SOLICITORS DISCIPLINARY TRIBUNAL

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

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NASIR ILYAS Respondent

Before:

Mr E. Nally (in the chair)
Miss N. Lucking
Mr S. Hill

Date of Hearing: 13 to 15 October 2014

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 Blake Morgan LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant.

The Respondent, Mr Nasir Ilyas, attended and represented himself during 13 October 2014 but then left the hearing.

JUDGMENT

Allegations

1. The allegations against the Respondent, made in a Rule 5 Statement dated 27 September 2011, were that:

1.1 He 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 ("the Code").

1.2 He failed to act in the best interests of the Firm's clients contrary to Rule 1.04 of the Code and behaved in a way that was likely to diminish the trust placed in him or the legal profession contrary to Rule 1.06 of the Code.

1.3 He failed to act in accordance with his management responsibilities in relation to his conduct of the business of the Firm contrary to Rules 1.04, 1.06 and 5 of the Code.

1.4 He failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors' Accounts Rules 1998 ("SAR 1998").

1.5 He breached Rules 1, 19 and 22 of the SAR 1998.

1.6 He failed to cooperate with the Applicant's investigation into the Firm and into his conduct contrary to Rule 20.05 of the Code.

2. The Respondent acted with a lack of integrity contrary to Rule 1.02 of the Code in that he committed each of the breaches referred to in 1.1 to 1.6 above dishonestly.

3. The Respondent dishonestly sought to mislead the Solicitors Regulation Authority during the investigation into the Firm contrary to Rule 1.02 of the Code and Rule 20.05 of the Code.

Documents

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

Applicant:-

- Application dated 27 September 2011
- Unnamed bundle including:
    - Written submissions on behalf of the Applicant (81 pages) dated 6 October 2014
    - Second Witness Statement of Delme Griffiths dated 9 October 2014, with exhibits (44 pages)
- Trial bundle comprising:
    - ***File A***

      Pleadings/Witness evidence

- Rule 5 Statement dated 27 September 2011
- Witness Statement of Anne-Marie Townend, 11 July 2012
- Witness Statement of Nicola Trigg, 11 July 2012
- Witness Statement of Yvonne Mwaiwa, 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 (various dates)
- 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.

- ***File B*** *– Documents re earlier hearing in these proceedings*
  - Tribunal Judgment against Second to Sixth Respondents re hearing 11 April to 3 May 2013
  - Written submissions on behalf of the Applicant for hearing commencing 22 April 2013
  - Chronology
  - Skeleton Arguments of the Second, Fifth and Sixth Respondents
  - Second Skeleton Argument of the Second Respondent
  - Mitigation Submissions of the Fourth Respondent
  - Mitigation Statement of the Fourth Respondent
  - Additional Statement of the Fifth Respondent
  - Witness Statement of the Third Respondent (unsigned)

- ***File C*** *– Documents re earlier hearing in these proceedings*
  - Witness statement of Ian Jones, 26 April 2013
  - Witness statement of Susan Stewart (unsigned)
  - Witness Statement of Mr Abdul Qayum (unsigned)

Witness statements

- Witness statement of Natasha Muniz, 14 September 2014
- Witness statement of the Respondent, 30 July 2014

CDDA Proceedings

- Order and Schedule of Unfit Conduct to the Disqualification Undertaking given by the Respondent

Tribunal's Memoranda

- Memoranda of Case Management Hearings 26 February, 26 June and 31 July 2014

- Civil Evidence Act Notice with letter 1 November 2011

- Documentation relating to the Respondent's prior application for an adjournment including medical evidence

- Miscellaneous correspondence (additional to that in File 10)

- ***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

- ***File 2*** – Appendices C1 to G30 to the FIR
- ***File 3 –*** Appendices G31 to G79 to the FIR

- ***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

- ***File 5*** – Schedule of Compensation Fund Payments, undated

- ***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 Respondent and draft witness statement
- ***File 13*** – Applicant's further disclosure

- Schedule of Costs

Respondent:

- Witness statement of the Respondent, 30 July 2014 (in Volume C of trial bundle)
- Personal financial statement of the Respondent (undated but received by email on 15 October 2014)

Preliminary Matter (1) – Terminology

5. The Rule 5 statement contained allegations against six Respondents. The current Respondent, Mr Nasir Ilyas, did not take part in the hearing at which the allegations against the other five Respondents were considered and disposed of, in April and May 2013 ("the earlier hearing"). The proceedings against him were severed and adjourned to a later date by an order of the Tribunal made on 11 March 2013.

   In order to maintain consistency throughout this Judgment and to assist reading the Judgment in the matter against the other Respondents, the following terminology is used:

   - Mr Nasir Ilyas is referred to as the Respondent (or "the First Respondent" in the earlier Judgment);

- Mr Imran Hussain is referred to as the Second Respondent;
- Ms Helen Murgatroyd is referred to as the Third Respondent;
- Mr Bobby Shabbir is referred to as the Fourth Respondent;
- Mr Bilal Khawaja is referred to as the Fifth Respondent;
- Ms Asma Qayum is referred to as the Sixth Respondent.

6. Further, in this document the Solicitors' Code of Conduct 2007 will be referred to as "the Code" and the Solicitors' Accounts Rules 1998 will be referred to as "SAR 1998". The Company Directors Disqualification Act 1986 will be referred to as "the CDDA". The mattes in issue occurred primarily in 2009 and 2010 and in any event whilst the Code and SAR 1998 were in force.

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) – History of the proceedings

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 proceedings against the Respondent were severed, such that he would not take part in the hearing.

9. The earlier hearing was concluded on 3 May 2013. The Judgment in that matter, dated 7 August 2013, set out in detail the Tribunal's findings in relation to five Respondents and the sanctions imposed on each. The Judgment bears the same case number as this Judgment.

10. At or about the time of the earlier hearing, the Crown Court at Birmingham had concluded that the Respondent was unfit to plead in relation to certain charges which had been brought against him, in the light of medical evidence produced in those proceedings. The criminal proceedings against the Respondent were heard in the autumn of 2014; the Respondent was acquitted of all charges.

11. On 18 February 2014 there was a Case Management Hearing ("CMH") in these proceedings to determine the next steps. The Respondent did not appear and was not represented at that hearing. The Memorandum of that hearing, dated 26 February 2014, recorded that the Respondent had indicated to the Applicant that he intended to contest all of the allegations. The Applicant and Respondent had agreed draft directions, which were put before the Tribunal for consideration. Those draft directions were approved. They provided for the Respondent to file and serve a statement by 11 April 2014 setting out which of the allegations were admitted and which denied (with the basis for any denials) and set out dates for certain other steps concerning exchange of evidence and preparation for the substantive hearing. The Tribunal ordered the hearing to be listed on the first open date after 2 May 2014, with a time estimate of 5 days. The matter was then listed to commence on 13 October 2014, this being the first available five consecutive days.

12. A further CMH took place on 24 June 2014; again, the Respondent was not present or represented. The Memorandum of that hearing, dated 26 June 2014, recorded that the present hearing had been listed by the time of that CMH. In an email to the Tribunal dated 23 April 2014 the Respondent had asked for more time to file his response to the allegations, stating that he had been seriously ill and that he was facing civil action with deadlines similar to those set out by the Tribunal. The Tribunal was on that occasion referred to correspondence between the parties in which the Respondent had indicated that he would provide his response to the allegations by 22 April 2014; the Applicant had not objected to this. However, no response had been received by the time of the CMH on 24 June 2014. The Tribunal directed that unless the Respondent filed and served his response by 4pm on 14 July 2014, he would not be entitled to adduce any evidence at the hearing without the leave of the Tribunal. The Tribunal adjusted the timetable for trial preparation, in the knowledge that this hearing was listed.

13. A further CMH was held on 22 July 2014, at which the Respondent was present and represented himself. The Memorandum of that CMH, dated 31 July 2014, noted that on 13 July 2014 the Respondent had sent an email to the Tribunal in which he requested an extension of time of three weeks (i.e. until about 4 August) for filing and serving his response to the allegations; that request was opposed by the Applicant and the CMH was listed. The Tribunal had recorded that the Respondent had previously been represented in these proceedings by a solicitor, who had prepared a draft response to the allegations some time before. The Respondent told the Tribunal that he had asked for the draft, and would need to cross reference and check it. The Respondent had also referred to medical issues, which he said had the effect of slowing him down and asked to be allowed until about 15 August to file and serve his own statement and 29 August 2014 to provide statements from other witnesses. After hearing from the Applicant, the Tribunal directed the Respondent to file his Answer by 4pm on 8 August 2014 and gave consequential directions. A copy of the Tribunal's Practice Note on Adjournments was provided with the Memorandum, which also recorded:

> "22. The Tribunal noted that during this hearing the Respondent had made a number of references to his ill-health. The Tribunal understood that at an earlier stage in the proceedings there had been medical evidence, but there was no up to date medical evidence. The Tribunal wanted to make clear to the Respondent that if he wanted to rely on his medical condition in any way he must provide a proper medical report from a suitably qualified person. The Tribunal's Guidance Note on Adjournments, for example, provided that the claimed medical condition of a party would not generally be a ground for adjournment unless supported by a reasoned opinion of an appropriate medical adviser. A "sick note" or similar stating the person was unfit for work was unlikely to be sufficient. (A copy of the Tribunal's Practice Note is appended to this Memorandum). Medical evidence would be required, for example, if the Respondent were to claim that ill-health prevented him from complying with the directions or if he wanted any special arrangements for the hearing.
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> 23. The Tribunal noted in particular that the Respondent had referred to his ill-health and medication having the effect of slowing him down. It was

important that if this would have any effect on the time estimate for the hearing it should be identified as soon as possible…

24. The Chair noted that any problems with the time estimate had come about because the Respondent had not complied with the orders made so far; he would be prejudiced if he did not comply with the Tribunal's further orders. Any application to delay the hearing or make special arrangements for the Respondent due to his stated ill-health would have to be supported by evidence, and the Respondent should make his position on this clear as soon as possible. The Respondent told the Tribunal that he felt he could deal with the proceedings, but needed the extra time to give his response to the allegations."

14. The hearing remained listed from 13 October 2014, with a time estimate of 5 days. The Respondent produced a statement in response to the allegations dated 30 July 2014.

Preliminary Matter (3) – Respondent's application to adjourn

15. The hearing was listed to commence at 10am. The case was called into court at approximately 10.30am, at which time the Respondent was not present and no messages had been received from him. The Tribunal was aware that on 8 October 2014 the Respondent had made an application by email to adjourn the hearing. Before the Tribunal could consider the application made by email or hear submissions on it from the Applicant, a message was received (at approximately 10.35am) indicating that the Respondent had telephoned the Tribunal. The hearing was adjourned briefly.

16. When the hearing resumed, at approximately 10.55am, the Respondent was present together with a Mr Quayum; the Tribunal was informed that Mr Quayum was present to assist but not represent the Respondent formally. In fact, Mr Quayum spoke for the Respondent who adopted a disengaged attitude throughout his time in court; the Respondent did not engage with the Tribunal or speak distinctly. However, the Tribunal was content that the Respondent gave his permission for Mr Quayum to address the Tribunal and adopted what was said on his behalf.

17. The Tribunal referred to the Respondent's application by email to adjourn the hearing. That email, dated 8 October 2014, read:

"I would like to make an application to rely on evidence.

As I understand I cannot introduce evidence or call witnesses. The applicant can do both. I find it wholly unfair this process of proceeding to the hearing.
I have highlighted my health problems previously. I'm on medication which does not allow me to function like a normal working person. I cannot get a consultant appointment to send you a report, and I cannot afford a private report.

I seek that the hearing next week is adjourned and I be allowed to introduce evidence, witnesses and if need be expert evidence.

> I have not been able to respond earlier due to suffering from depression. Even now I'm getting help to write this email to you.
>
> I look forward to hearing from you."

18. Mr Quayum told the Tribunal that the Respondent was not trying to delay the hearing. The Respondent had not been able to get a consultant appointment on the NHS to obtain a medical report. Mr Quayum told the Tribunal that the Respondent lives alone; he is providing support to the Respondent. The Respondent wanted to have a fair hearing and to obtain a medical report to assess if he could deal with the proceedings. Mr Quayum could not predict the time this would take, but possibly not more than 4 or 6 weeks; a minimal period of adjournment was requested.

19. The Tribunal noted that the issue of medical evidence had been discussed at the CMH in July 2014 (see paragraph 13 above) at which hearing the Respondent had been present. The Tribunal asked about the attempts made by the Respondent since then to obtain evidence. Mr Quayum told the Tribunal that the Respondent could not afford to pay for a medical report privately and was trying to get his GP to refer him to a consultant. Mr Quayum told the Tribunal that there had been medical appointments arranged which the Respondent had missed. Mr Quayum told the Tribunal that the Respondent's family and friends were anxious for him to receive treatment, as he needed round the clock care. Mr Quayum told the Tribunal that the Respondent was presently living with friends in a property in Manchester; he did not live with his wife and children any longer, but was trying to resolve the family difficulties. Mr Quayum told the Tribunal that he had travelled with the Respondent to support him.

20. The Tribunal noted that the application was made late and was not supported by a written statement or documentary evidence, so only verbal representations were available.

21. Mr Quayum referred to the efforts made by him to get the Respondent to see his GP. Mr Quayum told the Tribunal that the Respondent was definitely on some medication; those who lived in the house with him made sure that he took his medication. Mr Quayum told the Tribunal that he had known the Respondent for a long time. He now helped him, for example, by taking the Respondent for walks. The Respondent tended to become emotional and agitated. Mr Quayum told the Tribunal that the Respondent had gone through a lot. The sooner these proceedings were over, the earlier he would be able to concentrate on his recovery. Whatever the outcome, the Respondent wanted a fair hearing.

22. In response, Mr Dutton referred to the Memorandum of the CMH of 22 July 2014 and in particular the passage at paragraph 22 of the Memorandum (quoted at paragraph 13 above) in which it was made clear that the Respondent would need to produce medical evidence if he wanted to rely on a medical condition in any way. Mr Dutton also referred to the Tribunal's Practice Note on Adjournments, which stated that the claimed medical condition of a party would not normally be regarded as providing justification for an adjournment unless it was supported by the reasoned opinion of an appropriate medical adviser. The Tribunal had made it clear at the hearing in July 2014 that medical evidence would be needed if the Respondent wanted to rely on a

claimed medical condition as a reason for failure to comply with directions, or if special arrangements for the hearing were needed.

23. Mr Dutton submitted that the Respondent had been aware of any relevant medical condition for a long period. It had been relied on in spring 2013 when the case against him was severed from that of the other Respondents and in the course of the criminal proceedings. There had been medical evidence in those proceedings, as a result of which the criminal case had been adjourned for a number of months.

24. The report of Dr S dated 16 September 2012 stated that the most likely diagnosis of the Respondent was of "a moderate depressive disorder without somatic syndrome". The report of Dr F, dated 24 September 2012 included confirmation that she agreed with his reported concentration problems which would severely compromise his ability to follow court proceedings. A report by Dr A dated 24 January 2013 concluded that the Respondent at that time was suffering from a "severe depressive episode". A further report by Dr F dated 21 February 2013 stated that her preferred diagnosis was of "a moderate depressive disorder with some biological features such as memory impairment, fatigue and sleep disturbance" but concluded that the Respondent was fit to plead and to stand trial, with appropriate adaptations in the course of the proceedings. The Tribunal was referred to a passage in Dr F's report which read:

> "There is a great deal of discrepancy in symptomatology articulated by [the Respondent] at which he contradicts himself, and his observed clinical performance, which disproved his described difficulties. If I dismiss this conflicting information provided by [the Respondent] and merely base my opinion on continual observations of [the Respondent's] reasoning, clarifying and asserting himself during the whole interview, his conflicting responses and allusions by indirect questions, I feel that [the Respondent] understands the charge, he clearly has an understanding of guilty and not guilty. Unless he has developed an extreme form of memory loss, psychosis or depression – all of these should be consistently present during the interview, which was not the case – it is impossible that he does not understand the role of the different professionals involved in court proceedings and how to instruct a counsel…"

25. Mr Dutton told the Tribunal that the Respondent had attended the criminal trial, which lasted from 25 October to 20 December 2013, which was conducted with "Maxwell Hours" (i.e. evidence was heard in the mornings and legal matters discussed in the afternoons). The Respondent had been acquitted.

26. Mr Dutton told the Tribunal that there was little new evidence in the present proceedings. The Respondent had been aware of these proceedings for a very long time, and for much of that period he had been capable of dealing with proceedings.

27. Mr Dutton described the history of these proceedings. The Firm had been intervened in December 2009. In 2010 the Respondent had taken part in High Court proceedings concerning the intervention and some of the issues in this case, in the course of which he had legal representation from Ozon Solicitors. The Application and Rule 5 Statement in this case were made on 27 September 2011. At a CMH in March 2012 the Respondent and the other Respondents were ordered to respond to the allegations

by 29 June 2012. The Respondent did not comply. Further directions were made on 19 July 2012, which included provision for the Respondents to provide their responses to the allegations by 31 August 2012. The substantive hearing, which had been listed to take place in December 2012, was adjourned on the application of the Respondent (and the Sixth Respondent), for reasons including the possible trial of the Respondent on criminal charges in early 2013.

28. Mr Dutton told the Tribunal that at a CMH on 18 December 2012 the Respondent applied to adjourn the substantive hearing, which had been re-listed to take place in April 2013, referring to his health (about which no evidence was produced to the Tribunal at that time) and the criminal proceedings. The application was refused. At a further CMH on 11 March 2013, the Tribunal severed the proceedings against the Respondent from those against the other Respondents; the hearing concerning those other Respondents proceeded in April/May 2013. Mr Dutton submitted that throughout the proceedings, the Respondent had been directed to file and serve a response to the allegations, but had not done so. Although the Respondent had been directed to serve his response by 15 April 2013 (so that the other Respondents would be aware of his position before dealing with the allegations against them), he had failed to do so.

29. Mr Dutton told the Tribunal that there had been CDDA proceedings against the Respondent, which had been resolved in August 2014. The Respondent had participated in those proceedings, and had made admissions and given undertakings; he had been disqualified from being a company director for 15 years.

30. Mr Dutton told the Tribunal that there had been no further medical evidence submitted since the reports referred to at paragraph 24 above, the most recent of which was dated February 2013. The Respondent had failed to comply with the directions (which he had agreed) made in February 2014, and the further directions in June and July 2014. At the latter hearing, the Tribunal had made it clear that if the Respondent wanted to rely on a medical condition in the proceedings, he should supply medical evidence; he had not done so.

31. Mr Dutton told the Tribunal that the Respondent had supplied his response to the allegations on 30 July 2014, in which he denied all of the allegations. The Respondent had been in correspondence with Mr Havard, Mr Dutton's instructing solicitor, concerning delivery of certain documents to him at the address referred to in the Application. The Respondent had not indicated that the documents should be sent to another address. The Respondent had received the Applicant's written submissions by email. Mr Dutton told the Tribunal that the documents the Applicant had tried to deliver were mostly documents the Respondent had seen before. However, there were some newer documents supplied by the solicitors who had acted for the Secretary of State in the CDDA proceedings and there was a statement by Ms Muniz, a client of the Firm, concerning non-payment of SDLT; Ms Muniz would be attending to give evidence.

32. Mr Dutton submitted that the Respondent was entitled to a fair trial. He and his friends and family had known about these proceedings for a long time and had also known that if he wanted to rely on medical matters in these proceedings he would need to provide evidence. Mr Dutton submitted that in the past it had been clear that

the Respondent suffered with depression but there was no up to date medical evidence about the current situation.

33. Mr Dutton submitted that it was important to consider that it was in the interests of all concerned for these proceedings to reach a conclusion. The proceedings were three years old, and related to events in 2009. The issues were of the utmost seriousness, as indicated by the Tribunal's findings in the earlier hearing. It would be in the public interest, and quite possibly in the Respondent's interest, for these proceedings to be brought to a conclusion.

34. Mr Dutton submitted that if the case were adjourned, the prospects and timetable for the proceedings was uncertain. There was no indication from the Respondent when he would be able to obtain a medical report. If the Respondent were receiving medical treatment at the moment it was surprising that there was not even a letter about his condition. Although there was a background in which it was clear the Respondent had had a medical condition, it was in the interest of everyone to bring this case to a conclusion.

35. Mr Dutton submitted that it was not unfair to proceed; the Respondent had had ample opportunity to provide medical evidence. The Respondent had undertaken correspondence with Mr Dutton's instructing solicitor and with the Tribunal. It was unclear what his current condition was although it was acknowledged that there was a history of episodic depression; there was no evidence about this since February 2013.

36. Mr Quayum told the Tribunal that he had been the Respondent's litigation friend in the CDDA proceedings. It had been decided to conclude those proceedings; the Respondent had not attended.

37. Mr Quayum told the Tribunal that he was asking for an adjournment of the case. If the Respondent were fit, he would comply with the Tribunal's directions, but he did not understand matters. Mr Quayum told the Tribunal that the Respondent would have to get an up to date report from the NHS or someone would have to pay for a private report; the Respondent's family and friends would ensure that he attended any appointment for this.

38. The Tribunal asked Mr Quayum to clarify whether the Respondent had tried to get a NHS appointment since the directions were given in July 2014. Mr Quayum told the Tribunal that the Respondent had made an approach but he did not know if any appointment had come through. Mr Quayum told the Tribunal that the Respondent's recent change of address had had an impact on the timing and which doctor would be prepared to see him. Mr Quayum could not say if there was any letter about an appointment. So far as Mr Quayum knew, the Respondent had moved to his current address about 6 weeks before the hearing. The Respondent was in a difficult situation with his wife. At present, he needed the support of his family and friends.

The Tribunal's Decision

39. The Tribunal considered carefully the application made by the Respondent both by email and by way of representations by Mr Quayum. It also took into account the

representations made on behalf of the Applicant, together with the Tribunal's Practice Note on Adjournments and the history of these proceedings.

40. The Tribunal was sensitive to the medical issues referred to on behalf of the Respondent, in particular his history of depression. The Tribunal was aware that depression could be debilitating so as to prevent a party from taking a full and proper part in court proceedings. The Tribunal noted the Respondent's body language during his appearance at court, which remained apparently disengaged throughout the 35 minutes or so during which the application was made. However, as noted below, the Tribunal had seen no up to date medical evidence from the Respondent.

41. The Tribunal noted that this case was a little over 3 years old, and related to events in 2009, some 5 years before this hearing. The Tribunal noted that in 2010 and, indeed, until 2012 the Respondent had been capable of conducting the proceedings and had instructed solicitors to act on his behalf in these proceedings, proceedings in the High Court and in the criminal proceedings against him. The Tribunal noted that the Respondent had made previous applications to adjourn these proceedings, in particular in July and December 2012. The Respondent had been directed to file and serve his answer to the allegations, by directions given in March and June 2012 but he had failed to comply. The present application, therefore, was made against a background in which the Respondent had failed to comply with the Tribunal's orders, even when he was clearly well enough to do so.

42. The Tribunal further noted that the Respondent had agreed to the directions proposed (and made) in February 2014, under which his response would be filed and served by a date in April 2014. He had then asked for an extension of time, but had failed to file and serve a response by the time of the CMH in June 2014. At that point, he had been directed to file and serve his answer by 14 July; he had not done so. The Respondent had attended the CMH on 22 July 2014. He had on 13 July 2014 asked for an extra three weeks to file and serve his answer. His response was, it appeared, served on the Applicant on or about 30 July 2014, but it had not been filed at the Tribunal.

43. The Tribunal noted that in an email of 23 April 2014 the Respondent had stated that he had been seriously ill, and also referred to deadlines in other proceedings as his explanation for not complying with the directions made (with his agreement) in February 2014. Apart from that reference, and representations made to the Tribunal on 22 July 2014 by the Respondent on his own behalf, there had been no references to ill health as a factor in the present proceedings since this hearing had been listed.

44. The Tribunal noted that at the July hearing the Tribunal had taken pains to make it clear to the Respondent that if he wanted to rely on his alleged ill health in any way, he would need to produce appropriate medical evidence. The Tribunal had ensured that a copy of its Practice Note on Adjournments was sent to the Respondent and his attention was clearly drawn to the need for supporting evidence.

45. The Tribunal also noted and took into account that at the hearing on 22 July 2014, the Respondent had told the Tribunal that he felt he could deal with the proceedings but needed some extra time to give his response to the allegations.

46. The Tribunal also noted that the Respondent's statement dated 30 July 2014 appeared to be articulate and reasoned, and dealt with relevant matters. That statement contained the statement, "My medication has slowly helped me to come to terms with the illness". The statement, which contained a statement of truth, did not refer to any substantial difficulties or any assistance the Respondent had had with the preparation of the statement; the Tribunal understood that it was largely based on a draft by the Respondent's solicitors at an earlier stage in the proceedings.

47. The Tribunal also noted that the Respondent had been able to engage, intermittently, with the Applicant and the Tribunal and had sent emails about relevant matters, for example, his requests for more time to deal with the response. It also noted that the Order made by the High Court on 6 August 2014 in the CDDA proceedings, which recorded that the Respondent had given an undertaking, did not refer to the Respondent acting in those proceedings through a litigation friend. On the face of the CDDA proceedings papers which were available, there was nothing to suggest the Respondent's capacity to make admissions or give undertakings had been in doubt.

48. Mr Quayum had described to the Tribunal what he perceived to be the Respondent's medical problems and the position with regard to medical treatment and reports. It was not clear to the Tribunal that the Respondent, or those assisting him, had made any sustained effort to obtain an appointment and/or report from a suitable medical practitioner. There was not even a letter from a GP. Whatever the reason, there was no up to date medical evidence concerning the Respondent. The history appeared to be that in late 2012/early 2013 he had had such difficulties that a criminal trial had been adjourned, but that trial had proceeded in autumn 2013; the Respondent had been able to take a proper part in that trial, which lasted for about 2 months. There was no medical evidence in any form explaining what had happened since then; the last reports seen by the Tribunal were from February 2013, some 18 months before this hearing. There was thus no evidence on which the Tribunal could conclude that the Respondent was unwell and unable to deal properly with the proceedings.

49. The Tribunal noted that Mr Quayum had, reasonably, accepted that these proceedings were a source of stress and/or distress for the Respondent. There would be benefits to the Respondent in concluding these proceedings, so that he could concentrate on his recovery.

50. The Tribunal also took into account that it was in the public interest and in the interests of justice and the profession for proceedings to be dealt with as soon as reasonably possible. The Tribunal concluded that it would be in the interests of all concerned that these proceedings should be heard and concluded. The Tribunal was satisfied that the Respondent could and would have a fair hearing.

51. The Tribunal was reassured that the Respondent was present and that he had some support from Mr Quayum, who was familiar with the issues as he had apparently assisted the Respondent in the CDDA proceedings. The Tribunal would ensure that regular breaks would be taken so that the Respondent would have time to absorb the relevant information. The Respondent had attended without a set of case papers (which were voluminous) but the Tribunal would ensure that copies of the documents were provided to him.

52. After announcing the Tribunal's decision, the Chair indicated that matters would proceed with the Applicant opening the case and a review of when the various witnesses would be called.

Preliminary Matter (4) – Proceeding in the absence of the Respondent

53. Immediately after the Chair had outlined the next steps in the hearing, Mr Quayum told the Tribunal that he did not want to be present for the remainder of the hearing. He indicated that he would leave and take the Respondent with him, to make sure that the Respondent got home safely. Mr Quayum told the Tribunal that he could not defend the Respondent and so did not want to be involved in the hearing. The Chair indicated that Mr Quayum's participation was a matter for him; the Tribunal did not expect Mr Quayum to be the Respondent's advocate, but he could sit with the Respondent if he wished. Mr Quayum told the Tribunal that he would prefer to take the Respondent home. The Chair explained that the Respondent was entitled to be present but if he did not want to remain then the Tribunal would hear from Mr Dutton on the issue of proceeding in the Respondent's absence. The Chair wished to make it clear that the Tribunal had declined to adjourn the hearing. Mr Quayum submitted that he did not believe the Respondent would get a fair hearing and that he could not leave the Respondent on his own. The Chair confirmed that if the hearing proceeded in the Respondent's absence, findings and orders could be made and the Respondent needed to be aware of that.

54. Mr Dutton referred to the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") and in particular Rule 16(2) which provided that the Tribunal could proceed with a hearing if satisfied that a Respondent had had notice of the hearing. The Respondent was present and the Tribunal could proceed to hear and determine the case. The Tribunal's power to proceed in the absence of a Respondent must be exercised judicially. Mr Dutton submitted that, for many of the same reasons as given for declining the application to adjourn, it would be fair to proceed in the Respondent's absence. Mr Dutton reiterated that the Respondent had been in possession of the Rule 5 Statement and supporting documents for about 3 years. The Respondent had been a party in CDDA proceedings; some of the newer documents in the case related to those proceedings and there was one additional statement from a former client. The Respondent had received the Applicant's written opening, which cross referred to the documents relied on by the Applicant. The Respondent had had every opportunity to understand the case against him; if he chose to withdraw, the case against him could proceed.

55. Mr Quayum indicated that he had nothing to add. The Chair pointed out to the Respondent that the Tribunal would now consider whether or not to proceed in his absence, if he chose to leave; it invited the Respondent to consider his position. It would allow the Respondent a short period for this, then would hear from him again before making a decision. The Tribunal then rose for five minutes.

56. On resuming, Mr Quayum told the Tribunal that he had explained the Tribunal's decision on the adjournment application to the Respondent. The Respondent denied the allegations and, it was submitted, the Respondent was not fit to explain his position properly. It was hard for Mr Quayum to remain. Mr Quayum told the Tribunal that he could try to find if there were any medical records or letters about

treatment when the Respondent returned home, so that this could be taken into account. Whilst it might be late, there may be something about the Respondent's health which could be taken into account.

57. The Chair asked the Respondent if he agreed with what Mr Quayum had said on his behalf; the Respondent replied that he did not know. The Chair explained to the Respondent that the Tribunal would prefer to proceed with him present and taking part and that if the Respondent were to leave, the hearing might continue without him.

58. Mr Quayum told the Tribunal that he did not think the Respondent fully understood. The Respondent had denied all of the allegations. Mr Quayum told the Tribunal that all he could do was to try to find any medical letters etc., which could be sent to the Tribunal.

59. The Chair indicated that if new documents were submitted, they would be shared with the Applicant, which may or may not object to the inclusion of material provided late. The Chair asked if the Respondent had heard what Mr Quayum had said, but the Respondent did not reply.

The Tribunal's Decision

60. The Tribunal considered carefully whether or not to proceed with the hearing in the event that the Respondent withdrew from the hearing. The Tribunal had regard to Rule 16(2) of the Rules. In this instance, there was no doubt that the Respondent had had notice of the hearing as he was present. The situation was that the Respondent was considering leaving, after his application to adjourn had been rejected.

61. The Tribunal was aware that in making a decision about proceeding in the (potential) absence of the Respondent, it had to act judicially. The Tribunal was aware of the particular factors to take into account, in accordance with the case of R v Jones [2002] UKHL 5 ("Jones") which approved a list of some factors to consider as set out in R v Hayward [2001] EWCA Crim 168 ("Hayward"). Of most significance in the circumstances of this case was that if the Respondent were to leave, he would be waiving his right to attend and voluntarily absenting himself.

62. The Tribunal was aware that it was for the Applicant to prove each/any allegation to the highest standard. The Respondent had denied the allegations, and the Tribunal had the benefit of his statement and so would be able to consider what he said. The Tribunal noted that in accordance with the judgments in Jones and Hayward it should be particularly alert to challenge the prosecution and draw attention to any gaps or areas of doubt in the case.

63. The Tribunal considered the alternative to proceeding with the case on this occasion. There would inevitably be considerable further delay. There was no clarity about when the Respondent would have appropriate medical evidence available (if, indeed, there was any such evidence) and so when the case could be re-listed. The Tribunal was mindful of the interests of justice. It was in the interests of all concerned, including the Respondent, the public and the profession, that the case was disposed of now.

64. The Tribunal noted that it had attempted to clarify with the Respondent that he understood the position. Although the Respondent had presented as disengaged and unresponsive, the Tribunal had no evidence whatsoever that he lacked the capacity to understand or take part in the proceedings.

65. The Tribunal noted that it had indicated that it would be of assistance if Mr Quayum were present to assist, but he may choose to leave with or without the Respondent.

66. The Tribunal determined that if the Respondent chose to leave, it would proceed in his absence as this was in the interest of justice. The Tribunal would ensure that the Applicant was put to proof of its case and would take into account the written response of the Respondent dated 30 July 2014. The Tribunal noted that this decision was being announced at approximately 12.45pm (on 13 October). It would adjourn for lunch and resume at about 1.30pm. The Tribunal expressed the hope that the Respondent would choose to remain.

67. On the Tribunal resuming at about 1.35pm, the Respondent was not present and the hearing proceeded in his absence.

Preliminary Matter (5) - Burden and standard of proof

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

69. The Tribunal was conscious that this case overlapped to a considerable extent with the matters considered at the earlier hearing. Where appropriate, it adopted the wording in the earlier Judgment (in order to avoid any unnecessary complications or inconsistencies) but in each instance made its own decision on the facts and matters in issue. Although some aspects of the earlier Judgment have been used in this Judgment, the Tribunal was careful not simply to adopt the earlier Judgment wholesale; it reached its own conclusions on the issues.

Factual Background

<u>The Respondents</u>

70. The Respondent was born in 1976 and was admitted to the Roll of Solicitors in 2003. His name remained on the Roll at the date of the hearing but he did not hold a current practising certificate. The 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 Respondent was a member of the Firm, which was the successor practice to Wolstenholmes.

71. 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 had been disputed at the earlier hearing, 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.

72. 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.

73. 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.

74. 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.

75. 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 had been disputed at the earlier hearing 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.

Wolstenholmes/the Firm

76. 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 about early 2009 the Firm opened offices in Birmingham and central Manchester. The details concerning the opening of these offices was disputed at the earlier hearing; the SRA had no record of these offices until a Practice Standards Unit ("PSU") visit to the Heald Green office in September 2009.

77. From about 1 August 2006 the Respondent took control of the Firm. The Respondent and Sixth Respondent were married in October 2004 under Sharia law and had three children together.

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

79. During the course of the SRA's investigation the Respondent and Second Respondent 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:

79.1 The Respondent remained a member and beneficial owner of 98.98% of the shares in the Firm until 1 September 2009; and

79.2 Pursuant to a Declaration of Trust dated 1 September 2009 the Respondent purported to pass his shareholding (stated to be 99.6% of the issued share capital) to the Second Respondent, who held the shareholding in the Firm on trust for the Respondent; and

79.3 The 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.

80. 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.

81. 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 earlier hearing the Second to Sixth Respondents acknowledged that there had been significant involvement in the management and direction of the Firm on the part of the three individuals, although the date such involvement was said to have begun and the date and degree of knowledge of each Respondent was not the same. The Respondent's position on this was not known at the time of the earlier hearing).

82. 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.

83. 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.

84. The Second Respondent, in an interview by the investigation officers, stated that the Firm had a management team comprising of the Respondent, WS and MC; the last two both worked from the Heald Green and Birmingham offices. MK was described by the Second Respondent as the Head of Sales and Marketing, who 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.

85. 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 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.

86. 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

87. 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 s35 in Schedule 1 of the Solicitors Act 1974 ("the Act") and was executed in the days thereafter, as set out further below.

88. 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 account in respect of which there were neither proper client bills produced nor disbursements to justify such transfers, in the sum of £314,000.

89. 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.

90. The investigation continued during 2010 and the final FIR was prepared and was dated 16 November 2010. The Applicant relied on the final FI Report in support of its case.

Allegation 1.1

91. The Firm was formed in 2006 by the Respondent and a Mr Burke, 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 Respondent was no longer connected with the practice, had "stepped down" and had relinquished management control. The Respondent stated in an interview in November 2009 that he did not have any interest in the Firm and had not had any such interest since late 2008. A Trust Deed dated 1 September 2009 made between the Respondent and the Second Respondent stated that the 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 Respondent, with the beneficial interest in the shares vesting in the Respondent. The Applicant contended that the Respondent's assertion that he had no interest in the Firm (from either 31 January or 1 September 2009) was untrue.

92. The Applicant alleged that from late 2008 until the intervention was effected on 28 December 2009 the Respondent permitted WS, MC and MK to have significant influence and/or control over the affairs of the Firm. It was accepted by all the Respondents at different points that WS, MC and MK had been involved in the

management and direction of the Firm in the period from 2008. It was not disputed that the evidence in the FI Report 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 others and that all three had given instructions to staff as to the conduct of the Firm's affairs and client matters. For example, the Third Respondent's salary was set by WS. MC and WS were said by the Second Respondent to have managed the Firm's Birmingham office. 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.

93. The Respondent's position was that WS, MC and others had been introduced into the Firm by the Second Respondent, to whom he had handed over management of the Firm from 31 January 2009. The Applicant contended that the Respondent knew that WS and others undertook management functions but took no steps to prevent it, and so condoned it.

94. Payments made by the Firm to 15 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

95. From or about late 2008 or early 2009 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. The Applicant contended that the Birmingham and Manchester offices were run, not by solicitors but principally by WS and MC. Client matters were not supervised by solicitors to any or any proper extent at any of the Firm's offices.

96. 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 A 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. The Applicant contended that the Firm outsourced client work in this manner without client permission.

97. 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.

97.1 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 whilst the cheque requisition slip referred to a payment to HMRC.

97.2 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 (on which Miss W's signature was forged) 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, a company connected with WS.

97.3 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. That cheque was signed by the Respondent on 17 August 2009.

98. 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 Respondent.

99. 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. The Applicant contended that the provisions relating to submissions of SDLT forms to allow registration of the charge within the priority period were not met. Further, there was no evidence that relevant searches had been obtained in order to maintain priority.

100. 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. Other files were

distributed to other firms, as set out further below. The Applicant contended that the Respondent and the Firm failed to keep client files secure.

101. 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. The Applicant contented that the Respondent and the Firm failed to keep the client account cheque book secured and there was therefore a failure to safeguard the interests of clients.

102. On or about 9 December 2009, during the course of the SRA investigation, it was reported to the investigators by someone at the Firm 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. There was evidence that someone had accessed the Firm's computers at 9.53pm on 25 December 2009. The Applicant contended that the Respondent and the Firm had failed to maintain a proper system of security with regard to client and accounts information.

Allegation 1.3

103. The allegation arose from the loss of client money during 2009 and the matters set out at paragraphs 91 to 102 above concerning the influence of WS, MC, MK and others in the Firm. The Applicant contended that: there was no proper system for the supervision of staff or clients' matters; there was no system for the control of undertakings; documents were not safeguarded, nor were assets entrusted to the Firm properly safeguarded; there was no system of training of individuals to maintain appropriate levels of competence; and no, or little, management of risk.

104. In the period from early 2009 until the intervention there was a massive loss of client money. As at October 2014 the payments out of the Compensation Fund amounted to £13,462,796 (as against £12,370,716.84 as at April 2013)**.** After recovery from the statutory trust representing the proceeds of the former client account of the Firm of £4,860,849 (as against £4,710,849.02 as at April 2013) the net loss to the Compensation Fund was £8,601,947 (as against £7,659,867.82 as at April 2013)**.** No meaningful or complete computer records were available at the time of the intervention.

Allegation 1.4

105. 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.

106. 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 client 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.

107. 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.

108. The FI Report recorded that client accounting records were not up to date due to incomplete and incorrect bookkeeping. The Applicant contended that the massive book differences, set out above, showed the records were not properly maintained during 2009.

Allegation 1.5

109. The final FI Report recorded that:

109.1 Such records as were recovered on the intervention were in "a state of disarray";

109.2 The system for issuing cheques or making a telegraphic transfer "changed a number of times". The accounts staff had to post transactions both to Cognito and a CRM system but, insofar as such postings occurred, they must have been either inaccurate or so slow that postings had all but come to an end by the time of the intervention;

109.3 Staff began to leave, possibly because of the Firm's failure to maintain a proper system of keeping accounts. The Respondents were unable to identify to whom the task of accounts reconciliations was transferred during 2009;

109.4 The intervention agents reported that the records kept at the Firm were "in no discernible order or filing system";

109.5 On 3 June 2009 a Mr W, former cashier in the Firm, wrote a letter of resignation to the Respondent (copied to WS and Ms RH) in which he stated his main reasons for resigning were:

> "1) The lack of procedures and policies followed by the company;
> 2) Breaches of the solicitors accounting rules;
> 3) A lack of respect for the accounts department and what they do".

109.6 As at September 2009 the Firm had failed to allocate £4.8 million of client money to clients on client ledgers;

109.7 By 2 October 2009 there were unallocated client funds of £10,620,156.46;

109.8 In an email exchange on 5 June 2009 between WS and Ms LM, information was exchanged about the Firm's accounts – see further paragraph 230.7 below.

110. The Applicant relied also on the following matters:

110.1 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;

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

110.3 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 £8,601,947.

111. 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 and the Respondent signed one cheque. The transfer of £80,000 on 5 June 2009 was made on the direct instruction of WS as set out at 107 above.

Allegation 1.6

112. 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 2

113. This allegation was made on the basis that each and any of the foregoing breaches had been committed dishonestly by the Respondent.

Allegation 3

114. This allegation related to the period of the SRA investigation i.e. from November 2009.

115. On 27 November 2009 the Second Respondent told the investigation officers that the Respondent was "no longer connected with the practice", that he had "stepped down" and that the 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 Respondent replied, "no". In a witness statement in proceedings in the High Court made in March 2010 the Respondent stated that he had withdrawn from involvement in the Firm in late 2008/early 2009.

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

Responses

117. The position of the Second to Sixth Respondents at the time of the earlier hearing is set out in the Judgment of the April/May 2013 trial.

118. The Respondent and the Sixth Respondents stated that the Respondent relinquished control of the Firm in late 2008 or early 2009, in favour of the Second Respondent, and that the Respondent had no material involvement in the Firm thereafter, whereas the Second Respondent contended that he did not become responsible for the Firm until September 2009.

Witnesses

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

119.1 Mr Rob Freeman, who was a SRA investigation officer at the material time. He confirmed the contents of the interim and final FIRs. His evidence dealt with the investigation and the contents of the reports and in particular a meeting with the Respondent on 9 December 2009, relevant to allegation 3.

119.2 Mr Ted Walsh, who confirmed his witness statement dated 23 November 2012. 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.

119.3 Ms Natasha Muniz, a client of the Firm during 2009, who confirmed her witness statement dated 16 September 2014 and dealt in particular with her dealings with the Respondent in the period from August 2009 in relation to a conveyancing transaction and her subsequent discovery that the Firm had not paid the SDLT due on the purchase of a property.

119.4 Ms Nicola Trigg confirmed her witness statement dated 11 July 2012. Ms Trigg'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.

119.5 Mr Frank Butcher of Dataspace, a document storage company, confirmed his witness statement dated 15 March 2010 and gave evidence in particular about his dealings with the Respondent concerning storage of the Firm's documents in the autumn of 2009. He also gave evidence concerning the chaotic condition in which the Firm's documents were stored as at the time of his visit to the Firm.

119.6 Mr Ian Jones of the Applicant gave evidence concerning the up to date payments from the Compensation Fund ("CF") in relation to the Firm.

120. As noted above, the Respondent withdrew from the substantive hearing and did not give evidence.

Findings of Fact and Law

Evidence considered

121. Although the Respondent did not give evidence, the Tribunal considered carefully the points made in his Response document of 30 July 2014 and the other documents in the Respondent's name, including his written statements in the High Court proceedings in 2010. These items were considered when assessing the evidence provided on behalf of the Applicant, in order to identify any areas of doubt or concern in that evidence, bearing in mind the Tribunal's duty to ensure that the Applicant's case was properly tested.

122. The Tribunal was provided with comprehensive documentation, contained within a total of 17 lever files. The Tribunal noted that CEA Notices had been served in respect of both FI Reports and their supporting documents on 1 November 2011. Unless the Respondent had raised a concern about the authenticity or accuracy of any document in writing, (or such a challenge could reasonably be inferred from what the Respondent set out in writing) the Tribunal proceeded on the basis that the documents relied on by the Applicant were genuine and unchallenged. The Tribunal noted that even where a document was not challenged, it may be possible to put a different interpretation on that document than that suggested by the Applicant. That said, any alternative interpretation would have to be reasonable, given the context in which the document was produced and it should generally be the case that a document meant what it appeared to mean on its face.

123. The interim and final FIRs were supported by comprehensive documentation. Where documents are quoted from or referred to without further comment, the Tribunal accepted that those documents were written by the person named as the writer on or about the date which appeared on the face of the document. This Judgment does not set out in full detail the documentary or witness evidence supporting each and every finding of fact but each finding was based on consideration of all the relevant documents and evidence.

124. The Tribunal considered in particular the oral evidence of a number of witnesses. That evidence is summarised here, so that the basis of the Tribunal's findings can be seen clearly by reference to the documents and what was heard.

Mr Rob Freeman

125. Mr Freeman told the Tribunal that at the relevant time he was a Senior Forensic Investigation Officer ("FIO") with the Applicant, but now worked as a Financial Controller for a solicitors' firm in the north of England.

126. Mr Freeman told the Tribunal that a colleague had attended the Firm's office in Manchester, of which the Applicant had had no record, and found it abandoned. Mr Shields of the Applicant had noted that the Firm had an office at Heald Green which he decided to attend; as there were allegations that there had been a shooting linked to the Firm in some way, Mr Freeman had attended the Firm's Heald Green office with Mr Shields. It was understood by Mr Freeman that a former employee of the Firm, a Mr W, had been shot after leaving the Firm to set up his own practice. The Respondent had referred to a shooting in his Response document.

127. Mr Freeman told the Tribunal that he was involved in the preparation of the interim FIR dated 17 December 2009 and the contents of that Report were correct. Mr Freeman told the Tribunal that he had attended a meeting at the Firm on 9 December 2009. The FIR recorded,

> "On 9 December 2009 at a meeting between [the Second Respondent], the Officers, Mr R (from Tenon, insolvency practitioners), Ms F (of GD Solicitors LLP, legal advisors to Tenon), [the Respondent] and Mr Blatt ([the Respondent's] solicitor), Mr Shields asked [the Respondent] if he had any interest in the practice and [the Respondent] replied, "No, but (my) wife is (the) practice manager."

128. Mr Freeman told the Tribunal that the Respondent was not present later in the day when the Second Respondent told the Officers that, "[the Respondent] had provided a personal guarantee in respect of the practice's overdraft that was approximately £350,000 and that was "all he's concerned about" in attending the meeting with the Officers". The Second Respondent had gone on to tell Mr Freeman that the Respondent owned 98% of the equity in the practice. The interim FIR went on to record,

> "[The Second Respondent] said that earlier in the year he had entered into an arrangement with [the Respondent] whereby the practice would be operated by [the Second Respondent] until 31 December 2009 with any profit during that period being attributable to [the Respondent]. Thereafter, the equity would be transferred to [the Second Respondent] and he would enter into an agreement to rent the premises from which the business operates from [the Respondent]. [The Second Respondent] said that, although not part of his agreement with [the Respondent], he had agreed that once equity was transferred to him, he would transfer equal amounts to [the Fourth Respondent] and [the Third Respondent] so that they would all be equal partners. Mr Freeman asked [the Second Respondent] if essentially he and the other "partners" were currently working for [the Respondent]. [The Second Respondent] said, "We are, in a way"."

Again, this discussion was not in the presence of the Respondent.

129. Mr Freeman told the Tribunal that he had only seen the Respondent at the meeting on 9 December 2009, at which the Respondent's solicitor had been present.

130. Mr Freeman told the Tribunal that he had seen a document headed "The facts" provided by the Respondent's solicitor on or about 14 January 2010; this document was appended to the final FIR. This document included the following section:

> "… In December 2008 and January 2009, following a period of negotiations, [the Respondent] agreed to sell the Firm to [the Second Respondent].
>
> On 31 January 2009 [the Second Respondent] took over de facto, and total, management and control of the Firm. [The Respondent's] role in the Firm from that time was much reduced, and he was frequently abroad. By agreement [the Respondent] was to remain "in the background" to retain goodwill and staff motivation. One of the first steps taken by [the Second Respondent] as manager of the Firm was to open a Birmingham office, in which I understand [the Respondent] had little or no involvement. The Firm began to take on volume conveyancing. The accounts staff were replaced. The accounts were, I am told, directly supervised by [the Second Respondent].
>
> [The Respondent] resigned as a member of the Firm on 1 September 2009 and notified all interested parties including the SRA. He has not (at the express request of [the Second Respondent]) set foot on the Firm's premises since. He is still owed money by [the Second Respondent] in respect of the sale of the practice…"

131. Mr Freeman told the Tribunal that he did not believe these statements (written on the instructions of the Respondent) were true. From the documents, and what he had been told by various individuals, the Respondent was still around after 1 September 2009 and he still owned the Firm. Mr Freeman told the Tribunal that he was not sure if it was he or Mr Shields that had asked the Second Respondent if he was working for the Respondent, but the Second Respondent had agreed that he was.

132. Around the time the interim FIR was prepared, Mr Freeman had learned that the Respondent was still the beneficial owner of the Firm. The Second Respondent had given the impression that the Firm was his, but it was not.

133. Mr Freeman told the Tribunal that his involvement in the investigation continued during 2010. After the intervention, the Firm's files had been sent to a firm, DWF, in Manchester. Mr Freeman told the Tribunal that he had trawled through a mass of information which had been uplifted, which was in no logical order. These tasks had been undertaken until about the May Bank Holiday in 2010. Mr Freeman told the Tribunal that, with others, he had prepared the schedule of payments made to WS and others. It had been necessary to pull in other SRA staff because of the volume of work.

134. Mr Freeman told the Tribunal that he had read the final FIR and was satisfied it was correct. He was sure he worked on the schedule of payments made to a number of individuals including WS, MC, MK and others which showed payments of £128,119.03 in the period 13 February to 31 July 2009. Mr Freeman had also worked on the schedule which showed payments to a variety of individuals during 2009, including payments to the Respondent averaging £3,890.18 per month throughout the year, with £7,388 paid in December 2009.

135. Mr Freeman told the Tribunal that he had given evidence at the earlier hearing, when he had been cross examined by the Second Respondent on various matters including the meetings on 9 December 2009. Mr Freeman said that he had given truthful answers to the Tribunal then, and he was telling the truth now about what the Respondent had said on 9 December 2009.

136. Mr Freeman told the Tribunal that it had not been possible to access any computer records of value on 9/10 December 2009. He had been told that there had been a power surge, so there were no meaningful records. Mr Freeman told the Tribunal that he had asked for information during the investigation but had not been given all he needed, for example paper or electronic files and accounts records. By the time of the intervention, the computers had been wiped and hard drives removed.

137. Mr Freeman told the Tribunal that during the investigation he had not been able to obtain client files. He had met with someone, described as being in charge of the post-completions department, probably a Mr A, who could not provide him with files. Mr Freeman told the Tribunal that the Firm's office at Heald Green went back a long way from the street. The Firm had two shipping containers at the back of the offices. Mr Freeman told the Tribunal that it looked like someone had carried files out to the containers and simply thrown them in, in no order. Mr Freeman told the Tribunal that he could understand why the staff could not find files.

138. Mr Freeman told the Tribunal that he had learned that some files had been sent to other firms. He visited the firm of MacIntyre Clark and found lots of RTA files from the Firm. It was questionable if the files had been transferred properly, as it appeared on further enquiry that some of the signatures on consent forms had been forged. Mr Freeman told the Tribunal that files had also been sent to other firms.

139. Mr Freeman told the Tribunal that the meeting room in which the Officers worked during the investigation was tidy, as was a room next door in which an auditor was working, and the reception area. However, upstairs was in chaos, with no distinction between offices and no order to the files. Mr Freeman told the Tribunal that he had not visited the Birmingham office. Mr Freeman told the Tribunal that he had learned that the Manchester office had been used for marketing; that office had been abandoned, and Mr Shields had been shown into the office by a representative of the landlord. Client documents had been left behind, Mr Freeman understood. Mr Freeman told the Tribunal that the Second Respondent had said he had set up the Birmingham office, whilst employed as a consultant, and that he had litigation experience. Mr Freeman told the Tribunal that he understood that WS and MC were primarily based at the Birmingham officer; Mr Freeman was not aware he had seen them during the investigation at Heald Green. Mr Freeman told the Tribunal that the Birmingham office was used for PI matters and Heald Green for conveyancing; the Respondent worked in conveyancing.

140. In response to questions from the Tribunal, Mr Freeman told the Tribunal that the document headed "The facts" (referred to at paragraph 130 above) was not in his possession when he met the Respondent. Mr Freeman told the Tribunal that he had asked why the Respondent was present on 9 December 2009 and was told it was because he had given a guarantee (for the Firm's overdraft). Mr Freeman told the Tribunal that it was not usual to have a solicitor present at that stage of the

investigation, but the whole investigation was unusual. Tenon and their advisors were present as the Second Respondent had raised the issue of winding-up the Firm. In response to a question from the Tribunal, Mr Freeman said that he did not recall the Respondent's solicitor contributing to the meeting on 9 December 2009 and there had been no other contribution by the Respondent, other than his statement about not having an interest in the Firm.

141. In response to a question about whether the Respondent had any doubt about who the Officers were or what they were doing at the Firm, Mr Freeman told the Tribunal that there was no doubt. The investigation had started without notice. On arrival, on 27 November 2009, a letter about the investigation was given to the receptionist who took it to the Second Respondent; the receptionist told the Officers that the Second Respondent was reading the letter and would come down when he had done so. The Second Respondent had met with the Officers about 10/15 minutes later. The receptionist knew who the visitors were and what they were there for and as with most firms, it would be expected that all staff would have known the position very quickly. The Respondent had attended several days later, on 9 December 2009. All the staff of the Firm knew the Applicant's Officers were attending and Mr Freeman thought they would all know what was going on.

142. In response to further questions about the provenance of the document headed "The facts", it was acknowledged that this was not signed. Mr Freeman told the Tribunal that the Respondent's solicitor had indicated that the Respondent wanted to meet the Officers, but had changed his mind and this letter was sent instead. Mr Freeman told the Tribunal he had no reason to think the document was not based on the Respondent's instructions to his solicitor. Mr Freeman could not recall when he had received it; it had not been hand-delivered.

143. In response to a question from Mr Dutton, Mr Freeman told the Tribunal that whilst the Respondent had indicated that he had given up control of the Firm on 31 January 2009, no-one else in the Firm had said the same during the investigation in December 2009.

Mr Ted Walsh

144. Mr Walsh told the Tribunal that his witness statement dated 23 November 2012 was true. He had given evidence at the earlier hearing. Mr Walsh continued to trade as a PC systems engineer in his own business.

145. Mr Walsh told the Tribunal that his first involvement with the Firm came when he was contacted by the Third Respondent on 9 December 2009 and asked to look into a server failure; the Third Respondent had indicated that it was important to do the work quickly. Mr Walsh visited to inspect the server on Monday 14 December 2009.

146. Mr Walsh told the Tribunal that he would describe the server as a standard server; the server was operating and all the drives were present and operating normally. Mr Walsh told the Tribunal that he had backed up the hard drives then extracted the configuration data. It became clear that there were no on-site back-ups of the computer system, although there was a standard "tape streamer" fitted. Mr Walsh told the Tribunal that it was not usual for there to be no back-up tapes in the office and,

indeed, firms often had a three-tiered back-up system which would be rotated. Mr Walsh told the Tribunal that he had asked if there were back-ups in the other offices, when he learned that there were other offices. In such a situation, it was not uncommon to have remote tape back-ups but no-one in the Firm was forthcoming about whether there might be back-ups at the Birmingham or Manchester offices, or any back-up tapes at all. Mr Walsh told the Tribunal that as the server had been down for several days, the Firm was effectively shut down. Mr Walsh told the Tribunal that this was the first time in his 26 years or more experience that he had come across such a situation, with no back-up data.

147. Mr Walsh had recorded in his witness statement that he was extremely surprised to see that all of the drives except one had no data on them whatsoever; the sole hard drive which did have data contained only four individual bytes of data on a 74GB drive.

148. Mr Walsh told the Tribunal that what he found was not consistent with a power surge. If there were a power surge, it should be possible to continue operating. Each drive would have a proportion of the data, so a power surge would be less likely to have an impact. There had been no failure of the hardware and the server was still configured as an array; this was not consistent with a power surge.

149. Mr Walsh told the Tribunal that his interpretation was that an action had been taken to remove data, forcibly, or a less experienced systems engineer had made a significant configuration error. It had not been suggested to him that anyone had done any work on the system.

150. Mr Walsh told the Tribunal that the Firm's IT support mechanism was a bit peculiar. The Third Respondent had told him that BT normally provided support. Mr Walsh doubted that a BT engineer would wipe the Firm's data as no work would be done without creating a back-up first. Mr Walsh told the Tribunal that it would be possible to lose one drive, but still have a functioning system where there was no hard-drive failure; there was no obvious hard-drive failure here.

151. Mr Walsh told the Tribunal that during 14 December 2009 he had spoken to someone in the Birmingham office, who said he was the IT Director and another partner who was at the Heald Green office; he could not recall who that was. Mr Walsh told the Tribunal that he had set out his concerns and indicated the time-scale to rebuild the system. Mr Walsh told the Tribunal that those he spoke to seemed less than worried, considering that they had lost use of their entire site for 4 days and their employees had been doing nothing for almost a week. Mr Walsh told the Tribunal that he would have expected there to be more urgency. Even if there had been back-up tapes available, some 20-30 hours of work would have been necessary to get the system working again. No-one had given Mr Walsh the impression that there were back-up tapes, even after he had told them what he needed.

152. Mr Walsh told the Tribunal that he had been disenchanted with the Firm's lack of enthusiasm about this problem; he had been undertaking this task on a speculative basis but there was a lack of concern and enthusiasm shown by those at the Firm. Mr Walsh told the Tribunal that it was very unusual to lose a whole server for such a long period; he had never come across a server failure over such a period. Normally

in a business, all hell would break lose if a staff member could not so much as send an email. Mr Walsh told the Tribunal that when he left at about 7.30pm there were people on site but he did not know who they were as he had had no previous dealings with the Firm.

153. In response to a question from the Tribunal, Mr Walsh told the Tribunal that the Third Respondent, who had contacted him, did not seem to have a great understanding of IT but could discuss the essential points. In response to a question about what impact the server failure would have on the office, Mr Walsh stated that the Firm still had some limited capability through the Manchester officer. However, whilst it might be possible to deal with emails, the Firm's database was hosted on the server.

154. Mr Walsh told the Tribunal that he had initially spoken to the Third Respondent, who may have introduced him to someone else, but he could not recall who. The Third Respondent had not known about any back-up tapes.

155. Mr Walsh was asked what it meant that the server had only 4 bytes of data when he examined it. Mr Walsh told the Tribunal that the capacity of the server was 74GB; it was like starting with £74 million and being left with only £4.

156. In response to a question about whether he had been instructed to rebuild the server, Mr Walsh told the Tribunal that he could have recreated it up to the last back-up, if there had been back-up tapes. Whilst it would be possible to rebuild the system without back-up tapes, it would be empty of data.

157. In response to a question from the Tribunal, Mr Walsh told the Tribunal that he had been told there had been a power surge, which he could understand was a layman's definition of something which may have happened. However, when he arrived the server was powered up and functional. The software, including the operating systems, had been lost. It was possible that the 4 bytes of data left were because of the internal hard-drive.

158. In response to a question about what had been said to him about rebuilding the system, Mr Walsh told the Tribunal he was told not much beyond that the Firm would think about it and give him a call in a couple of days. It appeared that the Firm hoped the problem would be fixed and no immediate concern was shown. Mr Walsh told the Tribunal that he had attended the Firm speculatively, in the hope of picking up work; he did some work for solicitors in the North West, and would often help them out analysing an issue in the hope he would be instructed to do the work needed. Mr Walsh told the Tribunal that he had not been paid for attending at the Firm; and since then had spent two days at the Tribunal.

159. In response to a question from the Tribunal, Mr Walsh told the Tribunal that he could not recall if there was any surge protection equipment on the system. Mr Walsh told the Tribunal that in order to wipe the system deliberately, one would not need to be particularly technically competent but would need some understanding of computer systems. Whilst actually setting up a system to be erased might take only about 3 minutes, it would take some time to work through the whole server.

Ms Natasha Muniz

160. Ms Muniz confirmed that the contents of her statement (with exhibits) dated 16 September 2014 were true and correct. Since that statement was made, Ms Muniz had received a payment representing interest on the £9,000 she had earlier received from the Compensation Fund.

161. Ms Muniz told the Tribunal that in April she and her (now) husband instructed the Firm to act in relation to the purchase of their present home, in Hampton. Ms Muniz carried out an internet search from which it appeared that the Firm was reputable and competitively priced. Ms Muniz told the Tribunal that she received a quotation for the work from Ms LW. The quotation was accepted on 24 April 2009 and Ms Muniz and her husband were sent an engagement letter the same date, which they both signed on 25 April 2009.

162. Ms Muniz told the Tribunal that she became dissatisfied with the level of service provided by the Firm and the solicitor conducting the matter, Ms DG, in particular when she was told by the estate agents that the Firm had not made any legal enquiries of the vendor's solicitors. Ms Muniz told the Tribunal that she had tried to speak to Ms DG and her assistant (whose name she did not have) and had left messages for them but there was no response. Ms Muniz recorded in her statement that on 3 July 2009 she telephoned the Firm and spoke to the Respondent, who described himself as the partner in charge of the Firm. Ms Muniz told the Tribunal that he had told her that he would take control of the matter, that there was no need to instruct another solicitor and that the estate agents were worried about losing the conveyancing chain.

163. Ms Muniz referred to an email from the Respondent later that day in which he provided his email address and on which he was named as "Chief Executive Officer" of the Firm. Ms Muniz told the Tribunal that for a period she dealt with the transaction through the Respondent, and referred to a number of emails with him in July 2009, in particular on 3 July and 7 July 2009, about the next steps in the conveyancing. Ms Muniz told the Tribunal that after this point, matters moved more quickly and on 10 July 2009 she was notified that the proposed date for exchange of contracts was 17 July, with completion due on 24 July 2009. There were no major issues thereafter, as the dates were agreed.

164. Ms Muniz referred to a document headed "Draft Completion Statement" relating to this matter, which listed Stamp Duty Land Tax ("SDLT") as due in the sum of £9,000. Ms Muniz and her husband signed an authority for the Firm to deal with SDLT on 30 April 2009 and before completion transferred funds to the Firm, including £9,000 for SDLT. Completion actually took place on 5 August 2009.

165. Ms Muniz stated in her witness statement that she assumed that the Firm had paid the £9,000 SDLT which was due. On 23 October 2009 Mr NE of the Firm wrote to Ms Muniz and her husband confirming that registration of the purchase of the property had been completed at the Land Registry. She had not been asked to sign any additional forms, in particular concerning SDLT.

166. Ms Muniz told the Tribunal that she received a letter from HMRC dated 12 October 2012 which stated,

> "I hold information that suggests the [SDLT] return submitted on your behalf by your solicitor may contain inaccurate information".

Ms Muniz told the Tribunal that the letter was quite vague and she assumed there was a mistake, as the letter did not suggest anything more than that. Ms Muniz told the Tribunal that she had telephoned HMRC, as requested in the letter. She was asked how much they had paid for the house and had told HMRC (correctly) that the price was £300,000. The HMRC officer told her that he had a document declaring that the amount paid was under £180,000. Ms Muniz was told that SDLT of £9,000 was due and had not been paid. Ms Muniz told the Tribunal that she was in a blind panic at that stage. On making further enquiries of HMRC, Ms Muniz was told that she had declared the purchase price was £173,000; Ms Muniz knew she could not have done this.

167. Ms Muniz told the Tribunal that on 20 November 2012 HMRC sent her a copy of the SDLT tax return concerning this transaction. That document, which was exhibited to Ms Muniz's statement, indicated that the price paid was £173,000 and the SDLT due was nil. Ms Muniz pointed out a number of further errors on the form. The Firm was shown as solicitors for the vendor, whereas it had acted for the purchasers; the vendors had instructed a firm in the Hampton area. The purchasers' "agent" was shown as Rooney & Co, of Birmingham; Ms Muniz told the Tribunal that she had never heard of that firm or instructed them. Ms Muniz told the Tribunal that neither of the signatures on the final page of the form, purportedly the purchasers' signatures, were those of her or her husband. The signatures did not resemble the true signatures. Further, Ms Muniz pointed out that her husband's first name was spelt incorrectly – indeed, it was not even close to the correct spelling, on the page above the signatures.

168. Ms Muniz told the Tribunal that she had tried to find out from internet searches what she could do next and to whom she could turn, given that HMRC was asking for payment of £9,000 and that sum had been paid to the Firm for SDLT. This was a massive problem for her and her husband. Ms Muniz told the Tribunal that when she had instructed the Firm, it appeared that it had been operating since 1818, and it had seemed robust. The fact it had three branches was also reassuring. It had appeared the Firm had an office in Chiswick, which was convenient for Ms Muniz and she asked if she could hand in documents there. Ms Muniz told the Tribunal that it had been important to her to have a good price for the conveyancing and that there was a physical presence for the Firm. Ms Muniz told the Tribunal that she had felt she was dealing with real solicitors and that there should not be a problem. They had not been able to use the solicitors local to the property as the vendors instructed them.

169. Ms Muniz told the Tribunal that she had found out about the Compensation Fund and had made an application; the Compensation Fund had paid the SDLT which was due from 2009. Ms Muniz told the Tribunal that she had been quite scared of owing any money to HMRC and wanted the payment to be made directly by the Compensation Fund. The HMRC had claimed interest, due to the late payment of SDLT, which claim had settled some seven and a half months later. Ms Muniz confirmed that the claim to the Compensation Fund had now been settled in full, for both SDLT and interest.

170. In response to a question from the Tribunal, Ms Muniz stated that she had dealt with the Respondent from about 3 to 7 July 2009 but had not had any interaction with him after that. Instead, she had dealt with a number of others; it seemed to be different people at each stage, after initial dealings with Ms DG. She had understood from her telephone discussion with the Respondent that he was in an office near that of Ms DG.

171. Ms Muniz was asked if she had heard about the collapse of the Firm, at the end of 2009. Ms Muniz told the Tribunal that she had not, due to her busy working and family life.

172. The Tribunal asked Ms Muniz if she had lost confidence in solicitors as a result of this transaction. Ms Muniz told the Tribunal that it was taking time to recover trust. It had taken 9 months to get the money paid over. She had sent a hundred emails to the Firm, HMRC, the Applicant and solicitors acting for the Applicant. She had had to put together about 40 pages of exhibits to her statement, and scan those. Some friends had suggested she should get a solicitor to help her, but she did not know who to trust. There had been a lot of money at stake – about £10,000 including interest – and she did not know how to find someone who would care enough to do it properly.

173. Ms Muniz told the Tribunal that she was now worried about whether there would be any problems when they come to sell their home; she would probably instruct the solicitor in the village. Ms Muniz told the Tribunal that she did not feel she could trust solicitors or banks. She would expect there to be serious consequences for those involved; it was not clear to her why someone else was having to pick up the mess left by the Firm. Innocent people had had to rush around to try to get their money back. It had been hugely stressful and frustrating to have to put all the papers together for the claim. Ms Muniz was now cross that these things had happened and people had got away with it.

174. In response to a question from the Tribunal, Ms Muniz referred to the various different figures quoted for fees on documents from the Firm (and whether those did or did not include disbursements). The fee paid was £590, including various disbursements and £75 for completion and submission of the SDLT form. Ms Muniz told the Tribunal that she did not visit any of the Firm's offices; all the contact was by phone or email. Ms Muniz told the Tribunal that this suited her, due to her work commitments.

175. It was noted that the client care letter referred to the Sixth Respondent as being the person to contact about complaints. Ms Muniz told the Tribunal she did not think she had checked this letter when she wanted to complain, she just wanted to get hold of someone.

176. Ms Muniz confirmed that she had never signed the SDLT form, on which the purchase price was stated to be £173,000, or any similar document.

Ms Nicola Trigg

177. Ms Trigg confirmed that the contents of her statement dated 11 July 2012 were true and correct. Ms Trigg had also given evidence at the earlier hearing.

178. Ms Trigg stated in her statement that in 2009 she decided to sell her home in Cardiff (at FD) and purchase another property in Cardiff (at CN). The sale and purchase were agreed in August 2009. After an internet search for conveyancing solicitors, Ms Trigg had found the Firm's details. The rates advertised were competitive and the Firm was regulated by the SRA and so Ms Trigg chose to instruct the Firm. Ms Trigg told the Tribunal that she contacted the Firm in late August 2009 concerning the sale of FD for £200,000. On 18 August 2009 Ms Trigg received a confirmation email and client care letter from Ms MP of the Firm. Ms Trigg told the Tribunal that she had sent £250 on account of costs, as requested. On 28 August 2009 Ms Trigg had received a quote for the purchase of the property at CN, from the Firm. The quotes were both headed "Best Quote Conveyancing".

179. Ms Trigg told the Tribunal that she had then received a telephone call from a Mr AK of the Firm who said he was responsible for her conveyancing matter, but thereafter she did not hear from Mr AK and instead spoke to Ms SM who said she had conduct of the file. Ms Trigg told the Tribunal that she had spoken to several different people – including Ms MP and Mr AK – but had usually been in contact with Ms SM.

180. Ms Trigg told the Tribunal that the instructions to proceed with the purchase were not confirmed until after the sale instructions were given, but it was important for the sale and purchase to work together. Ms Trigg told the Tribunal that the sale of FD completed on 27 November 2009; the sale proceeds of £200,000 were received by the Firm and used to discharge the mortgage on FD and discharge the Firm's fees. The surplus of £167,171.38 was retained by the Firm. Ms Trigg told the Tribunal that it was not possible to complete the purchase until December 2009. Ms Trigg told the Tribunal that she had queried with Ms SM why the balance of the funds could not be returned to her until completion was due; Ms SM said it was easier for the Firm to retain the money and Ms Trigg had accepted what she said.

181. Ms Trigg told the Tribunal that the Firm paid the deposit for the purchase, £17,500, to the purchaser's solicitors without specifically asking Ms Trigg about this. When Ms Trigg found this had been done, her trust in the Firm diminished a little. The balance of £149,471.38 remained on the Firm's client account as Ms SM convinced Ms Trigg to leave it there.

182. Ms Trigg told the Tribunal that at the end of November and on 12 December 2009 Ms SM had confirmed to her that everything was in place for the purchase of CN to be completed. Ms Trigg stated that this was the last contact she received from anyone at the Firm by telephone.

183. Ms Trigg told the Tribunal that she had then received a letter (by email) from Mr AK of the Firm dated 15 December 2009 in which it was stated,

> "Unfortunately, I have been advised that due to the current economical (sic) climate, [the Firm's] Birmingham office is to cease trading from this Friday, 18th December 2009. I understand that files in progress will be transferred tomorrow – 16th December 2009 – to our head office in Cheshire, including your file for completion on 22nd December 2009…"

Ms Trigg told the Tribunal that she was concerned about this. She was aware that the solicitors had nearly £150,000 of her money and that completion was due in about a week's time. Ms Trigg told the Tribunal that she had been very distressed and concerned, particularly as she did not know who to contact at the Firm. It was of particular concern that it appeared that the Firm had financial problems. Ms Trigg told the Tribunal that she went on the internet to try to find information, and phoned the Firm but kept getting answering machines. What she found on the internet was very concerning, as the Firm's reputation appeared to be poor. Ms Trigg had exhibited to her statement some extracts of the information she found on the internet on 20 December 2009; it was upsetting to see so many people had been let down by the Firm. Ms Trigg had concluded that she had to honour the contract to purchase and was concerned in case she was in breach of contract. Ms Trigg told the Tribunal that all of this was happening close to Christmas. A combination of the letter about the closure of the Birmingham office and what she saw on the internet meant she felt herself to be in a very vulnerable position.

184. Ms Trigg told the Tribunal that she contacted the SRA's complaints team on about 19 December 2009 to tell them that she was due to complete, that the purchase monies were in the Firm's client account, that she had not been able to communicate with the Firm and had seen concerning information on the internet. Ms Trigg told the Tribunal that she had been told by the SRA that the "business was still viable" but they would monitor the situation. Ms Trigg was extremely worried that she may have lost almost £150,000 of her money, due to be used to complete the purchase.

185. Ms Trigg told the Tribunal that a solicitor friend had told her that any losses should be covered by the profession. The friend's firm, SB, were willing to help, but said they could not deal with it until 22 December as until that point the Firm had not failed to complete the purchase. The Firm failed to complete the purchase and on 23 December Ms Trigg instructed SB, who completed the purchase that day. However, to do so Ms Trigg had had to borrow her mother's life savings and inheritance. This had caused great stress and upset, even though they were aware that the Firm would be indemnified and the money could be recovered. Ms Trigg had been concerned about breaching her contract and so had completed the purchase, with the help of her mother.

186. Ms Trigg told the Tribunal that this was a very stressful period, particularly after she had seen the many postings on the internet about the Firm. Ms Trigg told the Tribunal that she had cried for the whole weekend. Christmas had been ruined for her and her children.

187. Ms Trigg told the Tribunal that she made an application to the Compensation Fund on 15 January 2010. Compensation of over £150,000 was paid by the Compensation Fund on 15 March 2010, being the sum lost from the Firm's client account and the fees incurred as a result of instructing the Firm. Ms Trigg told the Tribunal that she had several months of doubt about whether she would receive compensation, to be able to repay the loan from her mother. She had felt some relief when notified that the compensation would be paid.

188. Ms Trigg told the Tribunal that she had not at the time seen the correspondence from the SRA to the Respondent and others about the claim.

189. It was noted that in the Firm's terms and conditions of business letter, sent to Ms Trigg on 18 August 2009, the Third Respondent was named as the complaints manager for the Firm. Ms Trigg told the Tribunal that she had no realistic chance to raise her concerns with the Third Respondent; she had felt abandoned and upset from receipt of the letter on 15 December 2009. Ms Trigg told the Tribunal that she had tried to get hold of someone, but could not get hold of anyone at the Firm. Ms Trigg told the Tribunal that this was the worst 8 days of her life, from receipt of the letter of 15 December until it became clear on 22 December that the Firm had taken her money.

190. Ms Trigg told the Tribunal that she was aware that a balance to complete the purchase, of just over £8,000, would be required from her on completion and arrangements were in place for that; this sum was transferred to the new solicitors so they could complete the purchase on 23 December 2009. Ms Trigg told the Tribunal that the completion statement may have been emailed to her, as it appeared to be addressed to the FD address, which property had been sold in late November 2009.

191. Ms Trigg told the Tribunal that she had known that it was not possible to tie in the sale and purchase, so she went to live at her mother's home for a period. It had been a rational decision to complete the sale in November, stay with her mother for about 4 weeks and then complete the purchase.

192. Ms Trigg told the Tribunal that her vendor was expecting to complete on 22 December 2009, as she was buying another property and was due to complete that day. Ms Trigg told the Tribunal that she visited the vendor and explained the problem. The vendor also had children, and Ms Trigg did not want her to have her van packed only to learn later that the sale would not complete as expected. Fortunately, they were all able to move on 23 December 2009. The vendor had also been stressed, due to the arrangements she and her vendors were in with arrangements for Christmas. The vendor had had to rely on what Ms Trigg had said; it was fortunate that everyone was able to move on 23 December 2009.

193. In response to a question from the Tribunal, Ms Trigg stated that she had first contacted the Firm through "Best Quote Conveyancing". She had discovered the identity of the Firm when she received the quote, which referred to the Firm. Ms Trigg told the Tribunal that she had carried out an internet search for the Firm in August 2009; there had been no critical comments on the internet at that point and she was aware that the Firm was indemnified by the SRA. It had appeared that the Firm had been established in 1818. The quote received was comparable with others she had received.

194. Ms Trigg told the Tribunal that she would not encourage people to put their money into a solicitor's client account; if solicitors suggested leaving the money there, people should use their own judgement. Ms Trigg told the Tribunal that she had some mistrust of solicitors now.

Mr Frank Butcher

195. Mr Butcher confirmed that the contents of his statement, dated 15 March 2010 (made in High Court proceedings) were true. The statement had been made a long time ago.

196. Mr Butcher told the Tribunal that during 2009/10 he was the operations director for Dataspace, a position he still held. Dataspace provided document archiving and records management services to commercial businesses, including law firms, and public sector organisations. Dataspace dealt with the Firm from January to December 2009, under a contract made on 21 January 2009. Initially, the Firm had wanted a storage and retrieval service so that individual files could be retrieved from storage, but in fact used a "box level storage" facility which was less costly; a box could contain up to 15 files.

197. Mr Butcher told the Tribunal that the people he dealt with at the Firm varied, but included a Mr AW and the Sixth Respondent. Dataspace mostly dealt with the Respondent concerning invoices and payment. The contact was mostly by way of emails and meetings.

198. Mr Butcher told the Tribunal that from his point of view there were problems with the Firm as there was no proper document management system. The Firm did not keep proper inventories of what was in the boxes. The "box storage system" was not something Dataspace would recommend to law firms. Mr Butcher's statement recorded that he met the Respondent on 22 September 2009 and discussed moving to a "file level storage" system, which was later agreed. Mr Butcher told the Tribunal that he was investigating what needed to be done to put right the storage problems.

199. Mr Butcher described a visit to the Firm's Heald Green office in October 2009. Some files were in boxes in offices and others were in storage containers. The Firm's staff told him it was difficult to manage the files. Mr Butcher's statement recorded:

> "In October 2009 we were instructed to remove/store files stored in shipping containers in [the Firm's] car park. I understand that the local council had contacted [the Firm] regarding the location of these shipping containers following complaints from local residents. We informed [the Respondent] that subject to his agreement on cost, we could complete this activity by Friday 16 October 2009. This was not agreed and we later met [the Respondent] on 13 November 2009 to discuss this. Later that day we sent a cost proposal to him. However, it was not until December 2009 that we removed the items from the shipping containers following a call from [the Sixth Respondent] confirming the request.
>
> In December 2009 I had further contact with [the Firm] to address various issues including cost. At this stage I dealt with [the Sixth Respondent]. [The Sixth Respondent] informed me that [the Respondent] was in Dubai and he would resolve things when he returned. However, I did not hear from him"

200. Mr Butcher expanded on this in his oral evidence. He told the Tribunal that there were about four 20 foot shipping containers, which were open to the elements. Mr Butcher told the Tribunal that he had looked inside two of the containers. The day he visited was wet and windy; rain was getting into the containers, as the door was open, and the files were getting wet.

201. Mr Butcher told the Tribunal that the car park in which the containers were situated was the main car park for Heald Green village; the Firm had effectively taken over a

large part of the public car park with the containers. The containers were open to the elements, and to the public. Mr Butcher told the Tribunal that he was almost 100% certain that it was the Respondent who took him to see the containers. Mr Butcher was not sure who had told him about the complaints from the council but thought it might have been Mr AW.

202. Mr Butcher confirmed that he told the Respondent that Dataspace could do the necessary work by 16 October if costs were agreed, but they were not and so the matter was discussed again. As Dataspace was owed some money by the Firm, he was reluctant to do the work until he had the authority of the Respondent to carry it out. When he had been in contact with the Sixth Respondent, he had been satisfied with her reassurance and understood he had the Respondent's authority. Dataspace was owed about £10,000 at the time.

203. Mr Butcher referred to emails between Ms ZQ of Dataspace (copied to Mr Butcher) and the Respondent dated 29 September and 14/15 October 2009 concerning the quotes for the work to be done, including removing the files from the containers. Mr Butcher told the Tribunal that he had met the Respondent on 13 November 2009 at which point they were still discussing the work needed. With regard to the suggestion that the Respondent was in Dubai, Mr Butcher told the Tribunal that he did not know for how long he was in Dubai. The final quote for costs was in an email from Ms ZQ to the Respondent dated 13 November 2009, which email was forwarded to Mr Butcher on 18 November 2009. Mr Butcher told the Tribunal that the files which had been in the containers had been removed during December 2009, having been authorised by the Sixth Respondent. Mr Butcher could not recall the dates the work was done. The files were taken to Dataspace's premises.

204. Mr Butcher reiterated that the containers had been open to the weather and to the public. His business would never allow such a situation – it was a complete "no-no". Mr Butcher told the Tribunal that there had been a lot of contact with the Firm as Dataspace was bothered by the Firm's poor storage of documents; Mr Butcher told the Tribunal that he had never before seen storage as it was at the Firm.

205. In response to a question from the Tribunal, Mr Butcher told the Tribunal that he could not recall if there were any requests for files after they had been uplifted. Mr Butcher confirmed that the containers were in the public car part, in an area which was being used by the Firm. Mr Butcher told the Tribunal that when he was at the Heald Green office, the office was being refurbished. There were solicitors working in corridors, with files piled up. The Respondent told him the Firm was growing very fast and that they could not cope with the volume of files and so had an overflow. Mr Butcher told the Tribunal that he had never before seen documents of this nature in a car park, getting wet, and he had been very concerned about it. Mr Butcher told the Tribunal that he had met the Respondent in a meeting room downstairs in the office, before seeing the containers and piles of files. Mr Butcher told the Tribunal that the Respondent was very professionally dressed and smart.

Mr Ian Jones

206. Mr Ian Jones, a senior legal advisor at the SRA, referred to his witness statement dated 26 April 2013, which had been given in evidence at the earlier hearing.

Mr Jones told the Tribunal that the figures in that statement were correct as at April 2013, but he had spoken to the SRA's Costs Recovery Department to obtain up to date figures.

207. As at April 2013, payments out of the Compensation Fund arising from the losses of client money at the Firm amounted to £12,370,716.84. At that stage, the recovery on the statutory trusts (from the former client account of the Firm) was £4,710,849.02, such that the net loss to the Compensation Fund at that time was £7,659,867.82. There were at that time 24 outstanding claims on the Compensation Fund, which were being investigated; those claims amounted to £252,878.79.

208. Mr Jones told the Tribunal that the updated information was that the Compensation Fund had made payments totalling £13,462,796. There had been some further recoveries on the statutory trusts such that the amount recovered was now £4,860,849. The net loss to the Compensation Fund was now £8,601,947.

209. Mr Jones noted that the Tribunal had heard from two witnesses who had received payments from the Compensation Fund and had available the written evidence of others. The Compensation Fund had settled claims on the Fund as, due to the dishonest actions at the Firm, there was a significant amount of client money which had not been accounted for.

210. Mr Jones told the Tribunal that his understanding was that under the Compensation Fund Rules 2009, where there was merit in a claim which had been submitted, the Compensation Fund would write to the Firm involved for comments before the matter was referred to an Adjudication Panel for a decision; there was similar provision under the current rules.

211. In response to a question from the Tribunal about whether there had been any civil recovery from any of the former partners of the Firm, Mr Jones told the Tribunal that the SRA had to consider the costs and benefits of pursuing recovery. (Mr Dutton added that he had been counsel when freezing orders were obtained in the High Court against the Respondent and the Sixth Respondent. There were confidentiality clauses, which bound all parties, concerning the terms of the settlement of those proceedings; no further information could be given).

212. Mr Jones told the Tribunal that he could not confirm whether there were any further claims on the Compensation Fund but he would expect that all viable claims had been settled by now.

Witness statements read by the Tribunal
Ms Anne-Marie Townend

213. The statement of Ms Townend was dated 11 July 2012. Mr Dutton told the Tribunal that Ms Townend had given evidence at the earlier hearing. Ms Townend had referred in her statement to the relevant events taking place at a time of considerable stress, as both she and her mother were recovering from serious ill health. Mr Dutton told the Tribunal that by the time Ms Townend gave evidence to the earlier hearing, her mother had died. Sadly, Ms Townend had died since the earlier hearing. Mr Dutton drew the attention of the Tribunal to several points in the statement:

213.1 In the summer of 2009, Ms Townend was in the process of buying a property at B Street in St Albans from Mr DM at an agreed sale price of £268,000.

213.2 Ms Townend had carried out an internet search to find conveyancing solicitors. She noted that the Firm's rates were competitive and that it appeared from the website that the Firm had been in existence for a number of years. She had obtained a quote from the Firm in September 2009.

213.3 Ms Townend had dealt with a Ms KC of the Firm on the telephone on a couple of occasions. On 12 October 2009 Ms Townend transferred £300 to the Firm on account of legal fees and she received the contract documents with a letter dated 27 November 2009.

213.4 Ms Townend became concerned that there was a disconnection between the information she was receiving directly from Mr DM and from the Firm, for example with regard to when exchange of contracts would take place. Ms Townend recorded in her statement that Ms KC always sounded busy and stressed and in her later telephone conversations formed the impression that she was not familiar with Ms Townend's matter.

213.5 Ms KC informed Ms Townend that it was proposed that contracts would be exchanged in the week commencing 7 December 2009, with completion on 14 December 2009. As Ms Townend believed that exchange of contracts was imminent, she arranged to transfer £26,800 to the Firm, being the 10% deposit for the property. The transfer was made by Ms Townend's mother on or around 5 December 2009.

213.6 On 8 December 2009 Ms KC sent a completion statement by email which requested the balance to complete the transaction of £50,322.63. Ms Townend's mother transferred this sum to the Firm on 8 December 2009. By that time, Ms Townend and her mother had transferred to the Firm a total of £77,422.63 for this transaction.

213.7 Ms Townend had tried to contact the Firm several times by email, including on 11 December 2009, for an update. On 16 December 2009 she received an automated email reply which indicated that her file was being transferred to other (unnamed) solicitors in the Manchester area; this was without Ms Townend's knowledge or consent.

213.8 Ms Townend had tried to telephone Ms KC but had been unable to contact her.

213.9 Ms Townend was very worried her transaction would not go ahead and that she might lose the money she had paid by way of deposit if she could not complete. She was under considerable pressure at this time as the lease on the flat in which she was living was due to expire, so she needed to complete the purchase as soon as possible.

213.10 During 16 December 2009 Ms KC sent an email to Ms Townend in which she stated that the file had been transferred to Stirling Law in Oldham; this was without Ms Townend's permission. Ms Townend instead decided to instruct Mr NS of S & Co Solicitors.

213.11 Ms Townend had been able to complete the purchase with the assistance of Mr NS. However, the funds transferred to the Firm were not returned to her or passed to Mr NS; it was only possible to complete as Ms Townend's parents cashed in investments.

213.12 Ms Townend had made a claim to the Compensation Fund, which was paid in January 2010 in the sum of £77,454.13, including lost interest.

213.13 Ms Townend referred in her statement to suffering from stress and anxiety as a result of the risk of losing the purchase and/or all of the money sent to the Firm. Ms Townend's parents had also suffered a lot of worry.

Ms Yvonne Mwaiwa

214. The statement of Ms Mwaiwa was dated 11 July 2012 and she had given evidence at the earlier hearing. Mr Dutton told the Tribunal that Ms Mwaiwa had been prepared to attend the Tribunal, on Wednesday 15 October 2014, but had been stood down. Her statement, with others, had been served on the Respondent with a Civil Evidence Act Notice. The Respondent had not indicated that he required Ms Mwaiwa to attend. Mr Dutton drew the Tribunal's attention to a number of matters in Ms Mwaiwa's statement.

214.1 As with the other clients of the Firm who had given evidence, Ms Mwaiwa had carried out an internet search to find conveyancing solicitors. She had decided to sell her property at AC to her son and his wife (Mr and Mrs S-P) for £148,000 which would be part-funded by a mortgage of £132,000.

214.2 Ms Mwaiwa contacted the Firm and was provided with a quote, on 15 October 2009, with which she was content, and she instructed the Firm to deal with the sale.

214.3 Shortly afterwards Ms Mwaiwa and her partner found a property they wished to purchase, at C Road, for £209,000. Ms Mwaiwa obtained a quote from the Firm and again instructed the Firm.

214.4 Ms Mwaiwa paid £150 and £300 on account of costs to the Firm for the sale and purchase.

214.5 Ms Mwaiwa instructed the Firm that the sale of AC had to be completed by 31 December 2009, whether or not the purchase was ready to proceed, as there was about to be a change in the SDLT rates. Mr and Mrs S-P also instructed the Firm in relation to their purchase of AC.

214.6 The first indication of a problem was around 9 December 2009 when the Firm informed Ms Mwaiwa that completion of the sale had to take place by 22 December (rather than 23 December as expected by Ms Mwaiwa) as the Firm's office would be closed from 22 December until 4 January 2010.

214.7 The sale of AC was then scheduled to take complete on 18 December 2009. The purchase monies from the mortgagees was sent to the Firm as was the balance from Mr S-P. On 18 December the Firm indicated there was a delay in receiving the money from Mr S-P.

214.8 Later on 18 December the Firm informed Ms Mwaiwa that the funds had been received and monies had been sent to discharge her mortgage on AC. However, Ms Mwaiwa was told that the balance, of £88,006.98, could not be sent to her that evening and would be transferred to her on the morning of Monday 21 December. This was the last conversation Ms Mwaiwa had with anyone from the Firm.

214.9 Ms Mwaiwa tried to contact the Firm during 21 December 2009 as the money had not been received into her account. No calls were answered. An answer-phone message indicated that the Birmingham office had closed; Ms Mwaiwa had taken that to mean it was closed for the Christmas/New Year period.

214.10 Ms Mwaiwa tried to contact the Firm on 4 January 2010 and became concerned as the office was still not open. An internet search showed that the Firm had been shut down by the SRA. Ms Mwaiwa stated that at that stage she started to feel physically sick and started to panic as she did not know what to do or what would happen to the £88,000 of her money which was with the Firm.

214.11 Ms Mwaiwa was given conflicting advice by the SRA about how to make a claim. She was unable to complete the purchase without the £88,000 which was supposed to be in the Firm's client account and was very worried that she might lose both the monies and the purchase of C Road.

214.12 Ms Mwaiwa had instructed other solicitors and made a claim on the Compensation Fund, which she was informed would be paid on 5 February 2010. Ms Mwaiwa was able to proceed with the purchase, which completed on 17 March 2010.

214.13 Ms Mwaiwa's statement recorded that she went through a period of extreme anxiety, stress and worry when she thought she had lost her money, without which she would have been unable to purchase her new home. There were some physical symptoms exacerbated by this period of stress. Ms Mwaiwa stated that she felt completely devastated by the situation, which impacted on her partner and family, including her son and daughter-in-law.

Mr Kieran Walshe

215. Mr Walshe's statement was dated 2 March 2010 and had been prepared for use in High Court proceedings between the Respondent and the SRA, when the Respondent had challenged the intervention. Mr Walshe had given evidence at the earlier hearing. The Tribunal was invited by Mr Dutton to treat the statement as read; Mr Walshe had not been asked to attend on this occasion and the Respondent had not requested his attendance. Mr Walshe was a solicitor at DWF LLP, who had been the Applicant's intervention agents in relation to the Firm. Mr Dutton drew the Tribunal's attention to a number of matters recorded in Mr Walshe's statement.

215.1 The Resolution for intervention into the Firm was made on 23 December 2009 and Mr Walshe was instructed to act as the agent in the intervention into the practice (or former practice) of the Firm and five named solicitors, being the Second, Third, Fourth and Fifth Respondents, together with the Respondent.

215.2 The instructions required DWF to attend at the Firm's offices in Heald Green and Birmingham on Wednesday 24 December 2009 to take possession of all documents including books of account relating to the practice.

215.3 Mr Walshe attended at the Heald Green offices about 10am on 24 December but was unable to gain access. Mr Walshe had been instructed by the SRA that it had made repeated attempts to contact the members/former members of the Firm on 23 December to alert them to the intervention. None of the named solicitors was present, but an employee of the Firm was in attendance; this person said he did not have keys but the Second Respondent would attend with the keys shortly. Mr Walshe was later told by the employee that the Second Respondent could not attend as he was at a hospital with his wife. The employee later told Mr Walshe that the Fourth Respondent could not attend as a result of an accident. After waiting outside the Firm's offices for over three hours, Mr Walshe's team left the site.

215.4 Mr Walshe was informed by his colleagues who attended at the Firm's Birmingham office that the office had been "cleared"; filing cabinets were empty and there were only four boxes of documents to remove, and no live files. The staff of the Birmingham office had left and no members of the Firm were present.

215.5 As it had not been possible to gain access to the Heald Green office, Mr Walshe's firm was instructed by the SRA to apply for a court order requiring access to the premises. An Order allowing access was made by a High Court judge on Sunday 27 December 2009. Access was gained by Mr Walshe and his team on Monday 28 December 2009, which was a Bank Holiday; the Second Respondent attended, as did the Third, Fourth and Fifth Respondents. The Respondent did not attend.

215.6 Mr Walshe recorded in his statement that he understood that notices of the intervention were posted through the letterbox of the Heald Green premises on 24 December 2009, addressed to the Respondent and others; further copies were left at the Birmingham office. An email with the notice was sent to the Respondent's solicitor on 29 December 2009 and copies were subsequently posted to an address in Leeds and an address which was understood to be that of the Respondent's wife, the Sixth Respondent.

215.7 Mr Walshe recorded that during the intervention it quickly became apparent that there were many files which were missing. It became clear that a large number of files had been transferred out of the Firm in the weeks prior to the intervention, in several large scale transfers including:

- Conveyancing files to Stirling Law;
- Immigration files to Dar & Co;
- Approximately 20 litigation files which were removed by a former partner in the Firm to Abacus Law;
- Personal injury files to MacIntyre Clark LLP; and

- Family law files to at least one former Consultant of the Firm who, it appeared, was a consultant at Abacus Law.

215.8 Mr Walshe's statement recorded that Stirling Law had entered into an agreement with the Firm dated 15 December 2009 for the transfer of a substantial number of client files. Thereafter, 46 boxes of client files were recovered from Stirling Law, where there was no written authority from clients for the transfer of the files. A further 12 boxes of files were subsequently recovered from Stirling Law.

215.9 Mr Walshe recorded that the SRA appointed sub-agents, due to the scale of the intervention and that firm, Gordons LLP, dealt with the files transferred to MacIntyre Clark LLP.

215.10 Mr Walshe recorded that there was evidence that files were transferred to each of the firms mentioned above without signed, written authorities from the clients and there was no evidence that clients had consented to the transfers.

215.11 Mr Walshe's statement recorded that about 200 immigration files were recovered from Dar & Co on 31 December 2009, having been transferred there without client consent; a further 50 files were recovered on 22 January 2010.

215.12 Mr Walshe recorded that the Second, Third, Fourth and Fifth Respondents confirmed to him on 28 December 2009 that:

- There were no hard copy accounts records of client ledgers kept by the Firm;
- The accounts records were held on an IT system called "Cognito";
- The IT system had been "wiped by a power surge" approximately 8 days before the intervention; and
- There was no back-up made of the IT system.

215.13 The only records which could be used were bank statements, obtained from the Firm's banks and the individual files, which numbered in their thousands; this meant it was very difficult to reconcile the Firm's accounts. The Second Respondent referred to some printed information being provided to the investigation officers in November 2009.

215.14 Mr Walshe recorded that after obtaining the necessary court order he sought the release of the "CRM database" (which was understood to be the client matter database). None of the Respondent or Second to Fifth Respondents provided a password for the CRM system; the passwords provided by a person described as the Firm's IT expert did not work. Access to the system was gained when an employee of the Firm, co-operating with the SRA, provided an individual password. It was not expected by Mr Walshe, at the time he made his statement, that any significant accounts information would be obtained from the CRM system.

215.15 Mr Walshe recorded his dealings with Mr Frank Butcher of Dataspace, and recorded that Mr Butcher had told him that he understood the Respondent to be the managing partner of the Firm; he had not heard of nor come across the Second Respondent, despite dealing with a number of individuals at the Firm. Mr Butcher had provided

copy emails between Dataspace and the Respondent running until mid-November 2009.

215.16 Mr Walshe recorded his contact with a Mr MA who said he was one of about 50 "consultants" around the country who held some of the Firm's files; 12 files were eventually recovered from Mr MA, three of which were "live".

215.17 It was found that files had been placed in the Heald Green office after DWF had uplifted files in late December 2009; 3 boxes of client files were recovered on 22 February 2010. Approximately 200, mostly live, files were recovered from a locked cage in the basement of the Birmingham office's serviced office premises on 17 February 2010.

215.18 As at 2 March 2010, the SRA's Emergency Fund had paid out over £5 million in respect of 24 conveyancing transactions which had been due to complete and were either interrupted by the intervention or which should have completed before the intervention but did not.

The Respondent

216. Mr Dutton reminded the Tribunal that he had a duty to draw attention to the Respondent's statement dated 30 July 2014. The Tribunal should give that statement such weight as it considered appropriate, given that the Respondent would not be cross examined. Mr Dutton submitted that where the Respondent's evidence did not accord with the other evidence which had been heard or read, it should be rejected.

217. The Tribunal noted the following points in particular, but had regard to all that was said in the Respondent's statement.

217.1 The Respondent referred to statements he had made in proceedings brought against him by the SRA for a worldwide freezing injunction and the subsequent substantive proceedings. Those proceedings were resolved by consent, on terms which were and are confidential to the parties; accordingly, the Tribunal had no information on that point but it noted that the freezing order had been discharged.

217.2 The Respondent had been cleared of allegations in criminal proceedings concerning mortgage fraud, at a trial which concluded on 20 December 2013.

217.3 The Respondent set out his educational and career history. In relation to his role in the practice, he set out that in April 2006 he agreed a deal in principle with the partners of Wolstenholmes. The principal terms were that: the purchase price was £950,000 in respect of work in progress and the Heald Green office premises; an interim payment would be made in the sum of £325,000 and the balance over 36 months; the acquisition would be through a LLP; A Mr C and Mr B would be members and salaried partners and would be entitled to receive the greater of 0.001% of the annual profits, or £70,000 or £50,000 respectively; a Mr L would remain as a consultant. The transaction completed on 31 July 2006 and the Respondent took effective control of the Firm on 1 August 2006. Lloyds Bank plc took a first legal charge over the Heald Green office, and a personal guarantee from the Respondent, in respect of the Respondent's loan of £325,000 to make the interim payment.

217.4 Inspections by the Applicant's PSU, and a full investigation in 2007, were satisfactory save with regard to the activities of one former fee earner (and were not relevant to these proceedings).

217.5 By mid-2008 the Respondent decided to realise his investment in the LLP due to certain family matters, a desire to follow a political career and to build up a property portfolio. Initial contacts with two firms which expressed interest in acquiring the Firm did not lead to a sale.

217.6 The Respondent stated that he met with the Second Respondent in August/September 2008 and then on 5 September 2008, when it was agreed that the Second Respondent would acquire all of the Respondent's interest in the LLP as follows:

- The Second Respondent would pay £150,000 by 37 monthly instalments of £4,000, with a final payment of £2,000;
- The Second Respondent would provide security to replace the Respondent's personal guarantee to Lloyds Bank plc;
- The Heald Green office was excluded from the sale of assets as, it was stated, "it was and remains owned by Premier Properties Limited ("Premier")". The Firm would continue to lease the premises from Premier.
- The Second Respondent would take effective control of the Firm as soon as practicable although the transaction would not complete until the security issue had been resolved.

217.7 The Respondent provided a description of his dealings thereafter with the Second Respondent and a Mr AM who was said to be a business consultant engaged by the Second Respondent, and the provision of information concerning the Firm.

217.8 The Respondent stated that he met with the Second Respondent in late September 2008 when the Second Respondent introduced him to WS, who was said to be an expert in online marketing; the Respondent stated that he understood WS to be a business consultant to the Second Respondent.

217.9 The Respondent stated that he had no objection to the Second Respondent's suggestion that WS should take up a position in the Firm immediately in order to do the necessary groundwork before the Second Respondent took over. The Respondent stated he believed WS and MC began working for the Second Respondent in October 2008.

217.10 The Respondent stated that for family reasons he was abroad during November and December 2008 and next met with the Second Respondent around Christmas 2008. There was discussion of outstanding issues, including the provision of security.

217.11 The Respondent stated that he agreed with the Second Respondent that the latter would take effective control of the Firm, with "completion" on 31 January 2009. However, ownership of the Firm would not transfer until the security issue was resolved to the Respondent's satisfaction.

217.12 The Respondent stated that the transfer of his interests in the Firm was not absolute, in that the Second Respondent would not be able to sell the business or deal with or pledge the assets of the Firm as he pleased. However, the Second Respondent would have full control over the management and administration of the Firm. The Respondent stated that as nominee he would be required to sign, execute and deliver such instruments as requested by the Second Respondent from time to time and act upon his directives or requirements.

217.13 Paragraph 34 of the Respondent's statement read:

> "I relinquished effective control over the Firm in favour of the [the Second Respondent]… but the security issue was not resolved… Lloyds indicated that I had to remain a signatory on the [Firm's] accounts until such time that the Second Respondent provided security. Otherwise, the [Firm] would lose its overdraft facility. I understood that I would remain a signatory, but could only sign cheques or transfer funds if request to do so by [the Second Respondent]. I accept that I may have signed some cheques post 31 January 2009 but this would have been at the request of and in accordance with the directives of [the Second Respondent].

217.14 The Respondent stated that he was not involved after 31 January 2009 in the daily management of the Firm and that he rarely attended the Heald Green office. So far as he recalled, he did no further fee earning work for the Firm, but introduced clients to the Second Respondent. The agreement between the Respondent and the Second Respondent was not reduced to writing. The Respondent stated that he was engaged in dealing with family matters, often abroad, from February to June 2009.

217.15 The Respondent stated that the Second Respondent opened a branch office of the Firm in Birmingham on 1 April 2009. That office began to handle large volumes of PI claims.

217.16 The Respondent stated that in late May/early June 2009 the Second Respondent informed the Respondent that the Firm was expanding rapidly and it was necessary for the Firm to have more than one member in order to obtain panel membership with some lending institutions. The Second Respondent asked the Respondent to invite the Third and Fifth Respondents to become members. The statement read, "I discussed with [the Second Respondent] that a written agreement would be necessary otherwise [the Third and Fifth Respondents] would be entitled to, inter alia, share equally with me (as nominee for [the Second Respondent]) in the capital and profits of the Firm. In or around 5 June 2009 I entered into an agreement with [the Third and Fifth Respondents] as prescribed by the [Second Respondent]… At that juncture I anticipated that the overdraft security issue release was imminent and therefore did not inform [the Third and Fifth Respondents] of my arrangement with [the Second Respondent]."

217.17 The Respondent stated that following further discussion with the Second Respondent, he proposed a "Deed of Adherence" in late July/early August 2009 but received no reply from the Second Respondent. The Respondent did not have a copy of this draft document available.

217.18 The Respondent stated that in late August 2009 he made it clear to the Second Respondent that he was not prepared to allow matters to be prolonged. The Second Respondent continued to assure the Respondent that the Firm was operating successfully; the Second Respondent said the Firm's earnings had increased significantly and he was re-investing any realised profits in the Firm. The Respondent stated that he was aware that new office and IT equipment was being acquired. The staff increased from about 30 in January 2009 to about 100, not including the marketing team (in which there were about 40 individuals).

217.19 The Second Respondent produced the Deed of Trust which was made on 1 September 2009. The Respondent stated that this was to protect the Respondent's position in the event that the Second Respondent sought to sell or dispose of the Firm without first procuring the release of the Respondent's security or paying the purchase price.

217.20 The Respondent stated that the position was explained to the Third and Fifth Respondents on 1 September 2009. Notices were prepared to record the Respondent's resignation as a member and the staff were informed that the Second Respondent had taken over the Firm.

217.21 The Respondent asserted in his statement that the Deed of Trust was consistent with the Second Respondent's email to the investigating officers on 16 December 2009 in which it was stated that the equity in the Firm was held on trust for the Respondent, that the Second Respondent would take on the Firm's overdraft and then the Trust Deed would terminate and the equity would vest in the three partners (the Second, Third and Fourth Respondents).

217.22 The Respondent maintained that the legal and equity rights in the Firm were effectively transferred to the Second Respondent and that to the Respondent's mind his interests in the Firm were limited to the security he obtained by virtue of the Trust Deed. The Second Respondent would be paying for the business and assets of the Firm on an "earn-out" basis, from the proceeds of work in progress, although the ongoing capital and cash-flow requirements of the Firm would be exclusively financed by the Second Respondent.

217.23 The Respondent stated that based on his understanding of the position, on 9 December 2009 he informed the investigators that he had no interest in the Firm; he considered that the Trust Deed was a form of security rather than an instrument denoting that he had an interest in the Firm. The Respondent stated that he assumed that the Second Respondent would have explained to the investigators that the Firm had been sold to him.

217.24 The Respondent referred to evidence provided by others, in particular the Third Respondent, concerning the Second Respondent's involvement in the Firm, and to documents in the Second Respondent's name in which the latter had asserted his role in the Firm was that of a partner during 2009.

217.25 The Respondent stated that he became aware of the PSU visit on or around 17 August 2009 and that the takeover by the Second Respondent was contemplated before the Respondent had any notice of the PSU visit.

217.26 The Respondent stated that he went abroad in October 2009 and on his return dedicated his time to political campaigning. The Respondent stated that he was informed in December 2009 that the Second Respondent intended to put the Firm into administration.

217.27 The Respondent met with the investigating officers on 9 December 2009, when he was asked one question, concerning his interest in the Firm. The Respondent stated that he was willing to provide any assistance that he could and believed the investigators would not be considering any action against him as he was no longer part of the Firm. The Respondent was never formally interviewed by the investigating officers, or invited to attend an interview.

217.28 The Respondent stated that the first he knew of the intervention was on 31 December 2009 when friends informed him of a BBC website story about the intervention. The Respondent stated that he had been aware on or before Christmas Eve that the Firm's bank account had been frozen, but he did not think it had anything to do with him personally.

217.29 The Respondent asserted that it was the Second Respondent who introduced WS to the Firm. The Respondent referred to a number of instances after 1 September 2009 in which WS and/or MC had been involved in accounts matters in the Firm. The Respondent denied that he had been aware of the extent of the relationship or arrangements between the Second Respondent and WS and/or MC.

217.30 The Respondent then set out his position concerning some correspondence with the SRA concerning a default in payment of a professional indemnity insurance premium, and the involvement of a Mr KM and Mr IH in a company referred to as OSCS. The Respondent asserted that it was the Second Respondent who introduced these individuals into the Firm. He also dealt with the formation of a company called Addison Reed Solicitors Limited and the Second Respondent's role in that.

217.31 The Respondent then dealt with issues concerning SDLT returns. He stated that it appeared that the Firm had submitted forms to HMRC for SDLT via Rooney & Co and that payments were made to OSCS instead of HMRC. The Respondent stated that at the time he was not aware of Rooney & Co but he was aware that the Firm was receiving PI referrals from OSCS and that referral fees were being paid, but he was not aware of the agreement between the Firm and OSCS.

217.32 The Respondent stated that, contrary to what was said in the witness statements of the Third, Fourth and Fifth Respondents, he rarely attended the Heald Green office after the change of control in January 2009.

217.33 The Respondent stated that he had not been involved in any way in connection with the computer problems in December 2009 and had not been informed of the computer failure and removal of data.

217.34 With regard to the accounts and the apparent shortage of just under £20 million (at the time of the inspection) the Respondent questioned the evidence of such a shortage. The Respondent stated that prior to the disposal to the Second Respondent all of the books of account were in order (for example, the reconciliation statement to the end of

January 2009 showed a small surplus) and that the Second Respondent had had the books of account assessed and verified when he took over. The Respondent further stated that from 31 January 2009 he had relinquished control to the Second Respondent and so any failure to comply was attributable to the Second Respondent.

217.35 With regard to the round sum transfers identified in the FIR, the Respondent stated that: the transfers were from client to office account, not to the Respondent or anyone associated with him and any signatory to the bank account could make the transfers; some had been instigated by the Birmingham office which was established and controlled by the Second Respondent.

217.36 In this context, the Respondent stated in his statement (at paragraph 97.3):

> "If I signed cheques, I was asked to do so by [the Second Respondent] and it would have been represented to me by the accounts department that the appropriate bills were raised. I would have done so only if I believed that the money was properly due to the [Firm]".

The Respondent further stated that the responsibility to ensure that bills were properly raised rested with the Second Respondent and with the Third Respondent when she became involved in the management and administration of the Firm.

217.37 The Respondent asserted that there was no evidence that the round sum transfers were unrelated to profit costs and/or disbursements that were properly payable to the Firm. The Respondent specifically denied dishonesty and stated that he did not deliberately authorise improper payments by the Firm (although he could not say on the basis of the Applicant's evidence if there had been improper payments).

217.38 The Respondent asserted that bills were often raised for round sums, including VAT, particularly where there had been a payment on account of costs. The Respondent suggested that the Applicant's evidence showed that the failure to raise bills may be attributable to the workload of the accounts department rather than dishonesty and that the transfer of round sums occurred after September 2009. The Respondent also referred to there being bills in existence which had not been in the possession of the Firm as they were at the home of Ms LM of the Firm's accounts department.

217.39 The Respondent asserted that if the Applicant relied on the Membership Agreement of 5 June 2009 in support of the allegation that the Respondent was the only person able to authorise payment of round sum transfers, this reliance was misplaced as the Respondent had entered into the agreement as nominee for the Second Respondent. Some of the payments had been authorised by WS, who was recruited and appointed by the Second Respondent.

217.40 The Respondent asserted that if bills had not been raised to support the round sum transfers, this was not his responsibility.

217.41 Although it appeared that payments of about £4.5 million were made by the Firm to Premier (a company owned by the Respondent), the payments were shown to be made to "Premier Propertie" (sic) or "Premier Pro". The Respondent had instructed his solicitors to inform the SRA that none of the payments were received by Premier.

One payment, of £229,000 had been identified as being made to "Premier Property Lawyers, Salmak/Selby."

217.42 The Respondent summarised his position: he relinquished control of the Firm to the Second Respondent on 31 January 2009; thereafter, he acted as nominee for the Second Respondent, and in accordance with his instructions; from February 2009 the Second Respondent was responsible for the management and administration of the Firm, including discharging all regulatory and compliance requirements.

217.43 The Respondent accepted that he might have signed remittances when asked to do so by the Second Respondent and that if he did so concerning round sum transfers, it would have been represented to him that the appropriate bills were raised and the fees were properly due to the Firm. He was not knowingly involved in any impropriety.

217.44 The Respondent stated that any improper participation by WS, MS and others in the Firm was attributable to the Second Respondent. Matters appeared to have gone wrong under the watch of the Second Respondent.

217.45 The Respondent denied that he had concealed his involvement in the Firm during the investigation.

217.46 The Respondent acknowledged that the issues raised by the Applicant in relation to the Firm's accounts, and generally, were serious. The Respondent stated that he would not have allowed the Firm to be mismanaged had he been in control. The involvement of the Second Respondent in the Firm was regrettable and had caused him considerable personal loss and distress; the effect of the intervention on him had been absolutely devastating and his reputation had been destroyed.

217.47 The Respondent stated that in early 2009 a senior member of staff, Mr GW, was shot in the leg in his family home, which incident was reported to the police. The Respondent stated, "When I questioned the arrangements by [the Second Respondent] and WS, I was also threatened, along with my family. The fear of violence after an actual shooting slowly led (to) my mental health problems… I was too frightened to report this matter to the police. My medication has slowly helped me to come to terms with the illness. I have only come to mention this matter now as I have some comfort with the knowledge that WS has absconded abroad; I learned this from the criminal trial in Birmingham Crown Court. Also, Mr KM is serving a prison sentence. My wife was also threatened repeatedly with violence but has not said anything due to the real threat. Living in close proximity to the office just added to the fear".

General – findings on witness evidence

218. The Tribunal had the benefit of hearing from a number of witnesses on behalf of the Applicant. It was grateful to those witnesses for attending, particularly Ms Muniz, Ms Trigg, Mr Walsh and Mr Butcher. The Tribunal also wished to express its thanks to those who had provided witness statements, in particular Ms Townend and Ms Mwaiwa and to express its sympathies to the family of Ms Townend, who had died between the earlier hearing and this hearing; she and her family had experienced significant distress because of the actions of the Firm.

219. The evidence of the Applicant's witnesses was not challenged directly by the Respondent, but the Tribunal noted that the Respondent's accounts of some matters differed from the accounts given by the witnesses. Where there was any discrepancy, the Tribunal preferred the evidence of the Applicant's witnesses for reasons which will be made clear below.

220. The Tribunal had heard from Mr Freeman and had read the FIRs and relevant supporting documents. It was satisfied that the contents of those reports were true and accurate; the evidence provided was consistent and sufficient for the purposes of this hearing, despite the destruction of evidence by those involved in the Firm prior to the intervention being effected. The Tribunal had also heard from Mr Jones of the Applicant and accepted his evidence about the amounts paid out by the Compensation Fund with regard to the Firm.

221. The Tribunal was particularly impressed by the evidence of those witnesses who had no connection at all with the Applicant; there was no doubt that they had attended out of a sense of public duty. They had nothing to gain personally from attending, save the knowledge that they had contributed to the Tribunal's knowledge and understanding of the case. Mr Walsh had travelled a considerable distance to attend the Tribunal – and he had done so for both this and the earlier hearing. Ms Trigg was based in Cardiff and Mr Butcher in the North West; again, each had travelled some distance to attend. Whilst Ms Muniz lived more locally, she had had to take time away from work and family commitments.

222. The Tribunal found the oral evidence of Ms Trigg compelling, as she described not only the sequence of events involving the Firm in which she had been caught up but also the stress and anxiety she had suffered. Ms Trigg had also illustrated clearly that not just clients of the Firm but also those involved in transactions with such clients were badly affected by the Firm's collapse and improper financial dealings.

223. Ms Muniz had given clear and credible evidence concerning two important issues. Firstly, she had given evidence about her contact with the Respondent during July 2009, at which point he described himself as the Chief Executive Officer of the Firm; this contradicted the Respondent's assertion that he had limited involvement with the Firm from the end of January 2009. Secondly, Ms Muniz had given dramatic evidence about the Firm's failure to pay SDLT on her behalf, when she had provided the funds to do so and believed that the Firm had made the payment. She had been shocked to find some three years after the purchase that it had not been paid. Furthermore, she had learned that a false SDLT form had been created in her name and sent to HMRC bearing forged signatures. Whilst the Compensation Fund had paid out a sum for the SDLT and interest, the distress caused by suddenly finding that HMRC thought she had made a false declaration and failed to pay £9,000 in SDLT had been enormous. The Tribunal heard, and accepted, the evidence of both Ms Muniz and Ms Trigg concerning their diminished trust in solicitors as a result of this episode.

224. The Tribunal accepted also the written evidence of Ms Mwaiwa – who had been prepared to attend if required – and Ms Townend who, sadly, had died since she had given evidence at the earlier hearing. Both of these former clients of the Firm had given clear and credible accounts of how their conveyancing transactions had been

affected by the Firm's improper financial dealings and collapse, together with the impact on them and their families.

225. The Tribunal also had no hesitation in accepting the written statement of Mr Kieran Walshe, the intervention agent. Although that statement was prepared for use in High Court proceedings, it contained significant information relevant to this case. The fact that the statement was made on 2 March 2010, shortly after the intervention, added to the conclusion that the statement was true in all material respects.

226. The Tribunal accepted in full the evidence of Mr Ted Walsh. It found that the Firm's computer system had not been affected by a "power surge". Whilst the Tribunal could not identify who had caused the data on the server to be wiped, it was satisfied it had happened as a result of a deliberate act by someone on or before 9 December 2009. The Tribunal was particularly struck by the description given of how complete the destruction of data had been; Mr Walsh had described what was left as equivalent to having £4 remaining when one started with £74 million.

227. The Tribunal also found the evidence of Mr Butcher to be straightforward and honest. It accepted in particular that he had continued to have dealings with the Respondent after 1 September 2009 concerning document storage. The Tribunal was particularly struck by Mr Butcher's description of the chaos at the Firm in October 2009 and in particular the use of shipping containers to "store" files. It had not been apparent from Mr Butcher's very measured statement that the shipping containers were in a public car park and were open to the elements, and to the public. This was a particularly disturbing state of affairs, as it indicated the Firm had no regard to client confidentiality or the security of client information and documents.

228. The Tribunal had not had the benefit of hearing from the Respondent. Where his evidence was contradicted by that of the Applicant's witnesses, the Tribunal unreservedly accepted the evidence of the Applicant's witnesses. That evidence had been tested. The Respondent had not been subject to cross examination and so the Tribunal could give only limited weight to his statement. If it had been necessary to do so, the Tribunal would have drawn an adverse inference from the Respondent's failure to explain himself to the Tribunal by giving evidence; it was not in fact necessary to do so as the Respondent's evidence carried no conviction whatsoever.

229. <u>Findings of Fact - Background</u>

229.1 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.

229.2 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 Respondent (5 June 2006 to 1 September 2009); Mr DP Burke (5 June 2006 to 7 February 2009); Mr S Clarke

(26 July 2006 to 27 February 2009); Mr M Collie (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 a 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 Respondent and the 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 various Respondents had specific duties in their capacities as principals of the Firm.

229.3 By about October 2008, the Respondent was the most significant member of the Firm. Although Mr Burke and Mr Clarke remained members until February and Mr Collie 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 Respondent and his former partners. For a period of about a month, until the appointment of the Third and Fifth Respondents, the 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.

229.4 The Tribunal noted the terms of the Members' Agreement dated 5 June 2009, made between the Respondent, the Third Respondent and the Fifth Respondent. It noted in particular:

229.4.1 The agreement was said to be made between the named parties "to set out the basis on which [the Firm] was to be organised and the rights and obligations of the members of [the Firm]".

229.4.2 At clause 4.4. it was stated, "All cheques drawn on or instructions for the transfer of money from any account shall be drawn in the name of [the Firm] and shall be signed by [the Respondent] but not by any other person. Cheques for less than £500 may be signed by one signatory that may be duly authorised by [the Respondent].

229.4.3 The profits of the Firm were to be divided between the members as to 99.98% for the Respondent and 0.01% each for the Third and Fifth Respondents.

229.4.4 At clause 8.3 it was stated, "[The Respondent] shall be the Chief Executive Officer of [the Firm]".

229.4.5 The Agreement went on to make provision for there to be monthly meetings of the members to discuss and implement a marketing strategy and to discuss the accounts, cash flow, profits, commercial position and profitability of the Firm. Certain decisions were stated to require the casting vote of the Respondent, which would be decisive and would bind the remaining members.

229.4.6 In addition, the Respondent had authority to provide written notice of suspension of a member and a member could be expelled if "in the opinion of the Respondent" it was in the best interests of the Firm.

229.5 The Tribunal also noted that in a section on members' duties and restrictions, it was provided that except as agreed by the members, each member would devote his/her whole time and attention to the business.

229.6 The Tribunal noted the Respondent's contention that he had entered into this agreement at the behest of the Second Respondent. This was an incredible assertion, which the Tribunal completely rejected. Whilst it could not rule out the considerable evidence that the Second Respondent had had an influential and growing role in the Firm during 2009, the Tribunal was satisfied that at the time of making this Agreement the Respondent was the sole member of the Firm. It was also satisfied that there was no agreement in writing, or any other evidence, that the Respondent acted on the instructions of the Second Respondent. It was particularly struck by the fact that in order to make this assertion, the Respondent would have to admit that he had substantially misled the Third and Fifth Respondents and entered into an agreement which, he said, did not reflect the true position. The Tribunal was not satisfied that the assertions or evidence of the Respondent could be relied on, save where there was other supporting evidence. On this issue, it preferred the evidence of the written document and that it meant what it said on its face i.e. that the Respondent had 98.98% of the equity in the Firm and that he was the Chief Executive Officer of the Firm. The Tribunal noted that at the earlier hearing evidence was given in the witness statement of the Third Respondent and orally by the Fifth Respondent that neither of them were aware that the Second Respondent was in charge of the Firm in any way until 1 September 2009.

229.7 The Tribunal also took into account the Trust Deed which was executed by the Respondent and the Second Respondent, witnessed by the Third and Fourth Respondents on 1 September 2009. The Tribunal noted in particular the following:

229.7.1 It was stated that the Respondent was the Chief Executive Officer of [the Firm] and had decided to resign from such office and to relinquish all duties associated thereto. It was also stated that the Respondent was a majority shareholder in the capital of [the Firm] and his equity stake represented 99.6% (sic) of the issued share capital in the Firm. It was stated that the Respondent had decided to transfer his shares subject to and in accordance with the terms of the Declaration of Trust.

229.7.2 The Second Respondent irrevocably and unconditionally warranted, represented and undertook: that the shares in the capital of the Firm held by the Respondent and transferred to the Second Respondent would be held in trust absolutely for [the Respondent] upon such terms and conditions as he may direct from time to time; that beneficial interest in the shares would vest absolutely in the Respondent and he would be entitled to the value of such shares whether by transfer, sale, disposal or otherwise; and in the event of the Second Respondent's death the Declaration of Trust would cease and determine and the shares would be deemed to have been transferred back to the Respondent with immediate effect.

229.8 The Tribunal found that the effect of this document was that whilst the Second Respondent became a member of the Firm, the Respondent retained substantial control over the Firm as the Second Respondent held shares on trust for the Respondent. The Tribunal specifically rejected the Respondent's contention that this document simply protected the Respondent's position with regard to his personal guarantee. This was not recorded in the agreement, nor was any intention to transfer the equitable interest to the Second Respondent mentioned. Rather, the document reinforced the conclusion that the Respondent remained the owner of the Firm throughout 2009 and retained substantial control and influence over the Firm and the members.

229.9 The Tribunal further found that the Respondent, and his fellow solicitors involved in the Firm, remained responsible at all times for the discharge of their duties under the Code and SAR 1998. The Tribunal was also satisfied that all of the facts under consideration in this case dealt with extremely serious misconduct.

Findings of Fact – Involvement in the Firm of non-solicitors

230. The evidence of the involvement of certain non-solicitors in the management of the Firm was overwhelming. The Tribunal was satisfied that that involvement began in late 2008.

230.1 By about 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").

230.2 Each of the Second to Sixth Respondents in their statements had suggested that WS's role was that of a business consultant, carrying out a number of tasks on behalf of the Firm. 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 was 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) made it difficult to establish the exact chain of events, 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".

230.3 Further, WS had been involved in interviewing the Third Respondent for her position in December 2008. Also in December 2008, in an email from the Firm's HR/Accounts Manager Mr AW to WS, 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 stated that he had been interviewed by WS in February 2009 and in any event the Tribunal was satisfied that WS had been involved in discussions around that time with the Second Respondent (and possibly others) about establishing an office in Birmingham for the Firm.

230.4 The Tribunal noted that at the earlier hearing, the Sixth Respondent gave evidence that from about November 2008 WS, MC, the Respondent, Mr Burke, Mr Clarke and Mr Collie had held staff meetings at which billing targets had been discussed. The Fifth Respondent had given evidence, which the Tribunal had accepted, that he met with WS from time to time from about December 2008 to discuss billing and securing more commercial property work.

230.5 The Tribunal was mindful that it was not making findings against WS, or anyone who was not a party to these proceedings, at 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 permission 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.

230.6 The Tribunal also found that on 13 February 2009, in an email to Mr AW, WS authorised payment of an invoice to MK's business, for services provided in January 2009. This email exchange, on which the footers showed the Firm had office addresses in Manchester and Birmingham as well as in Heald Green, showed that WS was giving instructions for payments of accounts by mid-February 2009, and that MC had been engaged by the Firm at least by January 2009. 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 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 Respondent), 4 by MK, 4 by MC, 1 by "Iftab", 4 by the Respondent (of which 2 were jointly requested with WS), 2 by the Second Respondent, and 1 by the Fourth Respondent.

230.7 The Tribunal noted and found that a key example of the inappropriate influence of non-solicitors in the Firm was the instruction by WS to the accounts staff to transfer £80,000 from client to office account on 5 June 2009. The email exchange between Ms LM of the accounts department and WS read:

> "Balances are as follows:
>
> | | |
> |---|---|
> | Office balance as at close of business yesterday | -£343,648.37; |
> | Client balance as of close of business yesterday | £5,594,175.08; |
> | Cognito balance posted into client account | £4,922,147.61. |
>
> We have posted everything that we can allocate onto Cognito.
>
> Do you want me to transfer the funds across now?"

WS responded shortly afterwards,

> "Yes,
> Transfer £80k from client to office account".

There was no apparent consultation with any member of the Firm concerning this transfer – which actually occurred on the date the Third and Fifth Respondents were appointed as members of the LLP – and there was no evidence whatsoever that the transfer related to monies properly due to the Firm in settlement of bills or disbursements.

230.8 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.

230.9 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.

230.10 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.

230.11 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 that at the earlier hearing the Second Respondent had given evidence that in May 2009 he 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 Respondent would actually make the decision about the case management system. The Tribunal at the earlier hearing had 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.

230.12 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. The Tribunal noted that the Respondent had stated in his statement that about 40 people worked in marketing for the Firm. An exchange of emails in late August 2009 between MK and the Respondent, following an email from the Fifth Respondent to the Respondent and the 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 requirements of the Code, 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 M Khan 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.

230.13 The Tribunal noted a staff list which was passed to the SRA by the Second Respondent in 2010 which he had indicated referred to the period in or around 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 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 Respondent was described as "Chief Executive/Commercial Conveyancer". The Second Respondent was described as "Head of Litigation and Matrimonial", which the Tribunal noted was inconsistent with any suggestion that the Second Respondent had taken overall control of the Firm at that point. Indeed, this document clearly showed that WS and MC were involved in management and that the Respondent was still the Chief Executive Officer. The Tribunal noted that on this document the Third Respondent was described 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". Miss J, who had received a commission payment of £22,481.02, was described as a "PI paralegal" (in the Birmingham office).

230.14 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 Winnact 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 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 and in any event they had a significant role in recruitment for the rapidly expanding Firm.

230.15 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 varying degrees of access to the CRM system of about 190 individuals. The Tribunal found that, as shown by this document, the Respondent, WS, MC, MK and others (including Mr BB and Mr IH) had "full access" whereas the Third, Fifth and 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 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, as well as the Respondent, had access to client information which other solicitors and even some members of the Firm did not.

230.16 The Tribunal also noted and accepted the evidence in the final 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 Respondent and Sixth Respondent, WS, MC, MK and others including Mr BB and Mr IH.

230.17 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, dated 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. The Tribunal was satisfied on the evidence seen and heard that by about March 2009 WS was attending regularly at the Birmingham office, at which the Second Respondent also worked.

230.18 The Tribunal was satisfied that there was a clear temporal link between the Second Respondent's first involvement with the Firm (in autumn 2008) and the introduction of WS, MC and others, but it could not be satisfied whether it was the Respondent or the Second Respondent who actually introduced those individuals or in what circumstances.

230.19 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 paragraphs 230.5 to 230.8 above show a series of examples in which the staff of the Firm sought and received authorisation from WS or received instructions from him. 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. On 6 September 2009 the Respondent emailed WS with the subject "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 Respondent in allocating roles to staff. This particular email also showed clearly that the Respondent continued to have a role in the Firm after his apparent resignation as a member on 1 September 2009 and that he was deferring to WS, or at least involving him, in decisions concerning the Firm.

230.20 There was a massive growth in the Firm's marketing operation, which was based at the Manchester office. This was led by MK and involved a 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 (see, for example, paragraph 98). 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 to over 100 in the period prior to the intervention. The complete lack of reliable accounts information and the removal of files prior to intervention meant that it was difficult to establish the precise extent of the growth in the Firm's workload but it was clearly huge; this could be ascertained from the information provided by Mr Walshe and Mr Butcher concerning the files they retrieved on the intervention and the use of (open) shipping containers for "storage" of files.

230.21 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. 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. However, the

Tribunal was in no doubt that they had been allowed to exercise that control and influence with the full knowledge and consent of the Respondent.

231. The role of the Respondent

231.1 As noted above, the Tribunal was satisfied that the Respondent was in effective control of the Firm from its establishment on 1 August 2006 and it was beyond any doubt or argument that he remained in such control until at least the end of January 2009.

231.2 The Tribunal noted and found that in or about September 2008 the Second Respondent had held some discussions with the Respondent about purchasing/taking over the Firm. This was evidenced by an email from the Second Respondent to the 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 Respondent on 8 September 2008 requesting information about the Firm. The proposed transfer of the business did not take place at that time.

231.3 As noted above, the Tribunal found that WS and MC were working within the Firm from late 2008. This included a period in which the Respondent was, even on his own case, the Chief Executive of the Firm. His explanation, that WS and MC were engaged by the Second Respondent to prepare the groundwork prior to the Second Respondent taking over the Firm, was simply incredible. The Tribunal noted that there was evidence that from late 2008 the Respondent, WS and MC met with staff, as a group, to discuss billing. Further, the Fifth Respondent had given evidence at the earlier hearing that the Respondent, WS and MC were the Firm's management, as a "collective". Even if the Second Respondent had engaged WS and MC to prepare the ground for his take-over, this did not begin to explain why WS and/or MC were not properly supervised by the Respondent in their activities and/or why he did not establish the exact nature of the relationship between those individuals and the Second Respondent.

231.4 The Firm was undoubtedly under the control of the Respondent until the end of January 2009 (even on the Respondent's case) and yet he had failed to take any steps to control or monitor the activities of WS and MC, seemingly allowing them free rein to deal with staff and obtain information about billing and other sensitive issues. It was a notable feature of this case that the Respondent had failed to commit what he said were key agreements or arrangements into writing. The Respondent had in any event clearly allowed and permitted WS and MC to begin to exercise a considerable

degree of influence and control in the Firm whilst he was clearly the Chief Executive of the Firm. It was noted that there were other members of the Firm at that point but their role in management and decision-making appeared to have been limited; in any event the Respondent held almost all of the equity in the Firm.

231.5 The Tribunal accepted that there was no evidence of any material financial wrongdoing in the Firm prior to the end of January 2009. It noted that the Respondent relied in his defence on the proposition that he handed over control of the Firm to the Second Respondent on 31 January 2009 and thereafter acted only as nominee and on the instructions of the Second Respondent. This was a major contention and it was examined in some detail by the Tribunal.

231.6 It appeared to be accepted by all parties that the Second Respondent began working in the Firm in or about February or March 2009 but the capacity in which he worked was disputed. It was remarkable, and concerning, that a key member of staff could be taken on without proper records or notification to the Applicant. Given that the Second Respondent had been in discussions with the Respondent about purchasing the Firm, it was not credible that he was taken on simply as a solicitor, without some management role or expectation of involvement in the management of the Firm.

231.7 The Tribunal had found that the Respondent was a member of the Firm at all material times up to 1 September 2009; the position thereafter is considered further below. Indeed, in the period from 9 May until 5 June 2009 the Respondent was the only member of the Firm. As such, he was responsible for proper management of the Firm and of the Firm's accounts at least until 1 September 2009. There was no conceivable basis on which the Respondent could avoid liability for Accounts Rules and other breaches in that period, although the degree of personal culpability may have been disputed. His attempts to distance himself from responsibility for the Firm were unrealistic and entirely unconvincing.

231.8 The Tribunal could find no credible or persuasive evidence at all to support the Respondent's contention that he handed effective control of the Firm to the Second Respondent on 31 January 2009. Firstly, there was no agreement in writing to that effect. Secondly, no-one in the Firm had been informed of the Second Respondent's alleged role. It was impossible that the Second Respondent could have exercised control if no-one knew he was the person making the decisions. Thirdly, the Second Respondent never became a signatory on the Firm's bank accounts and in particular had not been able to transfer money from client to office account. In addition, the Second Respondent did not have access to the CRM system, which the Respondent did. Whilst the precise nature of this system was not established, access to any system which recorded information about clients and/or their matters would be essential in order to manage the Firm. The Respondent remained a signatory on client account and as such exercised some control over the Firm's accounts and banking functions.

231.9 The Tribunal further noted that when Mr AW of the accounts department resigned, his letter of resignation dated 3 June 2009 was sent to the Respondent and copied to WS. This clearly showed that staff, including accounts staff, understood the Respondent to be a manager of the Firm at that point as well as illustrating the significant role of WS and that the Respondent was aware of that role.

231.10 The Tribunal was conscious that it was for the Applicant to prove the allegations and not for the Respondent to disprove them, but it could see no evidence from the Respondent which even began to raise any doubts about the fact that the Respondent had remained a significant figure in the Firm at least until 1 September 2009.

231.11 The Tribunal found particularly compelling the evidence of Ms Muniz. She had clearly and convincingly told the Tribunal about her contacts with the Respondent in early July 2009, at which point the Respondent had introduced himself to her as a partner in the Firm; his email footer included the statement that he was the Chief Executive Officer of the Firm. The fact that Ms Muniz had confirmed that after involving the Respondent her conveyancing matter had proceeded more quickly also showed that the Respondent had some influence with staff which had galvanised them into action on this file.

231.12 The Tribunal also noted the staff list sheet which was understood to date from around June 2009, on which the Respondent was noted to be the "Chief Executive".

231.13 It was highly significant that the signatories on the Firm's bank accounts at the time of the investigation and the final FIR were the Respondent and the Third, Fourth and Sixth Respondents. In the period May/June 2009 only the Respondent and the Sixth Respondent could sign cheques or authorise transfers.

231.14 The Tribunal noted and found that the Respondent authorised the Firm's accountants, Booth Ainsworth, to deal with WS concerning the Firm's accounts in early summer 2009, as evidenced by various emails from 5 June 2009 until November 2009. These showed that Booth Ainsworth were in regular contact with WS concerning issues such as preparation of the Firm's accounts and the Firm's bad debt provision.

231.15 There was also considerable documentary evidence (notwithstanding the wholesale destruction of computer records, including the Respondent's email account) in the form of emails which showed that the Respondent was being informed of matters and/or consulted on issues throughout 2009. By way of example, the Tribunal noted that on 15 September 2009 WS sent an email, in response to one from the Respondent, concerning the Firm's Profit and Loss accounts; the Tribunal further noted that the Respondent was described as "Chief Executive Officer" in the footer to his email. In addition, the Respondent had signed a cheque for a round sum transfer, of £50,000 on 18 August 2009; he had not disputed this. This illustrated not only that the Respondent remained a signatory on the Firm's accounts but that he actually signed cheques during 2009. Further evidence on these points is set out in relation to allegation 1.1. below, to illustrate the knowledge the Respondent had of the involvement of WS and others in the Firm during 2009.

231.16 It was of great significance that the Respondent had entered into the Members' Agreement on 5 June 2009 with the Third and Fifth Respondents. As noted above, the Respondent's explanation that he did so as nominee for and as requested by the Second Respondent was clearly nonsense. To enter into an Agreement with fellow solicitors without disclosing the true nature of the agreement would be unethical and unacceptable. The Tribunal had considerable concerns about the Respondent's grasp of professional ethics – for reasons which should be clear from a full reading of this

Judgment – and noted that it was unusual and bizarre to defend an allegation on the basis that one had committed some other unprofessional activity. In any event, the Tribunal could not accept that the Respondent had signed a binding agreement in his own name, making a disposal of a small part of the equity in the Firm, on the direction of the Second Respondent. The Third and Fifth Respondents had produced statements in the proceedings in which they indicated they had little knowledge of the Second Respondent until told he was the new Managing Partner on or about 1 September 2009.

231.17 The Tribunal also noted with concern that the Respondent had not set out any remotely credible account of the terms on which he was to dispose of the Firm to the Second Respondent. He had referred on a number of occasions in the documents to his sole concern being release from the security held by Lloyds Bank, in the sum of £325,000. He had not made any attempt to explain what the position was with regard to the money owed to the former partners of Wolstenholmes, nor was there anything in the Trust Deed which referred to obtaining release from the personal guarantee. If this was the key to effecting a full transfer of all of the legal and beneficial ownership of the Firm – as the Respondent asserted – it was incredible that it was not referred to in any document. To proceed with such an important matter as the sale of a firm of solicitors without recording, in full, the terms and contingencies was extremely odd - at best. Either the Respondent was an incompetent solicitor or he had chosen to proceed with minimal documentation so as to obscure the true position with the ownership of the Firm. The Tribunal was satisfied that the latter was the case.

231.18 The Tribunal noted and accepted the evidence of the Respondent on the point that he informed the Third and Fourth Respondents that the Second Respondent was the new Managing Partner on or around 1 September 2009. This was consistent with the written evidence of those Respondents. It further supported the finding that the Second Respondent was not in effective control of the Firm before that point; if even members of the Firm did not know who was supposed to be making the decisions, that person clearly could not run the Firm.

231.19 All of that said, the Tribunal noted and accepted that there was evidence that the Second Respondent had had a role of growing influence in the Firm during 2009; it was not possible to pinpoint precisely when the Second Respondent became a decision-maker in the Firm and nor was it necessary to do so for the purpose of considering the case against the Respondent. The fact that one or more other solicitors may have shared some part of the Respondent's responsibility for management of the Firm did not diminish his own role.

231.20 The Tribunal considered the evidence concerning the Respondent's role from 1 September 2009. It noted in particular the terms of the Trust Deed of that date, as set out at paragraph 229.6 above. This made it abundantly clear that far from the Respondent being the Second Respondent's nominee from late January 2009, the reverse was the case in that the Second Respondent was the Respondent's nominee from 1 September 2009. The Second Respondent was bound to act for the benefit of the Respondent. There was no mention of when or how the terms of the Deed would cease to have effect (save on the death of the Respondent) and in particular no mention of full and complete ownership passing when the Respondent was released from his personal guarantee.

231.21 The Tribunal noted the email evidence concerning the Respondent's continued involvement in the Firm, in particular in exchanges involving WS and the other Respondents. It noted what the Respondent said about being abroad for various periods, but could not identify exactly when the Respondent said he had been out of the country. He had referred to visa stamps on his passport, which was included in the bundles, but it was not possible clearly to identify the periods marked. The Tribunal accepted that the Respondent had been abroad at various periods but could not identify for how long and in which periods he had been away. For example, the Tribunal noted from the evidence of Mr Butcher of Dataspace that the Sixth Respondent had indicated the Respondent was in Dubai towards the end of 2009, but it also noted he had been present at the meeting with the investigating officers on 9 December 2009.

231.22 The Tribunal had heard from Mr Butcher of Dataspace. He had clearly set out his dealings with the Respondent in the autumn of 2009, by email and in person. In particular, in October 2009 he had met with the Respondent and had personally seen the chaotic piles of files within the Firm's offices and in the unsecured shipping containers in the public car park. It was notable that the Respondent had not indicated to Mr Butcher that he would need to seek authority for the costs of removing and storing files from anyone else; in particular, Mr Butcher had not been aware of the role of the Second Respondent.

231.23 It was correct that the Respondent was not a member of the Firm after 1 September 2009. However, he remained a signatory on client account**,** continued to deal with enquiries from members of the Firm and remained personally liable for the Firm's borrowing from Lloyds Bank plc. Indeed, it was notable that the Respondent had stated that he spoke to a manager at Lloyds concerning the freezing of the Firm's bank accounts shortly before Christmas 2009. The Tribunal further noted that on 5 November 2009 the Respondent gave the instruction to the Bank to close a deposit account; there could be no doubt he remained involved in the Firm and its financial affairs.

231.24 The Tribunal was in no doubt at all that the Respondent had remained a key figure in the management of the Firm throughout 2009 and was officially a member of the Firm until 1 September 2009.

232. *The collapse of the Firm*

232.1 The Respondent was a member of the Firm during much of the time in which the Firm had been in breach of the SAR, with increasingly large differences between liabilities and monies held for clients throughout the year. By September 2009 there was £4.8 million of unallocated client money and there had been a book difference/shortage on client account of nearly £150,000 as early as 31 May 2009; these problems had clearly occurred whilst the Respondent was a member of the Firm. Further, the Tribunal noted that by the time of the PSU visit in early September 2009, there had been 43 service complaints made against the Firm; this level of client dissatisfaction had occurred whilst he was a member of the Firm. The Respondent was also a manager of the Firm throughout this period, in which the Firm changed from being a traditional practice to one which engaged in mass internet marketing and volume conveyancing and PI work. Neither category of work was properly

supervised or managed. Client care letters which were not compliant with the requirements of the Code were sent out by the marketing team, who were not supervised by a solicitor, until at least November 2009. As noted above, there was wholesale and blatant disregard for client confidentiality, with client files being left exposed and unsecured in a public car park. There were many concerns about the Firm's conduct of conveyancing files. As the complete collapse of the Firm approached, active client files were shipped out in large numbers to other firms, without the consent of clients. The Tribunal was concerned to note that at least one of those firms, MacIntyre Clark LLP, had been intervened during 2010.

232.2 Even more seriously, throughout the period clients' money was systematically siphoned out of the Firm. This money went to WS, MC, MK and others associated with them. It was paid out to OSCS when, ostensibly, cheques for SDLT were being sent to HMRC. Round sum transfers were made from client to office account when there were no bills or other justification for the transfers. The accounts system was in a complete mess, with client money not allocated properly or promptly. Despite this chaos, the Firm continued to market its services in such a way that large numbers of clients instructed the Firm and paid money to the Firm. The Tribunal had heard that there had been a net loss to the Compensation Fund of approximately £8.6 million; much of that related to money paid to the Firm by individuals such as Ms Trigg, Ms Muniz, Ms Townend and Ms Mwaiwa. Not only were clients of the Firm affected but also those in conveyancing chains with those clients. The immense damage caused to the reputation of the profession by the activities of those involved with the Firm could hardly be overstated.

233. *Overview*

233.1 The Tribunal considered all of the evidence and the allegations with great care and in great detail. As it did so, it formed a picture of the Firm, what had happened and the Respondent's role in this which caused escalating concern. This picture was enhanced by the emails which had survived the destruction of the Firm's IT system (e.g. through being present on other systems) and particularly the powerful and compelling evidence of clients of the Firm and other witnesses. The Firm had been in a state of chaos for much of 2009 due to the failings of those who should have been managing it.

233.2 The scale of the loss to clients and to the profession (through the profession's Compensation Fund) was huge – over £8.6 million. Hundreds of clients had been badly let down; the examples the Tribunal had heard were just a few amongst many but those examples were specific and graphic.

233.3 The Respondent had denied he was responsible for anything which had gone wrong. That was a startling and unrealistic position to adopt, given that the Respondent was (even on his own account) a member of the Firm until 1 September 2009 and the evidence that he was the legal and/or beneficial owner of the Firm at all the relevant times was overwhelming. The evidence that he continued to play an active and significant part in the Firm throughout 2009, particularly from Ms Muniz and Mr Butcher, was utterly convincing. In contrast, the Respondent's written evidence was contradictory and contained a confusing account of what had happened, particularly concerning the alleged transfer of the Firm to the Second Respondent.

The Respondent's prolonged denial of responsibility for what had happened on his watch had caused further damage to the reputation of the profession.

233.4 The Tribunal was driven to the conclusion that this was probably the worst case of its type that the Tribunal had had the misfortune to hear. The misconduct of those involved in the management of the Firm during 2009, including the Respondent, was extremely serious.

234. **Allegation 1.1: He 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 Code.**

234.1 The factual background to the allegation is set out in particular at paragraphs 91 to 94 above.

234.2 The Tribunal determined that in order to prove this allegation 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 the Respondent had the authority to prevent or stop such control and influence. If the Respondent did not have the power to prevent the inappropriate degree of control and influence he could not be said to have "caused or permitted" the third parties to act as they did.

234.3 As noted above, there was overwhelming evidence of the entirely inappropriate degree of capital and influence that WS, MC, MK and other non-solicitors had had in the Firm. It was inconceivable that the Respondent, as the Chief Executive and owner of the Firm, was unaware of this inappropriate degree of control and influence over the activities of the Firm.

234.4 The Tribunal noted in particular that the role of WS in the Firm was established and growing by late 2008, when the Respondent was, even on his own case, running the practice. There was, for example, an email dated 31 October 2008 confirming that WS would be conducting interviews for staff and an email from Mr AW of the accounts department dated 8 December 2008 to WS setting out his "jobs for the day". Further, there was a letter sent to the Official Receivers' Office in the CDDA proceedings by two former partners of the Firm which referred to WS and MC effectively running the Firm from about October/November 2008; those partners had been suspended on 3 December 2008 and excluded from the Firm. Whilst the Tribunal did not have the opportunity to test this evidence, it was entirely consistent with the other evidence in the case.

234.5 As noted above, the Respondent had contended that WS and MC came into the Firm to do some of the groundwork prior to the takeover by the Second Respondent. It was simply not credible that the Respondent would allow those who he said were the agents or representatives of the Second Respondent to exercise any management function, let alone improper control, simply in the hope that at some point the Second Respondent would purchase the Firm; there was no written agreement about the purchase at any point.

234.6 A key example of the inappropriate influence of the three non-solicitors in the Firm, was the instruction by WS to the accounts staff to transfer £80,000 from client to office account on 5 June 2009. The email exchange between Ms LM of the accounts department and WS read:

> "Balances are as follows:
>
> | | |
> |---|---|
> | Office balance as at close of business yesterday | -£343,648.37; |
> | Client balance as of close of business yesterday | £5,594,175.08; |
> | Cognito balance posted into client account | £4,922,147.61. |
>
> We have posted everything that we can allocate onto Cognito.
>
> Do you want me to transfer the funds across now?"

WS responded shortly afterwards,

> "Yes,
> Transfer £80k from client to office account".

There was no apparent consultation with any member of the Firm concerning this transfer – which actually occurred on the date the Third and Fifth Respondents were appointed as members of the LLP – and there was no evidence whatsoever that the transfer related to monies properly due to the Firm in settlement of bills or disbursements.

234.7 The Tribunal also noted that on 6 September 2009 the Respondent sent an email to WS, set out at paragraph 230.19 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..." This email clearly showed that the Respondent deferred to WS and was aware of his role and influence, even when the Respondent had purportedly given the role of Managing Partner to the Second Respondent. 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 Respondent was too high. This email in particular illustrated that the Respondent had a role in the management of the Firm immediately prior to 1 September 2009; if he had not, there was no reason for him to be involved in discussions about staff salaries.

234.8 The Tribunal further noted an email exchange concerning a Mr KK (aka Mr ZL) which involved the Fifth Respondent. On 3 September 2009 the Fifth Respondent emailed the 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 Respondent and the same day WS emailed the Fifth Respondent, copied it to the 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 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 Respondent for information. This indicated that even after the purported handover to the Second Respondent, members of the Firm understood the Respondent still to be in a position of influence. The exchange also illustrated that queries about staff/consultants were being directed to WS rather than to solicitors or members of the Firm and suggested that the solicitors did not know who had been recruited to work in the Firm.

234.9 The Tribunal considered a further email exchange from 27 August to 6 September 2009 i.e. immediately prior to the PSU visit. On 27 August, the Fifth Respondent emailed the 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 Respondent forwarded that email to MK, who responded to the Respondent on 27 August 2009:

> "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".

This exchange illustrated that members of the Firm were ineffective in implementing necessary changes and relied on MK and others, who failed to carry out instructions. It further suggested that MK regarded the members with some contempt, and that the Respondent was relying on MK and others to respond to his fellow members of the LLP.

234.10 The Tribunal also noted a series of emails, which had not been available at the earlier hearing, but which had been disclosed by the Secretary of State. These emails clearly showed that during July, August and early September 2009 the Respondent was involved in email exchanges with WS, MC, accounts and other staff concerning refunds to dissatisfied clients. The Respondent authorised a number of refunds to clients. In one of the exchanges, the subject line referred to the address of the client's property and "for the attention of the Chief Executive". The Tribunal noted in particular the following:

234.10.1 An email of 27 May 2009 from Mr AW to Ms LM of the accounts team, copied to WS, refers to a summary of jobs to be completed that day and noted amongst other matters, "Send statement to Sid/[the Respondent] cc Mario".

234.10.2 An email from Mr AW to WS and the Respondent later on 27 May 2009 stated, "Please find attached the statement up to 26/5/09. I have highlighted payments that will need to be paid within the next 7 days, [LM] will advise as to any urgent payments from the purchase ledger. Please again note the salary payment that will clear the account tomorrow. This will take the account overdrawn!!!"

234.10.3 An email from another firm to WS, copied to the Respondent, on 17 June 2009 seeking payment of an outstanding invoice.

234.10.4 An Email to the Firm from the accounts department, copied to WS, the Respondent, MC and the Third Respondent on 6 July 2009, concerning the procedure for client refunds.

234.10.5 On 16 July 2009 an email sent on behalf of the Fifth Respondent referring to a bill for £6,900 which had been submitted but the funds to settle it had not been transferred from client to office account; that email was copied to the Respondent, who forwarded it to WS.

234.10.6 On 8 June 2009 the Respondent sent an email to the Firm informing staff that the Third and Fifth Respondents had accepted an invitation to become members of the Firm and that they were now signatories on client account; the Respondent's email bore the footer "Chief Executive Officer".

234.10.7 On 7 July 2009 an email was sent by JJ to the Respondent, copied to MC, WS and others which referred to an enquiry about a file and stated, "Furthermore, [MC] has instructed me to temporarily assist in the File Management System task and said that I should solely concentrate on this and not look for files etc. He has given me support staff to assist me and I have delegated the task of finding files to them…"

234.10.8 On the same date, MC sent an email to JJ and the Respondent, copied to WS and others, which stated, "I fully appreciate your efforts in putting together an internal file management system, but please remember this also includes the locating and delivering of requested files!"

234.10.9 On 14 July 2009, JJ sent an email to WS, MC, the Respondent and others referring to outstanding balances due to Dataspace and which stated that MC, "was aware of the situation and had not authorised payment to Dataspace yet because he was dissatisfied with their current level of service and asked [LM] to tell them that unless they improve this then no payment will be made".

234.10.10 On 27 July 2009 the Respondent forwarded an email received from another firm of solicitors which chased payment to WS with the message, "Please deal with this urgently we don't want to make the same mistake as previously".

234.10.11 On 28 July 2009 the Fourth Respondent sent an email to LM, copied to the Respondent, WS, and MK, concerning refunds to clients. On 29 July 2009, WS authorised the refunds in an email to LM.

234.10.12 On 31 July 2009 the Respondent sent an email to WS, MK and others asking "Why are we taking so long to process refunds?..."

234.10.13 With regard to a specific refund, LM sent an email on 3 August 2009 to WS, copied to the Respondent, stating that the refund had been made.

234.10.14 On 3 August 2009 the Respondent sent an email to WS, MC and the Third, Fifth and Sixth Respondents with a draft conveyancing manual.

234.10.15 In an email on 3 August 2009 concerning email user groups, copied to WS, MC and the Respondent, it was stated, "Please note Sid, [MC] and [the Respondent] are not included in any of the above. You need to copy them in separately to your email".

234.10.16 An updated telephone extension list was circulated on 3 August 2009 to all staff, copied to the Respondent, MC and WS. That telephone list referred to those three individuals as "Management" at the top of the list; no other individuals were listed in that section.

234.10.17 On 4 August 2009, MK sent an email to the Respondent, MC and LM with a schedule of refunds on conveyancing matters.

234.10.18 On 5 August 2009 the Respondent sent an email to LM, copied to WS, authorising a refund.

234.10.19 On 5 August 2009 the Respondent instructed LM to action a refund and confirm to him it had been done; that email was copied to WS.

234.10.20 An email from the Respondent to LM on 6 August 2009, copied to MK and others, referred to a Birmingham file on which he had asked "Iftab" to authorise the refund.

234.10.21 An email dated 10 August 2009 concerning Dataspace's unpaid invoices was forwarded to the Respondent and MC.

234.10.22 On 10 August 2009, WS sent a revised client care letter and terms and conditions to MK and to the Respondent.

234.10.23 An email on 20 August 2009 in relation to credit and debit card payments was copied to the Respondent, WS and the Third Respondent.

234.10.24 An email from the Fourth Respondent to MK, copied to WS and the Respondent, stated "Sid has given me the go ahead to request for a secretary". It also contained statements about the Fourth Respondent's duties to clients and noted, "I will NOT jeopardise my practising certificate and mislead the client in any way, otherwise it is not ZA or anyone else who will answer to the SRA, it is me". A further email from the Fourth Respondent concerning a particular refund, on 28 August 2009, was sent to MK, WS, the Respondent and the Third Respondent.

234.10.25 On 4 September 2009 the Fourth Respondent forwarded to the Respondent and the Second and Fifth Respondents, an email from WS (which had in turn been copied to MK) in which WS gave instructions to the Fourth Respondent and referred to a meeting which WS had had with the managing partner of a "leading immigration law firm".

234.10.26 On 9 September 2009 MK sent an email to a link to an online refund spreadsheet to the Respondent, WS and others.

234.10.27 On 9 September 2009 the Respondent forwarded to WS an email he had received regarding a bank transfer.

234.10.28 On 15 September 2009 WS forwarded an email concerning a client query to the Respondent and to the Fourth Respondent.

234.10.29 On 29 September 2009 an email from a Mr Khan of the Firm to the Second Respondent relating to card activations was copied to the Respondent and WS.

234.11 The emails and exchanges above demonstrate that WS, MC and MK exercised inappropriate influence in the Firm and that the Respondent was well aware of and permitted it. There was also overwhelming evidence that the Respondent remained involved in the Firm after 1 September 2009, including statements from the Fifth Respondent and others and the evidence of Mr Butcher about his contacts with the Respondent in the autumn of 2009.

234.12 During 2009, whilst the Respondent was involved in the Firm as Chief Executive and/or member and/or beneficial owner, large sums had been paid to the individuals: over £114,000 to WS either in his own name, his aliases or to his associates; over £32,000 to MC in a 7 month period and over £174,000 to MK or his businesses. The Respondent was, throughout the relevant period, a signatory on client account. As such, he had a duty to ensure that client account was properly run and that payments from it were justified; he had comprehensively failed to do so. The Respondent was aware that WS was receiving information about the Firm's accounts.

234.13 The Tribunal noted that the Respondent had referred in his statement to a shooting which had occurred and the fact that he felt threatened by WS and/or others. If that were the case, there could be no doubt that he was fully aware that WS was a malign influence in the Firm and should be expelled from it. The further inconsistency in this evidence was that the Respondent's primary position was that he had voluntarily ceded control of the Firm to the Second Respondent; if that were truly the case, there would be no need for anyone to threaten the Respondent and/or his wife.

234.14 The Tribunal had regard to the findings of the Tribunal at the earlier hearing. It noted that the same standard of proof was applied in that hearing. The Tribunal concluded that the findings of the earlier Tribunal were compelling but not conclusive proof of the matters covered in the earlier Judgment, for the purposes of this hearing. That said, this Tribunal noted no inconsistencies between its findings and those of the earlier division.

234.15 The Tribunal was satisfied that during his period as a member of the Firm, the Respondent was in a position in which he had the capacity to "cause or permit" the third parties to exercise inappropriate control and influence. The Respondent was a member at all relevant times until 1 September 2009. As a member he had a responsibility to ensure that the Firm was appropriately managed. This was particularly so as the Respondent was the Chief Executive of the Firm at least until 1 September 2009 and he was at all material times the owner of the equity in the Firm. The findings set out above about the background to the Firm, the roles of the various third parties and the Respondent's role are to be read as incorporated into the findings in relation to this allegation. There could be no doubt at all that the Respondent had the capacity, as the equity owner of the Firm (legally and/or beneficially) and as a member to control the Firm; he could and should have prevented WS and others from acting as they did.

234.16 The Tribunal was satisfied to the required standard that from a period in late 2008 until the intervention into the Firm in December 2009 a number of unadmitted individuals, in particular WS, MC and MK had an inappropriate and malign influence over the operations of the Firm. That influence was used to extract very significant amounts of money from the Firm, to the detriment of clients of the Firm. During the period after these individuals began to exercise some control over the Firm, the Firm established an office in Birmingham which dealt in bulk with PI claims and an office in Manchester to carry out marketing functions. These two operations, with the development of bulk conveyancing work, massively increased the Firm's turnover during 2009 and hence the monies available to those with malign intent.

234.17 The Tribunal did not need to establish whether it was the Respondent, the Second Respondent or indeed anyone else who brought the inappropriate unadmitted persons into the Firm; it was sufficient to know that they were operating in an improper way. The Tribunal did not need, for the purposes of this allegation, to find if WS, MC, MK (and those working with or for them) were operating as they did with the connivance of the solicitor managers of the Firm or if they were not controlled properly by those solicitor managers. The Tribunal simply had to be satisfied to the required standard that the Respondent had "caused or permitted" the actions of the named individuals.

234.18 The Tribunal noted the Applicant's contention that the Respondent had tried to distance himself from the Firm shortly before the PSU visit. The Respondent had stated in his statement that he became aware of the proposed PSU visit on or around 17 August 2009. For the first time (on the Respondent's case) he put his (alleged) agreement with the Second Respondent into writing on 1 September 2009. It was not necessary for the Tribunal to make a finding concerning the Respondent's motivation for entering into the Trust Deed at that point. He remained, in any event, the beneficial owner of the Firm. The Tribunal was satisfied that the Respondent presided over a dishonest enterprise, whether or not he was directly or knowingly involved in specific misappropriations from the Firm.

234.19 The Tribunal noted that in reaching its conclusions, the evidence available for consideration had been compromised by the deliberate wiping of the computer system. Nevertheless, there was sufficient remaining for the Tribunal to be sure of its conclusions. No one email exchange would in itself have been conclusive, but there was a clear pattern of conduct demonstrated by the email exchanges and supported by the evidence seen in this hearing and the facts found in the earlier hearing.

234.20 The Tribunal also noted the terms on which the CDDA proceedings had been settled, under an Order made in the High Court on 6 August 2014, and took into account that on the face of the schedule of unfit conduct it was stated that the admissions were made for the purposes of those proceedings. There was no indication on the face of the Order that the Respondent had been unfit to give the undertakings, to make the admissions or to accept a disqualification as a company director for a period of 15 years. The Tribunal noted the terms of the admissions, listed under the heading "Matters of Unfitness", including:

- "I caused and/or permitted non-solicitor third parties to act as members and in the management of [the Firm] thereby allowing them to exercise an inappropriate degree of control and influence over its affairs from at least November 2008 until the [Firm] ceased to trade on 24 December 2009 to the ultimate detriment of [the Applicant] and [the Firm's] clients…"

- "… During the period 31 May 2009 and 24 December 2009, a non-solicitor third party was exercising an inappropriate degree of control over the [Firm's] accounting function, notwithstanding the fact that he was not a solicitor; further, during the same period there were inadequate controls over who had the ability to effect banking transactions, including the making of payments out of [the Firm's] client account…"

Further, the Respondent had admitted being in breach of Rules 1.02, 1.03 and 1.04 of the Code in allowing non-solicitor third parties to act as members and in the management of the Firm.

234.21 The admissions made in the CDDA proceedings were not determinative of any issue before the Tribunal but fortified the Tribunal in its findings which had been made on the basis of the evidence presented in this case. The admissions were consistent with the documentary and other evidence the Tribunal had seen. Further, the Tribunal noted that for a solicitor to make statements in court proceedings which he had

contradicted in his witness statement – without giving any explanation for the differing accounts – was itself a serious matter.

234.22 The Tribunal then considered whether or not the conduct dealt with above amounted to the breaches of the Code alleged. Rule 1.03 of the Code 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. It was clear that in allowing key decisions to be made by non-solicitors, the 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 £8.6 million been required from the Compensation Fund showed beyond any doubt that the Firm had been appallingly run, such that intervention was essential. Client confidentiality and the best interests of clients had been completely disregarded. The Tribunal was satisfied beyond reasonable doubt that this allegation had been proved against the Respondent both for the period before and after 1 September 2009.

235 **Allegation 1.2: He failed to act in the best interests of the Firm's clients contrary to rule 1.04 of the Code and behaved in a way that was likely to diminish the trust placed in him or the legal profession contrary to Rule 1.06 of the Code.**

235.1 The factual background to this allegation is set out at paragraphs 95 to 102 above.

235.2 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, and other internet marketing tools were used to generate work. The Birmingham office was established and expanded with large numbers of newly recruited paralegals and little supervision by solicitors. The marketing operation run from the Manchester office, again with little solicitor involvement, had not been in the interests of clients; for example, it had been responsible for sending out client care letters which did not comply with the requirements of the Code. 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 two clients directly affected by events in the conveyancing department and the intervention into the Firm to give evidence and tendered the evidence of others. It was clear that even where matters completed, as in Ms Muniz's case, there were unexplained delays and a failure to deal with the clients' money for the clients' purposes.

235.3 The payment of SDLT was outsourced to Rooney & 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; it was alleged that the Firm had failed to keep it secure. Cheques had been drawn and paid on the relevant "missing" cheque book for over £340,000 during December 2009. 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 very nearly in balance, 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 £8.6 million had been paid from the Compensation Fund, being the difference between the claims and the amount recovered from client account.

235.4 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 Freeman. The Tribunal found that his oral evidence was reasonable and credible and was appropriately supported by documents. The Tribunal also heard from Ms Muniz, and Ms Trigg, two 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. Ms Trigg and Ms Muniz had given powerful evidence; the statements of Ms Townend and Ms Mwaiwa illustrated further the distress caused to clients of the Firm. As noted above, the Tribunal had no hesitation in accepting in full the evidence of these former clients of the Firm.

235.5 Ms Muniz had been one of the clients who had paid money to the Firm to be used to settle her SDLT liability; dealing with SDLT had been delegated to Rooney & Co, without Ms Muniz's knowledge and the SDLT which was properly due had not been paid.

235.6 The evidence of Mr Butcher concerning the physical chaos at the Firm, and in particular the complete failure to protect and keep confidential client papers, was compelling and showed a shocking state of affairs at the Firm. The Tribunal accepted that the Respondent had accompanied Mr Butcher during the visit in the autumn of 2009 when the disordered and insecure "storage" of client files had been seen.

235.7 The Tribunal had regard also to the series of emails in July, August and September 2009 which showed a significant volume of complaints and requests for refunds from clients of the Firm. Whilst even the best run firm might receive complaints or requests for refunds from time to time, the volume and nature of complaints showed a level of dissatisfaction with the Firm which implied a significant failure to act in the best interests of clients. It was also notable that in some of the emails the Respondent (and others) referred to the need to pay refunds to dissuade clients from complaining to the SRA. All of this evidence fortified the picture of a Firm in absolute chaos – and yet continuing to accept large volumes of instructions with which it could not cope.

235.8 As at the time of the intervention, it appeared there were some 650-750 conveyancing transactions awaiting registration at the Land Registry. There was compelling evidence that the Respondent had been involved in the Firm's post-completion department during 2009, although it was also clear that an unqualified and inexperienced person, Mr A, had immediately after a period of work experience, been put in charge of the post-completions department in or about the summer of 2009, after a period of work experience; to allow this was a complete dereliction of duty. Registration of property transactions was necessary to protect clients' interests; it was not done promptly or properly, in that payments meant for SDLT were diverted from

HMRC to OSCS. That aspect of the Firm's operation undoubtedly involved fraud and forgery on a significant scale, in that the prices paid for properties were misstated on HMRC documents.

235.9 The Respondent had admitted in his statement that he might have signed cheques after 31 January 2009, but asserted he would only have done this at the request of the Second Respondent and on the assurance that the request was a proper one. The Tribunal found that in the transaction for Mr W the Completion Statement indicated that a payment of £1,850 was due to HMRC (although in fact the transaction was in a lesser sum, such that no SDLT was in fact payable). The sum of £1,850 was drawn from client account, in a cheque payable to OSCS, which cheque was signed by the Respondent on 17 August 2009. There was no documentation to suggest that this payment was a proper payment from client account; the Respondent could not have seen any information which would suggest it was proper to use client money to make a payment to OSCS. It was noted that the (remaining) documentation in the Firm suggested the cheque was to HMRC. It was not in the interests of a client for their money to be used for any purpose other than for the client's purpose.

235.10 Client information on the Firm's computer system was not protected adequately or at all. It was not backed-up, such that it was impossible to rectify the apparent failure of the system on or around 9 December 2009.

235.11 The Tribunal noted and accepted that large numbers of client files had been removed from the Firm to other firms shortly before the intervention, without the authority of clients.

235.12 In all of these circumstances, the Tribunal was satisfied that the Firm had failed to act in the best interests of clients. The Respondent was personally culpable, in that he was responsible for the management of the Firm (with others at various times) and had failed abjectly to look after the interests of the Firm's clients. Their matters had been badly handled and their money misused; client information and documents were not kept securely and the Firm's IT system was not protected and/or backed-up. The Respondent was responsible for these failures, in his capacity as the owner and as a manager of the Firm; this was particularly so as he was clearly in a position of power and influence in the Firm throughout 2009. The Tribunal was satisfied to the required standard that this allegation had been proved in its entirety.

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

236.1 The factual background to the allegation is set out in particular at paragraphs 103 to 104 above.

236.2 The Tribunal noted that in addition to alleged breaches of Rules 1.04 and 1.06, it was alleged that the Respondent had breached his duties under Rule 5 of the Code. 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 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 properly to 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.

236.3 The Tribunal was satisfied beyond reasonable doubt that the Respondent was a member of the Firm until 1 September 2009 and thereafter retained a management role as beneficial owner of the Firm. The Tribunal was therefore satisfied that he was in breach of Rule 5 SCC.

236.4 The Respondent's responsibility went beyond a failure to discharge management responsibilities. As already noted above, the Respondent had presided over a wholly disreputable and dishonest enterprise which had treated clients appallingly and extracted their money. There could be no doubt that in allowing the Firm to operate as it did, the Respondent was in breach of Rules 1.04 and 1.06 throughout the whole of 2009. This allegation had been proved in its entirety.

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

237.1 The factual background to this allegation is set out at paragraphs 105 to 108 above.

237.2 The Tribunal was satisfied on the evidence contained in the interim and final FIRs and on the oral evidence of 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 none of the Respondents could not explain the shortfalls on client account which became apparent during the PSU visit and during the forensic investigation; client account 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. Further, there had been significant, improper round sum transfers.

237.3 These matters, and the scale of the losses to the Compensation Fund, proved beyond any doubt that the Firm was in breach of Rule 32 of the SAR.

237.4 The Tribunal was satisfied to the required standard that the Respondent was a member of the Firm until 1 September 2009, by which time the failures of the Firm's accounts system were endemic. The Respondent remained in a position of authority in the Firm after 1 September 2009 as beneficial owner of the Firm. The Tribunal noted in passing that the Respondent was, through his company Premier, the owner of the Firm's premises at Heald Green. It also noted the Second Respondent's evidence at the earlier hearing that he had no access to the accounts department (as he did not

have the access code) and had no keys to the office. Whilst this Tribunal noted that at the earlier hearing the Second Respondent had been found to be dishonest, and his evidence on many points not credible, it could not help but be struck by the assertions of the Second Respondent, who claimed to be the Managing Partner from 1 September 2009, that he did not have keys to the office or access to the accounts department. This would be a truly extraordinary state of affairs. The Respondent had not set out what he had done to hand over to the Second Respondent (either in January or September 2009). Given the utter chaos in the Firm for most of the year, the Tribunal considered that there may have been some truth in the Second Respondent's assertions on the particular point about access to keys and the accounts department.

237.5 The Tribunal wished to make it clear that the finding that the Respondent was liable for the failure to maintain books of account was not simply because he was a principal of the Firm. Rather, it was something for which he was personally culpable. As the owner of the Firm, as well as a member, the Respondent was personally responsible for making sure the Firm had proper systems and that the books of account were properly kept; he had utterly failed to do this. The evidence that the Respondent was aware of the chaotic and improper way in which the accounts function was operated was overwhelming. The Tribunal was satisfied to the required standard that this allegation had been proved to the required standard.

238 **Allegation 1.5 - The Respondent breached Rules 1, 19 and 22 of the SAR 1998**.

238.1 The factual background to this allegation is set out in particular at paragraphs 109 to 111 above.

238.2 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 £8.6 million between the amounts required to be paid in compensation to clients of the Firm and the amounts recovered on the statutory trusts. 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.

238.3 The Tribunal found in particular that the Respondent had signed the authority for a round sum transfer of £50,000 on 15 June 2009.

238.4 The facts were substantially undisputed and showed that there had been significant breaches of each of Rules 1, 19 and 22 of the SAR. The Tribunal did not understand the Respondent to say in his statement that there were no breaches, simply that he was not responsible. As noted above, the Tribunal completely rejected that assertion.

238.5 The Tribunal was satisfied to the highest standard that this allegation had been proved in its entirety.

239. **Allegation 1.6: He failed to cooperate with the Applicant's investigation into the Firm and into his conduct contrary to Rule 20.05 of the Code.**

239.1 The factual background to this allegation is set out at paragraph 112 above.

239.2 The Tribunal was satisfied to the required standard, on all the evidence heard and read, that in the period of the investigation, which commenced on 27 November 2009, the Firm and those responsible for it had: 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. The Tribunal accepted the evidence in the FIR concerning the removal of firms to Stirling Law, MacIntyre Clark LLP, Dar & Co and others. It noted that even after the intervention, about 800-900 files were sent to Stirling Law. There was a substantial and widespread failure to preserve and retain client files. The issues with the computer system and the destruction of data have been dealt with above; it was of great concern that somewhere between the start of the investigation and 8/9 December 2009 almost every byte of data was removed from the system and there was no back-up.

239.3 The Respondent had asserted that he had resigned as Chief Executive of the Firm on 1 September 2009 and/or that he had handed over control of the Firm to the Second Respondent on 31 January 2009.

239.4 In order to prove the allegation, the Applicant was required to show that the Respondent knew or believed that there was an investigation under way which required his cooperation and that he failed to cooperate. There had been a PSU visit in September 2009; there was no doubt that the Respondent was aware of that visit as he had confirmed he had received the notice of the visit and passed it to the Second Respondent. It was noted that he then appeared to have played little, if any, part in the PSU visit. The Tribunal further noted that prior to the PSU visit, the SRA was unaware that the Second Respondent was involved in the Firm.

239.5 The Applicant's submission was that the Respondent remained a key figure in the Firm and that on becoming aware of the investigation could and should have instructed staff to preserve documents, secure the computer system/back-up and ensure that the Heald Green office was opened to the intervention agents on 24 December 2009.

239.6 The Tribunal was satisfied that by 9 December 2009 at the latest the Respondent was aware that there was an investigation by the Applicant; he had met with the FIOs on that date and the Tribunal was satisfied that he was aware of the nature of the investigation. It was simply not credible for the Respondent to assert that he did not think the investigation involved him as he had "stepped down" from the Firm.

239.7 The Respondent had a professional obligation at that stage to give whatever directions to staff were within his power concerning the preservation of files and accounts information. As noted above, the Tribunal was satisfied that the Respondent at that time still had considerable influence within the Firm. Even if the Tribunal had accepted the Respondent's contention that he had handed control to the Second

Respondent, the Respondent remained the beneficial owner of the Firm and should have required the Second Respondent to take all necessary steps to co-operate with the investigation.

239.8 The Tribunal accepted that the Respondent was not a member of the Firm at the time of intervention. However, the intervention was into his practice and former practice. The Tribunal accepted the evidence of Mr Kieran Walshe that the Respondent's solicitor had been notified of the intervention on or about 24 December 2009. The Tribunal also noted the Respondent's own evidence that he was notified that the Firm's bank accounts had been frozen with effect from 23 December 2009. The Respondent had asserted that he had spoken to the Firm's bank manager, "just before Christmas Eve" but did not believe this had anything to do with him personally. This was an incredible assertion. Even if the Respondent's evidence were accepted, he was still personally liable for the Firm's overdraft; the freezing of the Firm's accounts must have been of concern to him. Also, it was incredible that the Respondent would be aware the accounts were frozen but unaware of the reason. The Tribunal was satisfied that the Applicant and/or its agents had done all that was reasonably possible to draw the intervention to the attention of the Respondent, for example by leaving a letter for him at the Firm's Heald Green office.

239.9 The Tribunal was satisfied that the Respondent was aware of the intervention on or about the date the Applicant tried to effect the order. In any event, he was aware of the investigation from at least 9 December 2009 – even on his own evidence – and the Tribunal found it unbelievable that he would not have been aware of it from very shortly after the investigators arrived on 27 November 2009. The Respondent's assertion (in a document prepared on his instructions) that he did not set foot in the Firm after 1 September 2009 was plainly untrue.

239.10 The Tribunal found that the Respondent was untruthful when he told the FIOs that he had no interest in the practice, in the course of the meeting on 9 December 2009. Failing to provide true and accurate information amounted in a situation like this to failure to co-operate with the investigation; it had the effect of misleading the Applicant's officers and hindering the investigation.

239.11 The Tribunal was satisfied to the required standard that in failing to take any steps to provide full and frank information to the investigating officers and to preserve client documents and accounts information, the Respondent had failed to co-operate with the investigation. The Tribunal found this allegation proved to the required standard.

240. **Allegation 2 - The Respondent acted with a lack of integrity contrary to Rule 1.02 of the Solicitors' Code of Conduct 2007 in that he committed each of the breaches referred to in 1.1 to 1.6 above dishonestly**.

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

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

241.3 With regard to permitting unqualified third parties to exercise inappropriate control in the Firm (allegation 1.1), the Tribunal had found that the Respondent's culpability dated from late 2008 until the intervention, in December 2009. WS was not only unqualified to run a solicitors' firm but was also bankrupt, although it was not clear if the Respondent knew this at the relevant time. The 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 Respondent had indicated to the Second Respondent that WS and MC should be paid £60,000 per annum each. The Respondent had exercised no control over these consultants, despite being in a position to do so. He in effect gave WS, MC and MK (and others) free rein to misuse client funds on a massive scale.

241.4 The Respondent was a key part of the management of the Firm when a large hole in client account occurred. A huge book difference/ shortfall, of around £1.6 million as at 31 July 2009, became a massive shortfall of over £19 million by 31 October 2009. 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 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.

241.5 As set out at paragraphs 231 to 238 above, the Tribunal had found that the Respondent had failed to act in accordance with his management responsibilities. The Firm had been controlled by unqualified persons and had a book shortage, which grew massively throughout 2009. The involvement of the Respondent, and other solicitors, 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.

241.6 It was clear that the Firm had not maintained proper books of account (allegation 1.4) and had failed to carry out any or any proper reconciliations of client account.

241.7 The matters found in relation to allegation 1.5 demonstrated that the Respondent was responsible for widespread and substantial breaches of the SAR. With regard to allegation 1.6 the Respondent had avoided his obligation to cooperate with the SRA; indeed, he had deliberately misrepresented his role in the Firm.

241.8 The Applicant submitted that if a solicitor acted in circumstances where there were clear breaches of the Code, in particular the duty to act in the best interests of clients, those breaches could cross the line into dishonesty. The more serious or flagrant the breach of duty, the closer to dishonesty one became. The Tribunal accepted that general proposition but did not rely on it and instead considered what had been found specifically against the Respondent.

241.9 The Tribunal found that the Respondent was fully aware of his professional duties as a solicitor, and had the experience, and more importantly the authority to discharge them, notwithstanding his:

- 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

In so doing the 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 Respondent knew of his obligations as a solicitor, was not only aware of the fundamental breaches of his obligations but in each and every case, 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.

242. **Allegation 3: The Respondent dishonestly sought to mislead the Solicitors Regulation Authority during the investigation into the Firm contrary to Rule 1.02 of the Code and Rule 20.05 of the Code**.

242.1 The factual background to this allegation is set out at paragraphs 114 to 115 and relevant findings at paragraph 239 above. The Applicant's case was based on the interim and final FIRs and the evidence of Mr Freeman.

242.2 The interim FIR, dated 17 December 2009 i.e. about three weeks after the first relevant events recorded that in a meeting on 27 November 2009 the Second Respondent had told the investigating officers that, after discussions with the 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' hand written, 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 Respondent and others, Mr Shields asked the Respondent if he had any interest in the practice to which he replied, "No, but [my] wife is [the] practice manager".

242.3 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..."

242.4 On 17 December 2009 the Second Respondent sent to Mr Shields a copy of a Trust Deed dated 1 September 2009, the terms of which are set out at paragraph 229.6 above.

242.5 The Second Respondent's witness statement stated that:

> "What I meant by the words, "no longer connected with the practice" was that:
> (i) The 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"

The Tribunal noted that a note prepared during the PSU visit in September 2009 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..."

242.6 As a result of the misleading and untrue statements of the Second Respondent the investigators were at first unaware of the Respondent's continued involvement in Firm. As already noted, the Respondent continued to be connected with the Firm after 1 September 2009; indeed, he continued to receive substantial payments from the Firm up to and including December 2009.

242.7 As against the Respondent, this allegation rested on his representation to the investigators during the meeting on 9 December 2009 that he had no interest in the practice. The Tribunal was satisfied that that statement was clearly untrue. The

Respondent's assertion that the Trust Deed of 1 September 2009 was simply to give him some security until he was released from his personal guarantee was incredible nonsense.

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

243. There were no previous disciplinary findings against the Respondent.

Mitigation

244. The Respondent was not present to put forward any mitigation. The Tribunal took into account what it had heard from him in the course of the proceedings and the documents he had submitted.

Sanction

245. 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..."

246. 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 over £13 million and the net loss to the Fund was over £8.6 million. 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.

247. The Tribunal had had the benefit of hearing from two such clients and reading the written evidence of others. Moving house was often a stressful experience, even if all went smoothly, but three of these clients – representative of many others – had had

the significant worry that their money had been lost. The fourth, Ms Muniz, had been understandably distressed to find that the Firm had failed to pay SDLT due on her house purchase and that she remained liable to HMRC to pay £9,000. The harm to the profession was enormous. The SRA's 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.

248. Those controlling the Firm had treated clients as commodities, with personal injury and conveyancing matters in particular being dealt with as if 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 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.

249. The context in which the Tribunal was considering sanction was that there had been a catastrophic collapse of the Firm of which the Respondent was the owner. The Respondent had had a responsibility to his Firm's clients to act with integrity and probity; he had failed to do so. Whilst others were also involved in wrongdoing, the Respondent was the key player in the Firm and had, at best, allowed a number of undesirable individuals to use the Firm's clients as a source of cash, extracted from the Firm improperly. It was not necessary for the Tribunal to go so far as to find that the Respondent was actively involved in wrongdoing, or connived in it, to conclude that he was responsible for much of what went wrong.

250. The Tribunal had found that the Respondent had been dishonest, in a number of significant respects, for much of 2009. There were no exceptional circumstances. The only appropriate and proportionate sanction was to strike the Respondent off the Roll. Indeed, this case was so serious and the findings against the Respondent so grave that striking off would have been completely appropriate even if dishonesty had not been made out.

Costs

251. On behalf of the Applicant, Mr Dutton made an application for an order that the Respondent should pay the Applicant's costs of the proceedings.

252. Mr Dutton referred to the schedule of costs, which included the costs to the earlier hearing, as apportioned in relation to the Respondent, and the costs incurred since then. The total shown on the costs schedule was £185,274.34. Mr Dutton noted that the hearing had not lasted as long as anticipated, as a result of which his own fee would be reduced. Mr Dutton submitted that making the appropriate reductions and allowances for the shorter hearing, it was would be appropriate for the Tribunal to make a costs order against the Respondent in the sum of £170,000.

253. Mr Dutton submitted that the Respondent had not provided financial information, as would be expected following the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) if a Respondent wanted his means to be taken into account when considering any costs order to be made. This case and the resulting requirements had been drawn to the attention of the Respondent in a letter from the Applicant's solicitors dated 19 September 2014, which letter was exhibited to the witness statement of Mr Delme Griffiths dated 9 October 2014. The relevant section of the letter read:

> "In accordance with the decision in SRA v Davis and McGlinchey [2011] EWHC 232 (copy enclosed) if you wish to argue that you should not pay any costs order on the basis of your means, then you should provide us and the Tribunal with a statement, to include a statement of truth, setting out full details of you capital, income and outgoings together with supporting documents, in advance of the substantive hearing. We attach a template Financial Statement which should be utilised for this purpose".

254. Mr Dutton referred to an affidavit made by the Respondent on 14 April 2010 in connection with the High Court proceedings, following an Order which required him to provide financial information concerning Premier Properties Ltd, a company owned by the Respondent. Mr Dutton told the Tribunal that that affidavit showed that the company and the Respondent owned a number of properties and also set out the liabilities of both. That affidavit had been made some four and a half years ago and the Applicant did not know what the present position was; as at April 2010 the Respondent had indicated that his liabilities were £356,000 more than his assets and that Premier's liabilities exceeded its assets by £30,500. The assets of Premier were valued at just over £1.4 million, with mortgages on its properties of around £1,433,000. The Respondent had set out his immediate financial needs, totalling over £148,000 (including legal fees), and his ongoing financial obligations which included expenses for his mother's home. The schedule to the affidavit showed that Premier was receiving rental income from some properties.

255. Mr Dutton told the Tribunal that the Applicant understood that Premier still existed at the time of the hearing, whether the Respondent was still a shareholder and whether or not the company still had assets. Mr Dutton observed that the property market had recovered since early 2010.

256. Mr Dutton submitted that if the Respondent were to argue that he could not pay any costs order made, the Applicant would want to be able to investigate his financial position. It was clear that the Respondent was in business in a substantial way in early 2010 and it could be the case that the assets of Premier, if any, were still available to him.

257. Mr Dutton was instructed by Mr Griffiths that a recent Companies House search showed that the Respondent remained the sole shareholder of Premier as at 3 June 2014. The Respondent had been disqualified from acting as a company director by an Order made on 6 August 2014. A company return dated 11 September 2014 indicated that the Respondent transferred his three shares in Premier on 9 July 2014 to a Mr SM. Given the circumstances in which the Respondent had operated the Firm, the Applicant would like to investigate the circumstances of this transfer and, for

example, whether the shares were held on trust for the Respondent. The return of 11 September 2014 indicated that a Mr S was the director of Premier.

258. Mr Dutton submitted that a costs order against the Respondent was fully justified as the Respondent had not provided any financial information which would suggest that a costs order was not appropriate.

259. Mr Dutton told the Tribunal that the costs up to and including the earlier hearing had been apportioned as between the various Respondents. As at that point, the Applicant's costs attributable to work done in respect of the Respondent were around £95,000, which was about 30% of the total costs at that stage. The earlier Tribunal had apportioned costs between the other five Respondents, depending on their respective roles in the matters which had been determined.

260. Mr Dutton told the Tribunal that the overall costs of this case, up until the earlier hearing, incurred by the Applicant were over £447,000. This was a very large sum but, it was submitted, was proportionate and reasonable. The investigation into the Firm was one of the largest undertaken by the Applicant and the collapse of the Firm was one of the most serious which had occurred.

261. Mr Dutton submitted that the Respondent had conducted himself in these proceedings in an unrealistic way. He had failed to comply with deadlines. The Applicant had tried to conduct the proceedings proportionately but it had been necessary, for example, to call a number of witnesses. Mr Dutton told the Tribunal that he had had to spend a huge amount of time in preparation for this hearing. Mr Dutton submitted that £170,000 was a fair and proportionate sum to award in favour of the Applicant. Overall, the costs attributable to the Respondent in the proceedings were in the region of £182,000 (after making an allowance for the shorter length of hearing than had been anticipated). Mr Dutton submitted that the hourly rates used were reasonable. The suggested sum of £170,000 allowed some discount in case the hours claimed were thought to be slightly too high.

262. In response to a question from the Tribunal, Mr Dutton confirmed that the costs claimed on the schedule excluded the sums awarded in costs at the most recent CMHs. Those costs orders had not been satisfied.

263. The Tribunal considered carefully the schedule of costs. It accepted that the hourly rates claimed were reasonable, that the use of counsel of Mr Dutton's seniority was reasonable given the complexity of the case and the issues involved and that the work done on the case was proportionate to the seriousness and complexity of the matters under consideration. The Tribunal noted specifically that the costs claimed excluded the costs awarded at earlier CMHS, which costs had not yet been paid by the Respondent. The Tribunal assessed that the reasonable and proportionate costs of the proceedings against the Respondent were £170,000.

264. The Tribunal considered whether there was any reason to discount those costs further or restrict the enforcement of any costs order due to the Respondent's financial position. The Tribunal had received no information concerning the Respondent's financial position, although the need to bring such information to the Tribunal's attention had been highlighted, in particular in the letter from the Applicant's

solicitors of 19 September 2014. The Tribunal noted that the Respondent had owned a number of assets, including shares, as at 2010. Whilst it appeared that his shareholding in Premier had been transferred in July 2014, it was not clear on what terms that transfer occurred and whether or not the Respondent retained any beneficial interest in Premier. The position concerning his ownership of other assets was not known, nor were his liabilities and outgoings. In these circumstances, there was no reason to reduce the award of costs and nor was there any reason to restrict the Applicant's ability to investigate the Respondent's position and seek to enforce the order, if that were possible. Accordingly, the Tribunal ordered the Respondent to pay the Applicant's costs, assessed at £170,000 (inclusive of VAT and disbursements).

265. The hearing concluded at approximately 2.10pm, when the Tribunal Chair read the Order which had been made. At approximately 2.50pm the Tribunal received an email from Mr Quayum, on behalf of the Respondent, attaching a personal financial statement. This information could play no part in the Tribunal's decision, which had been made before it was received. However, it was noted for the record that the statement indicated that the Respondent was the sole owner of the property in which he lived in Manchester, in respect of which there were mortgage arrears. It was indicated that the Respondent was not the sole occupant of the property. It appeared that the Respondent had an interest in two properties in Burnley. He stated he had liabilities of £580,000 for credit cards, an overdraft with a bank and a loan for legal fees. The Respondent stated that he received sickness benefit; he stated his income was £1,400 per month and his expenditure was £2,480 per month. The statement, which had been emailed, did not contain a statement of truth signed by the Respondent but, as noted, it arrived too late to be taken into account by the Tribunal in any event.

Statement of Full Order

266. The Tribunal Ordered that the Respondent, NASIR ILYAS, 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 £170,000.00.

DATED this 20th day of March 2015
On behalf of the Tribunal

E. Nally
Chairman