse of the Firm had led to one of the biggest and most complex interventions ever and certainly the biggest in recent years. The complexity of the investigation was aggravated by the absence of almost all relevant accounts or client information, through the deliberate actions of persons unknown.

131. Those controlling the Firm had treated clients as commodities, with personal injury and conveyancing matters in particular being dealt with on a conveyor belt. There was a lack of care and respect for the fact that in conveyancing matters the Firm was dealing with the largest asset most clients would ever own. Whilst the SRA and the various firms of solicitors who had picked up the transactions after the intervention were to be commended for mitigating the distress and inconvenience to clients, it remained the case that considerable distress had been caused and the reputation of the profession had inevitably suffered.

132. The context in which the Tribunal was considering sanction was that there had been a catastrophic collapse of the Firm in which all of the Respondents had been members and/or involved in financial impropriety. The Tribunal, in order to maintain the reputation of the profession had to consider severe sanctions in each case, but was careful to analyse the wrongdoing of which each Respondent was guilty in assessing the appropriate sanction. The Tribunal was conscious that deterrence is a proper function of sanction; in the case of the Third, Fourth and Fifth Respondents, the Tribunal considered it necessary to point out that becoming a partner or member of a firm carries with it significant responsibilities and those doing so did so at their own peril if they had not carried out proper enquiries or due diligence.

<u>Second Respondent</u>

133. The Tribunal had found that the Second Respondent had been dishonest. Further, it had found him to have breached a number of core duties of solicitors and the SAR. The general circumstances and factors considered are set out at paragraphs 129 to 132 above.

134. At the time of the collapse the Second Respondent was, on his own account, the Managing Partner of the Firm. The Firm was continuing to take in client money, for which it was unable to account properly; it was moving client files without permission and the Birmingham office was closed on 18 December when, it was clear from the evidence, at least one completion was due to take place on 22 December 2009.

Whilst the Second Respondent had spoken at some length about the efforts he said he had made to correct the failings in the Firm after 1 September 2009 it was clear to the Tribunal that neither he – nor anyone else – was exercising any proper management controls or limiting the damage to the Firm's clients in any way.

135. From 1 September 2009 the Second Respondent had been a member of the Firm and was entirely responsible for the Firm. He knew, from at least the time of the PSU visit in early September 2009 if not before, that the client account had not been balanced or reconciled since January 2009. On the PSU visit a shortage on client account of about £1.6 million had been disclosed; this was the clearest possible warning of both accounting problems and potentially enormous losses to clients. An honest and responsible solicitor would have called on the SRA for assistance. As soon as it became clear that the client account had not been reconciled and was not capable of being reconciled – and action should have been taken on this immediately – it was clear that the SRA would have to be involved. The Second Respondent pretended that the accounts could be reconciled and continued to rely on the accounts department; that department was part of the problem as it operated under the influence of WS and others. The Second Respondent composed a response to the PSU visit which consisted of pages and pages of fantasy. This document was undated but appeared to have been sent to the SRA on 5 November 2009. It was stated in the response,

> "We confirm that we have reconciled client money held on general client account in accordance with Rule 32(7)"

However, it was clear on all of the evidence seen and heard that no reconciliations dealing with the required matters had been done since January 2009. The Second Respondent stated in evidence that he could not recall any reconciliations showing a deficit. However, the Tribunal found that it would have been obvious there was a cash shortage if reconciliations had been carried out. Further, the Second Respondent stated that he asked Ms LM about accounts issues and was told that the problem was that postings were not up to date. The Second Respondent stated in the response to the PSU visit that bills of costs to justify the round sum transfers had been raised. However, it was shown in the FIR that a number of these bills were not dated until November 2009, after the date of the response. There were statements in the response document concerning the supervision of the conveyancing department by solicitors; those statements were either inaccurate, or the supervision was ineffective given the continued chaos in the residential conveyancing department until the intervention.

136. Before September 2009 the Second Respondent had played a more significant role than he had admitted. The Second Respondent had clearly come into the Firm with a view to buying it, having tried to do so shortly before he joined the Firm. He set up the Firm's personal injury department in Birmingham and on his own case was in discussion with the First Respondent from June/July 2009 about becoming the Managing Partner. Under WS, MC and others the Firm was operating a practise which abused client account; the Second Respondent may not have been personally involved in the movement of monies but he was complicit in allowing it to happen. The personal injury department of the Firm was part of the commoditisation of legal services which WS and others had introduced.

137. A clearly aggravating factor in the Second Respondent's conduct was his dishonesty. He had permitted WS and others to be involved in the Firm in an inappropriate way. As part of his dishonesty, he had concealed the wrongdoing of others and in particular concealed the First Respondent from the investigating officers by denying that the First Respondent had any continuing role within the Firm when that was clearly untrue. He did not own up to the role WS, MC and others had clearly played in the Firm or his own part in the mismanagement of client money and of the whole Firm.

138. The Tribunal considered the Second Respondent's mitigation, which at its simplest was to suggest that: the fault lay with others (e.g. WS and the First Respondent); he had not known what the true position was and had been left a mess by the First Respondent; he had tried to sort out the mess he had inherited; and that he was also a victim. The Tribunal noted the Second Respondent's analogy of a truck going downhill when the driver did not know the brakes had been cut. The Tribunal could not accept that the Second Respondent was an innocent victim; had he been, at the time of the PSU visit he would have both confronted the First Respondent and sought help from the SRA. The Second Respondent had told the Tribunal in evidence that he did not speak to the First Respondent about the PSU visit, despite the fact he had only just become the Managing Partner, because he, "did not see the point in an altercation". This appeared to the Tribunal to be a wholly implausible position for any honest and responsible solicitor to take. Further, the Second Respondent had told the Tribunal in evidence that he had only become aware of the seriousness of the position when the forensic investigation began despite the fact that at the time of the PSU visit a shortfall on client account of about £1.6 million was identified.

139. The Second Respondent had lacked credibility in his evidence. His approach to the truth was shown in his evidence in relation to the PII proposal document, the draft letter in which he was noted to be a "partner" and the Brazilian letter.

140. Although the Second Respondent had made a public apology concerning the collapse of the Firm on BBC Radio 4 in January 2010 he had displayed throughout the proceedings a complete lack of insight into his misconduct. The Second Respondent had told the Tribunal he had tried to sort out the position at the Firm but he had failed to do so, resulting in net payments from the Compensation Fund in excess of £7.6 million. Further, the Second Respondent had obstructed the SRA investigation by lying about his role in the Firm and that of the First Respondent and failing to protect the Firm's data, client files and other records. The movement of files out the Firm had occurred when he was the Managing Partner and he clearly had not checked that client consent had been given. On his own evidence, many staff were resigning; it must have been obvious that the Firm was on the brink of collapse and the interests of clients were jeopardised. A physical inspection of the office would have shown that the conveyancing department in particular was in a state of chaos.

141. Even without the finding of dishonesty, the Second Respondent's misconduct was such that any sanction would have to be severe, in the light of the principles set out in Bolton. The Second Respondent had displayed a lack of integrity, probity and trustworthiness in the way he operated within the Firm. In the light of the multiple findings of dishonesty and where there were no exceptional circumstances which suggested a lesser sanction ought to be considered, the only right, proper and proportionate order was to strike the Second Respondent from the Roll of Solicitors.

Third Respondent

142. The findings against the Third Respondent, and the catastrophic impact of the default of all of the Respondents, are set out above at paragraphs 87.20 to 87.21, 89.5, 90.4, 91.4 and 129 to 132.

143. The Third Respondent had been interviewed for her position as a wills and probate solicitor by WS. Subsequently, she had deferred to WS concerning her terms of employment and in connection with the refund of monies to clients. Like the Fourth and Fifth Respondents, the Third Respondent had been a member of the Firm during 2009 but she had been a member for a longer period than either and remained a member at the time of the intervention.

144. In becoming a member of the Firm, the Third Respondent had taken on all of the duties and responsibilities of a principal of the Firm but did not exercise any proper management function. The Tribunal noted that she had worked part-time, but she had a duty to ensure that there were proper systems in place and it was not enough to assume that others were managing the Firm. The Third Respondent had not carried out due diligence before becoming a member in June 2009 and thereafter did not carry out her duties as a member. Solicitors must realise that on becoming a principal of a Firm they are responsible for that Firm and cannot rely on others or their own ignorance about what was going on. It was noted in the Bolton case that being a solicitor carried with it responsibilities as well as privileges.

145. The Tribunal noted that when the Third Respondent became a member (at the same time as the Fifth Respondent) her membership allowed the Firm to operate on the panels of various lenders: membership of such panels was less likely where there was only one member. The fact that she became a member allowed the Firm to operate as it did.

146. The Tribunal noted that the Third Respondent had taken a period of maternity leave – albeit very short – immediately before she became a member. At the time of becoming a member, she had almost 7 years post-admission experience, about the same as the Second Respondent. The Tribunal took account of the fact that the Third Respondent had tried to work with the Second Respondent from the time of the PSU visit. The Tribunal had no reason to doubt that she had meant well, but her efforts were totally ineffective. The Third Respondent appeared to have relied on assurances given by the Second Respondent and by the Firm's accounts department e.g. in relation to client account reconciliations. Nothing was done to protect the Firm's data and records e.g. by arranging for a proper back-up, although the Tribunal noted that it was the Third Respondent who had arranged for Mr Ted Walsh to attend the offices on 14 December concerning computer problems which apparently occurred on or about 9 December. The Firm's cheque book was not secured. The Third Respondent did not have proper access to the Firm's computer or accounts systems. From September 2009, if not before, it was apparent to the Third Respondent that the Firm was in a state of chaos and that the interests of clients were not being protected; indeed, her own evidence acknowledged that the conveyancing department was "just a mess". The Third Respondent had put herself forward as the person who, together with the Second Respondent, was trying to put matters right. Unfortunately, having taken on that role and failed to ask the right questions or demand answers to those

questions the Third Respondent had fallen very far short of what was expected of her. The Third Respondent had had a role in handling complaints against the Firm – of which there were many during 2009 - and on her own evidence had been involved in managing the conveyancing department on her return from maternity leave.

147. The Tribunal noted that the Third Respondent had made admissions in these proceedings and in the CDDA proceedings. This showed some insight into her misconduct but there had been no full acknowledgement of her responsibility for the events at the Firm. The Tribunal was satisfied that the Third Respondent had not been part of the inner circle which had controlled the Firm and she had had no financial gain from her position. However, her experience and the length of her membership, together with her association with the Second Respondent after September 2009 – which might have given the impression that problems were being tackled – meant that her sanction had to be greater than that awarded to the Fourth and Fifth Respondents.

148. The need for a severe sanction was apparent from the circumstances set out at paragraphs 127 to 132 above and throughout this Judgment, particularly given the impact on the reputation of the profession arising from the collapse of the Firm. The Third Respondent had not been dishonest but she had failed to carry out her responsibilities such that the Firm had been able to lose over £7.6 million of client money. The Tribunal did not consider it necessary or proportionate to strike off the Third Respondent, given that she had not been personally involved in any wrongful transfers etc. However, she had been a member when round sum transfers of £314,000 had been made from client to office account – the first of these occurring on her first day of membership – and when cheques had been paid to OSCS instead of HMRC. The Third Respondent had been a member when files were transferred out of the Firm; indeed, she had arranged the transfers of files to Sterling Law but had failed to check that clients had given permission.

149. In all of the circumstances, the Tribunal considered that the appropriate, proportionate and fair sanction was to suspend the Third Respondent from practice for a period of two years. Anything less would not meet the seriousness of the case and of the Third Respondent's defaults. The Tribunal considered it necessary in addition to impose some conditions of its own on the scope of the Third Respondent's ability to practise after returning from suspension. In particular, she should not be a principal of any recognised body and should only work as a solicitor in employment approved by the SRA.

Fourth Respondent

150. The background factors to the issue of sanction are set out above at paragraphs 129 to 132 and throughout this Judgment. It was clear that on any reading of the situation, someone who had been a member of the Firm during its descent into chaos must face a severe sanction.

151. The Tribunal took into account the Fourth Respondent's illness, which had perhaps contributed to his difficulties in standing up to WS and others. The Tribunal accepted that the Fourth Respondent's misconduct had taken place when he may have been ill or certainly prone to illness and therefore somewhat fragile. The Fourth Respondent had taken steps the Third and Fifth Respondent had not, such as seeking legal advice

before becoming a member; even with that preliminary advice, he had been unable to resist the pressure on him to become a member. The Fourth Respondent had not made any financial gain from becoming a member. At the time he became a member – August 2009 – the Firm had three members so his membership was not essential to the Firm acquiring or retaining any lender panel status. The Fourth Respondent had not played any proper role in the management of the Firm but had confined himself to working within the immigration department. This was a double-edged sword. Whilst it was clear that the Fourth had no substantial knowledge of wrongdoing within the Firm, as a member he should have made proper enquiries and taken proper action. The Fourth Respondent was a solicitor of about three years' standing when he became a member, so was less experienced than the Third Respondent but more experienced than the Fifth Respondent. Lack of experience was not in itself mitigation; any solicitor who takes on the role of a principal in a Firm must be ready to take on the responsibilities and duties which that entails.

152. The Fourth Respondent had tried to extricate himself from the Firm and had been looking for other work from about September 2009 i.e. very soon after he became a member. He had resigned as a member within four months of becoming a member. However, the period for which he had been a member was a significant part of the period in which the Firm collapsed; the Firm had been in reasonable order, it appeared, in late January 2009 and its disintegration had occurred in just 11 months, the Fourth Respondent had been a member for almost four of those eleven months.

153. The Tribunal noted the devastating personal consequences for the Fourth Respondent and his family. However, matters of personal mitigation were less important in determining sanction than the need to protect the reputation of the profession. The Tribunal also noted his admissions, which had been appropriate and in respect of which the Tribunal was satisfied the relevant matters had been proved. The Tribunal balanced all of the factors in the case. It was clear that to reflect the gravity of the matters in question, it was appropriate to interfere with the Fourth Respondent's ability to practice as a solicitor. However, taking into account the mitigating factors which had been put forward and bearing in mind the need to ensure each sanction was proportionate, the proper sanction in this case was suspension from practice for a period of six months. The Tribunal considered it necessary in addition to impose some conditions of its own on the scope of the Fourth Respondent's ability to practise after returning from suspension. In particular, he should not be a principal of any recognised body and should only work as a solicitor in employment approved by the SRA.

Fifth Respondent

154. In addition to the background factors set out above, the Tribunal considered the particular circumstances of the Fifth Respondent. He had admitted fewer allegations than the Third and Fourth Respondents, possibly as a result of legal advice he had received. The Applicant had given an indication at the beginning of the case that if the Fifth Respondent were to admit allegation 1.3, as well as allegations 1.4 and 1.5 for the period of his membership, that might have met the justice of the case. As it was, the Tribunal had heard a total of six allegations against the Fifth Respondent of which two were admitted, three were proved and one was not proved. Accordingly, the Fifth Respondent had had found against him a total of five allegations, whereas

the Third and Fourth Respondents had been sanctioned in respect of four allegations each, albeit those were serious allegations. Whilst there was no simple totting up exercise to be done, the Tribunal could not ignore the fact that the Fifth Respondent had failed to act in the best interests of clients and had acted in a way which was likely to diminish the trust the public would place in him or the profession. These breaches of core duties had not been pursued or found proved against the Third and Fourth Respondents.

155. The Tribunal gave the Fifth Respondent some credit for the fact that, as was clear from the email trail presented, the Fifth Respondent had emailed his fellow members about matters of concern and not WS even though WS and MK sometimes then intervened. The Fifth Respondent had been a member of the Firm for a period of four months, from 5 June to 5 October 2009, so slightly longer than the Fourth Respondent but less than the Third Respondent. During this reasonably short period, the descent into chaos was developing; for example the first of the round sum transfers occurred on the day the Fifth Respondent became a member.

156. There had been no concerns expressed about the Fifth Respondent's competence as a commercial property solicitor. The difficulty was that the Fifth Respondent had confined himself to his own work and department and had not even tried to get involved in wider issues of management. It was not acceptable for a principal of a Firm to rely wholly on others, without making proper enquiries to gain assurance that the firm for which they are responsible is being properly managed. As with the Third and Fourth Respondents, the Fifth Respondent had had no personal gain from becoming a member, but he had taken on the liabilities. The Tribunal was struck by the fact that the Fifth Respondent was aware, at the time he became a member, that the First Respondent wanted him as a member (along with the Third Respondent) in order that the Firm could be on lender panels; this was recorded in the Fifth Respondent's interview with the SRA on 23 February 2010. The Tribunal accepted that the Fifth Respondent had not been directly involved in the large-scale wrongdoing in the Firm, but in becoming a member he (and the other members) had created a veneer of respectability, so that the Firm appeared to be properly constituted when in fact it was being controlled to a significant degree by unqualified persons.

157. The Tribunal considered carefully all of the factors in the case. The gravity of the situation and the Fifth Respondent's role in it was too great to allow for any penalty less than suspension from practice. Taking into account the Fifth Respondent's mitigation including his short period of membership, but also the fact that he had been found to have breached Rules 1.04 and 1.06 of the SCC, under allegation 1.2, in addition to other serious allegations the Fifth Respondent's period of suspension should properly be shorter than that of the Third Respondent but longer than that of the Fourth Respondent. The Tribunal determined that suspension for the period of one year was appropriate, just and proportionate. The Tribunal considered it necessary in addition to impose some conditions of its own on the scope of the Fifth Respondent's ability to practise after returning from suspension. In particular, he should not be a principal of any recognised body and should only work as a solicitor in employment approved by the SRA.

Sixth Respondent

158. The Tribunal accepted that the culpability of the Sixth Respondent for the situation of chaos which developed in the Firm was much less than that of some other individuals, in particular the Second Respondent. The Tribunal noted that the Sixth Respondent had not played a central role in the management of the Firm and as she was not a member at any time had no obligation to play such a role.

159. The Tribunal accepted that the Sixth Respondent had suffered personal embarrassment arising from the collapse of the firm for which she had worked and which had been operated for a period by her husband. However, many who appeared before the Tribunal naturally underwent considerable personal distress and the Sixth Respondent's position was not exceptional in this regard.

160. The Tribunal was aware that the Sixth Respondent had been found to be dishonest in relation to signing cheques, as set out at paragraphs 93.13 to 93.19 above. In signing cheques as she had done, and thereby condoning a system which was an open invitation to fraud and abuse, the Sixth Respondent had shown a reckless disregard for her duty to protect client money. She had signed cheques when there was no proper reason for those cheques to be paid and had not insisted on seeing evidence to justify removing that money from client account. Cheque signing was not a mere formality – the signatory to a cheque was the last gate-keeper to prevent raids on client account. When presented with the request to make a round sum transfer, the minimum requirement on the Sixth Respondent was that she should see not only the cheque requisition form but also the bills, a list of the bills involved and, if relevant, copies of disbursement vouchers. It may have been the case that the Sixth Respondent did not have the necessary authority within the Firm to insist on proper procedures, but in that case she should have ceased to be a signatory. No honest solicitor could have signed cheques as the Sixth Respondent did. Her dishonest and lax approach was a gift to any fraudsters. Money belonging to clients was not secure because of the Sixth Respondent's reckless and dishonest disregard of her obligations as signatory. A solicitor must guard against mistakes as well as fraud. In a firm in which a large number of fee-earners were new and were not known to be properly trained and/or trustworthy the Sixth Respondent's default was especially serious. It was not enough to say that the system had not been abused when the Firm was smaller; its cheque signing system was clearly wrong and that became ever clearer as the Firm expanded and such controls as might once have existed ceased to have any effect.

161. It was clear from many recent cases that where dishonesty was found proved, striking a solicitor off the Roll would be the only reasonable sanction save in the most exceptional circumstances. Here, there were no exceptional circumstances. The Tribunal would order the Sixth Respondent to be struck off the Roll.

Costs

162. Mr Dutton presented to the Tribunal a schedule of costs in the total sum of £447,477.24 and made an application for payment of costs by the Respondents.

163. Mr Dutton told the Tribunal that this case had involved one of the most complex SRA/Law Society investigations for many years. The forensic investigation costs

were £158,722.99, legal costs including VAT were £272,536.48 and disbursements totalled £16,217.77.

164. Mr Dutton further told the Tribunal that his instructing solicitors had carried out an apportionment exercise to give an indication of the costs incurred in relation to each Respondent. There had been considerable costs incurred in relation to the First Respondent (being over £95,000) who had not taken part in this hearing. There had been four pre-trial hearings, including one in which the Second Respondent had applied for a stay of the proceedings. Whilst the apportionment schedule was not binding on the Tribunal, it was hoped that it would assist the Tribunal in considering the appropriate costs orders. The apportionment schedule set out costs claims against the Second Respondent of £137,229.69, the Third Respondent of £34,898.47, the Fourth Respondent of £34,898.47, the Fifth Respondent of £53,127 and the Sixth Respondent of £91,905.87.

165. Mr Dutton submitted that the Tribunal should make costs orders against each of the relevant Respondents such that enforcement could be considered and carried out by the Applicant's costs recovery unit. It was submitted that the Tribunal should not make an order which was enforceable only with the permission of the Tribunal as the Applicant would not seek to enforce costs which could not be recovered.

166. The Second Respondent had submitted a statement of financial means, which was considered by the Tribunal. He did not make any specific submissions on the amount of costs or how those costs should be apportioned.

167. The Third Respondent had also submitted a statement concerning her financial position. In an email of 2 May 2013 the Third Respondent had stated that she could not understand or comment on the schedule.

168. On behalf of the Fourth Respondent, Mr Afzal submitted that the proposed apportionment of costs was agreed. However, it was submitted that none or only a very small proportion of the hearing costs should be attributable to the Fourth Respondent as he had made admissions and withdrawal of other allegations had been agreed, subject to the Tribunal's approval, before the hearing. The Fourth Respondent had submitted a statement of means from which it was clear that his financial position was very poor. Mr Afzal submitted that any order for costs against the Fourth Respondent should not be enforced without the permission of the Tribunal. The Fourth Respondent was vulnerable, for reasons set out in the report of Dr Briscoe, and enforcement should not be left to the Applicant's costs recovery unit without further reference to the Tribunal. The Tribunal was asked to temper justice with mercy in the case of the Fourth Respondent.

169. The Fifth Respondent had submitted a statement concerning his financial circumstances. He did not have any specific comments on the overall schedule of costs. On the issue of apportionment, the Fifth Respondent submitted that he was the least culpable yet he was being asked to pay costs of more than half of the amount apportioned to the First or Sixth Respondent, which appeared to the Fifth Respondent to be unfair. The Fifth Respondent had had to attend the Tribunal but now felt it might have been to his detriment to have done so. He submitted that perhaps the Third Respondent had been more culpable than he had been. The case on dishonesty

which applied only to the First, Second and Sixth Respondents had been more complex than the allegations which he had faced. The Applicant had suggested that the Fifth Respondent was one of the least culpable of those involved.

170. On behalf of the Sixth Respondent Mr Nesbitt referred the Tribunal to the Sixth Respondent's statement of means. Mr Nesbitt told the Tribunal that the statement had omitted rental income on two properties, but all of that income was expended on paying the mortgages. Mr Nesbitt referred to a bank account which was, in effect, held on trust for the Sixth Respondent's eldest child and so was not part of the Sixth Respondent's means. The Tribunal was referred to the case of R v Northallerton Magistrates Court ex parte Dove (1999) 163 JP 894 from which it was clear that it was not the purpose of an order for costs to serve as an additional punishment for the Respondent, but to compensate the Applicant for the costs incurred by it in bringing the proceedings and any order imposed must never exceed the costs actually and reasonably incurred by the Applicant. It was submitted that the principle was that neither the costs, nor any fine, should exceed what the paying party could reasonably afford. With regard to the proposed apportionment it was submitted that this did not appear fair as the amount claimed against the Sixth Respondent was not far short of the amount claimed against the Second Respondent. It was submitted that the appropriate figure would fall somewhere between the costs claimed against the Fifth and Sixth Respondents i.e. there should be some deduction from the figure of nearly £92,000. Mr Nesbitt submitted that on a range of issues, the Tribunal had found in favour of the Sixth Respondent. In other sorts of court proceedings, this might lead to an order apportioning costs according to the matters on which parties had been successful. Mr Nesbitt did not submit that there should be no order for costs, but a significant amount of costs were attributable to issues on which the Sixth Respondent had succeeded. The findings against the Sixth Respondent were based on matters she had admitted concerning the cheque signing process; those matters had taken substantially less time in the hearing than other matters. Whilst Mr Nesbitt had no comments on the rates charged and the overall time spent, the Tribunal was invited to reduce the amount attributable to the Sixth Respondent substantially and to consider making an order which should not be enforced without the permission of the Tribunal.

171. The Tribunal had heard the case and considered the documents presented throughout a ten day period and so was very well placed to determine the appropriate costs orders.

172. The overall costs claimed were reasonable and proportionate to the gravity of the case and its complexity. No substantial objection had been taken to the rates claimed or hours spent in dealing with the case and the Tribunal found that the total costs were proper. All allegations had been properly brought, even where the Applicant had not proved the allegation. Whilst the allegations against the Sixth Respondent concerning a management role in the Firm had not been proved, it was right that they had been tried and the allegations tested; it would have been of concern to the public and the profession if allegations against someone who had been described as the Practice Manager, and who had been involved in the Firm, which had collapsed spectacularly, had not been heard.

173. The costs apparently apportioned to the First Respondent appeared to be of a similar order to those claimed against the Sixth Respondent but, of course, the First

Respondent had not played any part in this hearing and none of the hearing costs could be attributable to him.

174. The Tribunal accepted that the proposed apportionment had been properly carried out and provided a useful guide to the costs incurred in respect of each Respondent. The Tribunal considered in addition the relative culpability of each Respondent and found that in relation to this issue the apportionment appeared correct. Whilst the Third Respondent faced a more severe sanction than the Fifth Respondent, as her culpability was greater than his, there had been more costs involved in the case against the Fifth Respondent as he had played a greater role in the proceedings. Even taking into account the fact that the Fifth Respondent had succeeded in relation to one allegation, it was still clear that he should bear a greater amount of costs than the Third or Fourth Respondents. Having considered the issue of apportionment, the Tribunal determined that the schedule presented showed a fair apportionment which the Tribunal was content to accept.

175. The Tribunal went on to consider whether or not the means of any or all of the Respondents should either reduce their liability for costs or lead to an order that costs should not be enforced without the permission of the Tribunal.

176. The Tribunal noted the information given concerning the Second Respondent's financial position, which indicated that the Second Respondent was of limited means. However, the Tribunal had found the Second Respondent not to be a credible witness and could not be sure that the information he provided was full, complete and accurate. The Third Respondent's position also appeared to be poor. In addition to the apparently poor financial position of the Fourth Respondent, the Tribunal was conscious of his vulnerabilities and the risk that he would not be in a position to obtain a well-paid or full-time job for some time. The Fifth Respondent had also produced evidence of his difficult financial position and that he was the de facto head of his family. The Sixth Respondent had investment properties, albeit they were not producing a significant income.

177. The Tribunal considered the position carefully. It was satisfied that with respect to the Second, Third, Fifth and Sixth Respondents that the Applicant's costs recovery unit should be allowed to seek recovery in a proportionate way; whether and when any payments would be made was unclear, but the Applicant should have the opportunity to seek to agree a payment schedule and/or place a charge on assets belonging to the Respondents. The position with the Fourth Respondent was a little different and the Tribunal considered that it should provide some additional protection in the light of his current illness and vulnerabilities.

178. The Tribunal ordered each Respondent to pay costs as set out in the schedule of costs and the apportionment schedule. In the case of the Fourth Respondent those costs should not be enforced without the Tribunal's permission.

Statement of Full Order

179. The Tribunal Ordered that the Respondent, Imran Hussain, 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 £137,229.69.

180. 1. The Tribunal Ordered that the Respondent, *NAME REDACTED*, solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the 3rd day of May 2013 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £34,898.47.

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

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner, partner in a firm or member or manager of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); and

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

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

181. 1. The Tribunal Ordered that the Respondent, *NAME REDACTED*, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 3rd day of May 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £34,898.47, such costs not to be enforced without leave of the Tribunal.

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

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner, partner in a firm or member or manager of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); and

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

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

182. 1. The Tribunal Ordered that the Respondent, *NAME REDACTED*, solicitor, be suspended from practice as a solicitor for the period of 1 year to commence on the 3rd day of May 2013 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,127.09.

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

2.1 The Respondent may not:

2.1.1 Practise as a sole practitioner, partner in a firm or member or manager of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); and

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

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

183. The Tribunal Ordered that the Respondent, ASMA QAYUM, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £91,905.87.

DATED this 7th day of August 2013
On behalf of the Tribunal

D. Potts
Chairman