SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10849-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANTHONY THOMAS BRYSON Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr M. Fanning
Mrs L. Barnett

Date of Hearing: 1st May 2012

Appearances

Mrs Margaret Bromley, solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol BS2 0HQ for the Applicant.

The Respondent appeared in person and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 He failed to provide his client Mr B with information about costs and other matters in breach of rule 15 of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rule 2.02 and 2.03 of the Solicitors Code of conduct 2007;

1.2 He failed to act in the best interests of his client, Mr B, in breach of rule 1 (c) of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rule 1.04 of the Solicitors Code of Conduct 2007;

1.3 He failed to act with integrity and/or behaved in a way that was likely to diminish the trust the public placed in him or the legal profession in breach of rules 1 (a) and 1 (d) of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 by virtue:

1.3.1 Of his conduct towards Mr B;

1.3.2 His failure to comply with the terms of his agreement to pay monthly instalments to Miss R;

1.3.3 His failure to comply with his assurance given on 15 April 2010 in the R matter to pay the agreed instalment during the course of the next week;

1.3.4 His failure to comply within the time specified with the directions of the Adjudicator dated 11 October 2010 to pay compensation to Mr and Mrs D and costs to the LCS.

1.4 He failed to comply with the terms of an undertaking given in a Regulatory Settlement Agreement dated 19 May 2010.

Documents

2. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the Respondent, which included:

Applicant:

- Application dated 4 October 2011;
- Rule 5 Statement and exhibit bundle "IGM1" dated 4 October 2011;
- Additional bundle of correspondence – various dates;
- Witness Statement of Mrs B dated 30 March 2012;
- Schedule of Costs dated 26 April 2012.

Respondent:

- Letter to the Tribunal dated 31 January 2012;
- Respondent's letter to the Applicant's legal representative dated 20 April 2012;
- Respondent's Defence Statement and exhibit bundle dated 22 April 2012;

- Respondent's further letter to the Applicant's representative unsigned and undated;
- Respondent's Statement of Means unsigned and undated.

Preliminary Matter

3. Mrs Bromley informed the Tribunal that allegations 1.1 and 1.2 in the Rule 5 Statement required amendment as it had come to her attention that they referred incorrectly to the Solicitors' Practice Rules 1997, which should have read 1990.

4. The Tribunal agreed her request and granted leave for allegations 1.1 and 1.2 to be so amended.

Factual Background

5. The Respondent was admitted as a solicitor on 12 January 1970 and his name remained on the Roll of Solicitors.

6. At all material times the Respondent practised on his own account under the style of Anthony T Bryson & Co which business ceased on 31 December 2008 and from December 2008 in partnership as Grey Street Property Lawyers from 4th Floor Central Exchange Buildings, 93a Grey Street, Newcastle upon Tyne NE1 6EG. That practice closed on the 30 June 2010.

Mr and Mrs B

7. In about July 2005 the Respondent was instructed to act by Mr B in connection with a potential medical negligence claim.

8. The Respondent wrote to Mr and Mrs B on 12 July 2005 following a meeting with them on 7 July. With regard to funding any possible claim the Respondent stated:

> "The firm does conditional fee agreements ("No Win No Fee") but in clinical negligence cases it would not be proper to enter into such an agreement until an expert's report had been obtained dealing with the question of the breach of the standard of case (sic) and clinical negligence. Until such a report is obtained proceedings cannot be started and it is at that point that a Conditional Fee Agreement can be entered into. It has to be backed by an After the Event Insurance Policy to cover your liability for costs in the event of the claim failing".

9. Mrs B replied on 21 July 2005 saying that she wished to know "...the procedures for this Conditional Fee Agreements (sic) and wish to know what is involved...".

10. Mr B had legal expenses insurance with Zurich Insurance Company ("Zurich") under his Premier Home Insurance Policy. The limit of indemnity under that policy was £50,000.

11. On 20 October 2005 the Respondent wrote to Zurich explaining that he had been instructed to carry out initial investigations and seeking confirmation that "you will

indemnify our client's costs and disbursements incurred in furtherance of the claim should we proceed to act on his behalf and in the event that the case is unsuccessful".

12. Allianz Cornhill ("Allianz") replied to that letter on 16 January 2006. The letter set out the terms and conditions under which the Respondent would have to act under the policy. These included that the insurers would not pay "interim accounts, we will consider all unrecovered costs upon conclusion of the claim". The letter concluded "We trust that the above terms and conditions are acceptable and we ask you to sign and return a copy of this matter to us, by way of confirmation". The Respondent replied on 19 January 2006 and indicated that on the basis of the information available there were reasonable prospects of success, subject to obtaining an expert's report.

13. On 6 February 2006 the Respondent signed the letter of 16 January, confirming that the terms and conditions were acceptable and returned it to Allianz.

14. The Respondent continued to deal with Mr B's claim. On 29 March 2007 Mrs B wrote to the Respondent and expressed concern about how long the matter was taking. The Respondent replied on 2 April 2007 and explained the need to obtain an expert's report.

15. On 11 June 2007 the Respondent and his colleague, Mr H attended upon Mr and Mrs B at their home and advised about the steps to be taken in the claim.

16. Mr and Mrs B wrote to the Respondent on 17 July 2007 about an appointment to see an expert. They both expressed concern about how long the matter was taking.

17. On 27 November 2007 the Respondent wrote to Mr and Mrs B in connection with the funding of the claim and he stated:

> "Under the legal expenses policy, insurers will indemnify your costs and also liability for the other side's costs (in the event of proceedings being commenced and unsuccessful) but have stated they will make no payments on account. That is particularly hard in a case like this where experts' fees are so high. I am afraid in less demanding days we could carry disbursements for all clients but that is no longer possible. As a general rule, experts who are paid promptly are more accommodating so far as conferences and accessibility are concerned. May I ask you therefore please to settle the experts (sic) fees yourselves on the basis that they have been approved b y (sic) the insurers and when this case is concluded (or in the event of insurers deciding they wish to go no further) then a claim will be made to them for reimbursement. Given the charges have been approved in advance by insurers they will be obliged to repay that to yourselves.
>
> So far as Counsel and this firm is concerned we will await the conclusion of the case before submitting our costs to the insurers. You may be interested to know that so far we have done 65 hours work which is something we simply accept where the legal expenses policy is concerned".

18. On 20 December 2007 Allianz wrote to the Respondent and expressed concern about disbursements being incurred without prior authority, or the amount of disbursements exceeding the amount authorised. The letter reiterated that:

> "The policy wording states that we will not provide cover for "any costs we have not agreed in writing" and therefore, strictly speaking, we would be entitled to refuse to indemnify any Counsel's fees over £350.00 plus VAT in respect of the conference with Professor B".

19. On 14 February 2008 Mrs B spoke to Mr H, who was assisting the Respondent with the claim, on the telephone. She gave instructions to proceed with obtaining a further expert's report and confirmed that they would cover the expert's fee if necessary.

20. On 14 March 2008 the Respondent wrote to Allianz and provided an update in connection with the case. He detailed certain additional experts' fees which had been incurred and requested that Allianz agree to indemnify them under the terms of the policy. With regard to the prospects of success, the Respondent stated "...on the evidence currently available we remain of the view that these are good and certainly in excess of 51%". The Respondent gave an estimate as to costs to the conclusion of the case totalling £80,000 plus VAT and inclusive of costs and disbursements and £60,000 plus VAT for the other side's costs and disbursements.

21. Allianz replied on 18 March 2008 and again expressed concern that the Respondent had obtained experts' reports and instructed Counsel without their authority. Allianz also suggested that the Respondent should make enquiries into alternative cover. Allianz wrote again to the Respondent on 27 May 2008 having received an estimate from him of his costs and disbursements to date, which amounted to £34,000 and again reiterated that he should look into obtaining alternative after the event ("ATE") cover.

22. On 2 June 2008 the Respondent wrote again to Mr and Mrs B about the funding of the case. He stated:

> "You will note that we are now approaching the limit of the indemnity provided under the policy, particularly when one considers that the Defendant's costs and disbursements are now accruing and these will also have to be taken into account.
>
> In the circumstances we will shortly have to agree new terms of acting given that we will no longer be acting under the basis of the cover provided by your insurer when the maximum level of indemnity is reached. We will also have to make enquiries with alternative legal expenses insurers with a view to obtaining further insurance cover to protect you in the event that your claim does not succeed, and you are required to pay the Defendant's costs and disbursements and any further disbursements incurred on your behalf".

23. The letter concluded by asking Mr and Mrs B to arrange a mutually convenient appointment.

24. On 12 June 2008 the Respondent and Mr H attended Mr and Mrs B at their home. The Respondent advised on alternative ways of funding the claim and explained the terms of a conditional fee agreement ("CFA") and explained that an ATE policy would be sought to protect them against adverse costs and their own disbursements in the event that the claim failed.

25. On 26 June 2008 the Respondent wrote to Mr and Mrs B enclosing two copies of a conditional fee agreement. On the same date he wrote to Allianz and indicated that he had discussed with Mr and Mrs B "the possibility of entering into a no – win no – fee Conditional Fee Agreement (CFA) backed up by alternative ATE cover as soon as possible". The Respondent went on to say "It is therefore our intention to cease acting under the terms of appointment previously agreed with you leaving the balance of indemnity remaining under the policy in place to cover any adverse costs award that may be made against our client in the event that his claim does not succeed".

26. On 9 July 2008 the Respondent wrote to Allianz and enclosed his final account together with copy disbursements vouchers. The letter concluded "We trust our account is in order and await your prompt payment". The invoice dated 9 July 2008 amounted to a total sum of £30,810.17 including disbursements of £11,103.10.

27. Allianz replied on 10 July 2008 and stated "We have noted your comments but would advise that under the terms and conditions of (sic) policy costs and disbursements will be reviewed on conclusion of the claim". They asked to be kept updated and to be advised when the matter concluded and said that they would then deal with the question of costs and disbursements.

28. The Respondent and Mr H had a further meeting with Mrs B on 10 July 2008. The attendance note recalled "ATB further advising re ATE policy and how (sic) scheme works and discussing CFA. Mr B is to sign and return both copies ASAP. No queries on the terms contained therein.".

29. Mr C of Anthony T Bryson & Co replied to Allianz on 15 July and stated:

> "There will therefore be no further claim under the policy for our costs post 26th June, therefore this aspect of the claim is concluded".

30. Mr B entered into a CFA with Anthony T Bryson & Co dated 21 July 2008. On 21 July the Respondent wrote to Mr B and enclosed a copy of the CFA which had been signed on behalf of the firm. The Respondent referred again to applying for ATE cover.

31. The CFA included the following provisions:

31.1 Under the heading "What is covered by this agreement" "Your claim against Dr RJC for damages for personal injury suffered on or around 19 November 2004 due to his alleged clinical negligence";

31.2 Under the heading "Paying us" "If you win your claim, you pay our basic charges, our disbursements and a success fee"…"If you receive interim damages we may require

you to pay our disbursements at that point and a reasonable amount for our future disbursements"…"if you lose you remain liable for the other side's costs".

The guidance accompanying the CFA included the following provisions:

31.2.1 "If you lose you pay your opponent's charges and disbursements. You may be able to take out an insurance policy against this risk. If you lose, you do not pay our charges but we may require you to pay our disbursements.";

31.2.2 The hourly rates were given as £203 for solicitors with over eight years post qualification experience, £180 for solicitors and legal executives with over four years post qualification experience and £151 for other solicitors and legal executives. The rates were reviewed on 1 January each year and "we will notify you of any change in the rate in writing."; and

31.2.3 Under the heading "Insurance Policy" "In all the circumstances and on the information currently available to us we believe that a contract of insurance will be appropriate to cover your opponent's charges and disbursements in case you lose… We are currently in the process of identifying an appropriate insurance policy…".

32. The Law Society Conditions which formed part of the agreement set out the firm's responsibilities, which included "always act in your best interests" and "give you the best information possible about the likely costs of your claim for damages". It also set out the client's responsibilities, which included "give us instructions and allow us to do our work properly" and "co-operate with us". Under the heading "What happens when this agreement ends before your claim for damages ends? Paying us if we end the agreement" it provided that "we can end this agreement if you do not keep to your responsibilities. We then have the right to decide whether you must pay our basic charges and our disbursements including barrister's (sic) fees but not the success fee when we ask for them or pay our basic charges and our disbursements including barrister's (sic) fees and success fee if you go on to win your claim for damages".

33. The Law Society Conditions provided in relation to the exercise of any lien "We have the right to preserve our lien unless another solicitor acting for you undertakes to pay us what we are owed including a success fee if you win".

34. The Respondent wrote again to Allianz on 24 July 2008 and stated that if payment was not made they would issue a Part 8 claim for determination of the matter. Allianz replied on 28 July and enclosed a copy of the terms letter "which clearly states we will not pay interim accounts and consider all unrecovered costs upon conclusion".

35. The Respondent wrote again on 5 August and claimed that the bill rendered was not an interim account but a final bill since the firm was no longer acting under the terms of the policy and he requested payment forthwith.

36. Allianz replied on 11 August 2008 and reiterated that they were unable to consider costs until the claim was concluded. Mr H wrote on 27 August and raised the argument that the term "is an unfair contractual term contrary to regulation 5 (1) of the Unfair Terms in Consumer Contract Regulations 1999 and is thus not binding on our clients".

37. On 22 September 2008 Mrs B wrote to the Respondent and again expressed concern about how long the case was taking and asked him to push the matter forward as fast as possible "as we want the whole matter finished this year – 2008".

38. On 21 November 2008 Mr H spoke to Mrs B when Mrs B again reiterated concerns about the time the claim was taking and asked that the firm take a more aggressive approach.

39. Correspondence had continued between the Respondent's firm and Allianz through September and October and on 1 December 2008. The Respondent wrote to Mr and Mrs B. He referred to the fact that the insurers required a complaint from them and said that he was drafting it. He went on to state:

> "what I am proposing to do is to render an account for all work that we have done under the policy..... it gives me no pleasure to have to send this bill out and it is a reasonably substantial one. It will I think help the complain (sic) that the bill itself has been rendered to you and has only gone after a considerable amount of work has been done and also in the face of insurers' steadfast refusal to make any payment whatsoever on account".

40. On 3 December, the Respondent sent Mr and Mrs B a revised invoice. The invoice was in the total sum of £32,525.70 inclusive of VAT and disbursements. After allowing for disbursements paid by Mr and Mrs B there was a balance outstanding of £28,878.85.

41. On 5 December 2008 Mrs B wrote to the Respondent saying "we are rather concerned about your letter and the fact that the Insurance Co have not paid fees to date".

42. On 5 December the Respondent sent the letter of complaint to Mr B for signature and return. On 10 December 2008 the Respondent sent the signed complaint form to Allianz. On the same day he also wrote to Mr and Mrs B, giving an update on the proceedings and in relation to the complaint to Allianz he stated "payment of my charges ought to act as a very strong argument for the insurance company changing their unyielding stance".

43. Allianz replied to Mr B's complaint on 15 December 2008. They referred again to the terms and conditions signed by the Respondent on 6 February 2006. They stated that:

> "This term formed part of the basis on which we were prepared to accept the instruction of Anthony Bryson and Co under Mr B's policy. Had they not been willing to agree this, we would not have authorised the instruction".

44. Mr B's complaint was not upheld.

45. On 16 December 2008 the Respondent wrote to Mr and Mrs B and informed them that the complaint had not been upheld and of their right to complain to the Insurance Ombudsman. He requested settlement of his costs. On 15 January 2009, the Respondent wrote again to Mr and Mrs B and requested a cheque in payment of bills sent to them on 3 December 2008, as soon as possible. On 26 January 2009 the

Respondent wrote again to Mr and Mrs B following a meeting that morning. He confirmed their agreement to settle the charges and asked them to pay half within seven to ten days and the balance by the end of February 2009.

46. On 29 January 2009 the Respondent complained to the Financial Ombudsman Service.

47. On 2 February 2009 in an internal memo from the Respondent to Mr H he asked for Mr H's comments on the costs and stated "I put everything in at my rate but I think a better thing might be generally to slightly increase the number of hours and apportioning (sic) them between you and I." The Respondent asked Mr H to put Counsel on notice "that we ought to consider whether or not to have an after the event policy before mediation and really as soon as ever possible".

48. On 6 February 2009 the Respondent wrote to Mr and Mrs B and asked them to settle one half of his account by early the following week.

49. On 9 February 2009 the Respondent wrote again to Mr and Mrs B. In a section headed "The position regarding Costs post conditional fee agreement" he stated that:

> "I explained that your liability is for disbursements only from the date of the conditional fee agreement. There will have to be put in place an after the event policy which may include repayment of your disbursements in the event of the claim not succeeding."

The Respondent gave details of costs since 21 July 2008 (the date of the CFA), which amounted to £46,361.

50. On 24 February the Financial Ombudsman Service wrote to the Respondent and enclosed a complaint form and asked that it be completed and signed by Mr B.

51. On 26 February 2009 the Respondent had a meeting with Mrs B and Mr B's carer. Mrs B raised concerns about having to pay the Respondent's costs and stated that her understanding was that the matter was being dealt with on a no win, no fee basis from the outset. The Respondent informed Mrs B that they had not been acting on a no win, no fee basis at the outset as cover had been provided through the home insurance policy. The Respondent stated "In effect, they were privately paying clients until the CFA was entered into and we are entitled to bill those fees incurred up to the point of changing the terms of acting". The Respondent then wrote to Mr and Mrs B on 3 March 2009 and enclosed a copy of the attendance note of that meeting. He concluded by saying "I am afraid that without settlement of the account we simply cannot get on and do any further work in Mr B's case...".

52. On 4 March 2009 the Respondent had a further discussion with Mrs B during which she informed him that she had been to see another solicitor who had told her that she did not have to pay. The attendance note recorded "Going through things again and she finally agreeing that she would pay. She did not want to change solicitors. ATB stressing that we wished to look after Mr B's case but this was a business. She will make arrangements to pay immediately".

53. On the same day the Respondent sent a memo to Mr H in which he said "As soon as the cheque is received could you please write to the clients setting out our requirements/thoughts…".

54. On 10 March 2009 Mrs B sent a cheque for £10,000 to the Respondent.

55. On 16 March 2009 the Respondent had a further meeting with Mrs B and Mr B's carer. The issue of fees and payment of the Respondent's costs was further discussed and Mrs B said that she had taken independent advice and had taken advice from the Law Society. The Respondent advised that they could not take the matter further until the accounts situation had been resolved.

56. It was recorded that the Respondent would consider the position and revert to Mrs B. Mrs B was noted as having expressed the view that the Respondent was letting the client down given his stance on fees. The attendance note concluded by the Respondent stating that upon receipt of payment of another £8000 he would be willing to chase Professor B and Mrs B indicating that she wanted Professor B's report by the end of that week.

57. Mrs B wrote to the Respondent that day and enclosed a cheque for £8000 "... as per our agreement that the total of £18,000 which we have paid is to the end of the Court Proceedings (when we will receive this back plus the Expert Witness fees we have paid)". Mrs B requested confirmation that they were on a no win no fee arrangement and that "...we will be asked for no further fees from yourselves but that all of these will be covered under "no win no fee" policy plus insurance policy of £50,000".

58. On 24 March 2009 the Respondent wrote to Mr and Mrs B and acknowledged receipt of their cheque for £8000. He confirmed that the payment of £18,000 was "in part payment of the bill rendered on 27 November 2008 for work undertaken prior to entering into the "no-win no-fee Conditional Fee Agreement…". The Respondent further confirmed that he would not render any further bills but would ask for payment of disbursements incurred as the case progressed. The same day, the Respondent also wrote to Mr and Mrs B and enclosed a complaint form for the Financial Ombudsman's Service, which he asked Mr B to sign.

59. On 2 April 2009 Mrs B wrote to the Respondent and acknowledged his letter of 24 March 2009. She asked if he had arranged top up insurance to cover costs. She also acknowledged that she was aware that she was liable for disbursement costs which she identified as expert witness fees. Mrs B stated "...The Barrister is On (sic) a 'no win no fee situation'" and expressed her understanding of the situation as "The £50,000 policy should take care of the fees I have paid to date plus expert witness fees I have paid up to date, the no win no fee. (sic) policy will take care of your fees if you win, the other side (sic) fees if we lose".

60. On 29 April 2009 the Respondent wrote to Mr and Mrs B and indicated that subject to Counsel's further advice he would look into "applying for an After the Event litigation insurance policy on your behalf, as previously discussed…".

61. On 12 June 2009 Mr and Mrs B wrote to the Respondent and expressed concern about the delays.

62. On 24 June 2009 Respondent wrote again enclosing Counsel's Opinion and stated that the main purpose of the Opinion was to review matters "and also to provide a firm enough opinion on liability to justify an insurance company being persuaded to grant an after the event policy. We will complete the application form and let you have this for signature". The Respondent also enclosed Counsel's fee note and stated that Counsel was not on a conditional fee agreement. He went on to say that "making reasonably regular payment on account assists Counsel generally with his endeavours and of course to keep relations between Counsel and his instructing solicitor on the happiest of notes!".

63. On 16 July 2009 Mrs B wrote to the Respondent and expressed concern that he had not taken on board "...what I have told you about Mr B and his age and the urgency of getting this Court Case sooner rather than later… The other side obviously what (sic) to deter this as much as [possible (sic) and as our Solicitors you are not working in our interests by agreeing to their requests. They obviously want Mr B not to be here".

64. On 21 July 2009 the Respondent wrote to Mr and Mrs B. He dealt firstly with a conversation which had taken place on 8 July 2009 by saying "There was not one iota of understanding from you about our professional position during this conversation and to be told "Counsel's fees are your responsibility" shows a lack of sensitivity and a regard for the financial obligations that we have to undertake when instructing Counsel in a case of this type". The Respondent then dealt with the faxed letter of 15 July 2009. He concluded by saying that the accusation that the firm was not working in Mr B's interests was both incorrect and unreasonable. In light of the accusation and the attitude displayed to the firm's obligations of a financial nature, he stated "in the circumstances we consider our relationship has broken down" and concluded by saying "We will render a final account within the next few days".

65. The Respondent rendered his final account to Mr and Mrs B on 27 July 2009, for the period 21 July 2008 to 21 July 2009.

66. On 29 July 2009 Mr and Mrs B complained to the Legal Complaints Service ("LCS") and on 12 August 2009, Mr and Mrs B made a complaint to the Respondent. They said that one of the reasons they had instructed the Respondent was because he had advertised that he did "no win no fee" and that is what they had requested from the beginning. They expressed concern at the level of fees and that the Respondent had used the Allianz policy for his own costs "when this is not what it is for – it is to pay fees at the end of a Court Case if we lose".

67. In approximately August 2009 Mr B instructed new solicitors, RM. Mr P of that firm applied to the Respondent for Mr B's file of papers and the Respondent refused to release them claiming he had a lien over them until payment of his costs have been made in full. His letter of 10 August 2009 noted that there was a hearing listed for 4 September 2009. On 20 August 2009 the Respondent wrote to Mr and Mrs B and indicated that he would release the file upon payment of his costs only and VAT. On 24 August the Respondent replied to Mr and Mrs B's complaint.

68. On 26 August the Respondent applied to the court to come off the record. He wrote to RM the same day and stated that his previous offer to release the papers on payment

of his costs only and VAT was now withdrawn and he would only release the papers on payment of the total sum set out in his final account, including disbursements.

69. On 9 September the Respondent wrote to Mr and Mrs B and informed them that an order had been made by the court removing him from the court record. He concluded by saying that "if we do not receive confirmation that our outstanding costs are to be paid and that another firm of solicitors has come on the record as acting for you within 7 days, then we will advise your insurers accordingly. This may jeopardise your cover under the policy".

70. Mr B made an application to the court for release of the papers and signed a witness statement dated 30 August 2009. In his statement Mr B stated that his understanding was that the Respondent had always been instructed on a no win no fee basis. Mr B stated that he had never received a private client care letter suggesting that he would be on anything other than a conditional fee agreement. Witness statements were also filed by Mr P of RM and by the Respondent.

71. On 14 October 2009 the LCS referred the matter to the Applicant.

72. On 5 November 2009 the Respondent wrote to the LCS. He suggested that the letter from Allianz of 16 January 2006 "fulfils the requirements of a client care letter".

73. The application to court proceeded to a directions hearing on 4 December 2009 and was listed for a final hearing on 9 March 2010 with one day being allowed. In January 2010 negotiations took place between RM on behalf of Mr B and the Respondent and agreement was reached whereby Mr B would make a further payment of £3000 to the Respondent and he would then release Mr B's file of papers. Payment was duly made and in February 2010, RM received the file of papers from the Respondent.

74. On 1 April 2010 the Applicant wrote to the Respondent and requested his comments on allegations of failing to provide costs information and other information by way of client care letter. The Respondent requested an extension of time in which to respond and on 6 May 2010 requested a stay of the Applicant’s investigation. On 19 May 2010 the Applicant refused a stay but agreed an extension of time until 17 June 2010 for the Respondent's response. The Respondent did not respond and on 18 June 2010 the Applicant wrote to him again and requested a response within eight days. The Respondent replied on 24 June 2010.

75. On 20 August 2010 revised allegations were put to the Respondent. The Respondent failed to respond and a further letter was sent on 14 September 2010. The Respondent replied by e-mail on 20 September 2010 and requested an extension of time in which to respond. On 23 September 2010 the Respondent sent his full file on the insurance aspect to the Applicant. On 8 October 2010 the Applicant wrote to the Respondent and asked him to explain the relevance of the bundle of documents and to identify the specific documents on which he wished to rely. The Respondent replied by e-mail dated 22 October 2010 in which he said that he required his file to be included.

76. On 2 February 2011 the Adjudicator of the Applicant referred the Respondent to the Tribunal.

Miss IR

77. The Respondent acted for Miss IR in relation to a personal injury matter whilst he was employed at Anthony T Bryson & Co Solicitors. The Respondent failed to issue proceedings and as a result Miss IR's claim was statute barred. Miss IR then instructed new solicitors RRJ Solicitors LLP ("RRJ") and she commenced proceedings against the Respondent for professional negligence.

78. On 16 June 2008 RRJ made a Part 36 offer which was accepted by the Respondent in a letter dated 19 September 2008. The Respondent said that Anthony T Bryson & Co would pay by monthly instalments of £500.

79. On 28 January 2009 the Respondent who had by then moved to Grey Street Property Lawyers wrote to RRJ and enclosed a cheque in the sum of £250 in part payment. On 13 April 2010 RRJ wrote to the Respondent and stated that if the outstanding sum of £1700 was not received within the following seven days then they would "arrange for the issue of Court Proceedings without further notice and also make a formal complaint to the Solicitors Regulation Authority in respect of your conduct in this matter".

80. On 15 April 2010 the Respondent replied and stated "We are unable to pay the balance in full but will make the payment of the agreed instalment during the course of next week".

81. On 30 April 2010 the Respondent wrote to RRJ and enclosed a cheque for £300 drawn on the office account of Anthony T Bryson & Co Solicitors. The cheque was returned by the bank marked "Refer to Drawer" and RRJ notified the Respondent of that. The Respondent wrote to RRJ by e-mail dated 20 May 2010 and stated "...our apologies and we would have expected to resend the instalment next week".

82. On 23 June 2010, the Respondent wrote to RRJ and informed them that Grey Street Property Lawyers would be closing on 30 June 2010. The Respondent said "the firm's Accountants and Auditors…will write in July setting out a scheme for the orderly discharge of its liabilities". Miss IR then instructed G Solicitors to act for her. By letter dated 2 November 2010 G Solicitors wrote to the Applicant and enclosed a report in relation to the Respondent.

83. On 1 April 2011 the Applicant's case worker wrote to the Respondent and outlined the allegation against the Respondent:

> "It is alleged that:
>
> You provided a cheque for £300 in part payment under an agreement with R Solicitors LLP for their client Ms IR which was returned "Refer to Drawer" in breach of rule 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 (as amended)".

84. The case worker asked the Respondent to provide a response by 16 April 2011. The Respondent failed to reply and the case worker wrote to the Respondent again by letter dated 20 April 2011 and asked for a response within eight days. The Respondent

then telephoned the case worker on 3 May 2011 to apologise for not having replied and explained that he had had a chest infection. The Respondent said that he would send a response by e-mail and by hard copy that day.

85. The Respondent e-mailed the case worker on 3 May 2011 but did not provide a response in relation to the matter reported by G Solicitors although the Respondent did provide a response in respect of a different matter.

86. The Respondent replied by e-mail on 6 May 2011 which stated:

> "We were functioning throughout the Spring of 2010 and expected that we would be able to meet this instalment but were dependant on prompt receipt of monies due and cheques clearing. In that regard we were subject to the same vagaries as many other small businesses [legal or otherwise].
>
> On this occasion we believe that sufficient funds simply had not cleared otherwise the bank would have allowed this comparatively small account to go through.
>
> We are actively chasing our insurers and will keep her solicitors and yourselves informed".

The Applicant did not hear further from the Respondent in respect of this matter.

Mr and Mrs D

87. Mr and Mrs D instructed Anthony T Bryson & Co in relation to the estate of Mr D's mother. Subsequently Mr and Mrs D complained to the LCS in relation to the firm's invoices and said that the firm had provided them with inadequate costs information.

88. On 11 October 2010 the matter was considered by an LCS Adjudicator. The Adjudicator found that the services provided by Antony T Bryson & Co were inadequate in the following ways:

> "1.1 They failed to provide Mr and Mrs D with adequate costs information as their case progressed.
>
> 1.2 They failed to set out their complaints procedure in their initial client care letter.
>
> 1.3 They failed to consider with Mr and Mrs D whether the benefit gained in taking action to have Mr D made and executor of the estate, would be worth the amount such action would cost".

89. The Adjudicator directed that the Respondent as Sole Principal in the firm at the time of its closure pay to Mr and Mrs D the sum of £1500 by way of compensation. As Mr and Mrs D owed fees to the firm the Adjudicator directed that the firm would be deemed to have complied with the direction if they credited Mr and Mrs D with the sum of £1500 against the monies outstanding from them. The Adjudicator further directed the Respondent to limit the firm's costs and disbursements in Mr and Mrs D's

matter to a total of £13,803.88. The Adjudicator required that the directions be carried out within seven days of the date of the letter enclosing the decision. The Respondent was informed that "Non-compliance with my directions shall result in this matter being referred without further notice to the Solicitors Regulation Authority to consider an application to the Solicitors Disciplinary Tribunal".

90. The Adjudicator made a supplemental decision which directed that the Respondent should pay the LCS' fixed costs in the sum of £1080.

91. On 12 October 2010, the LCS sent a copy of the decision and supplemental decision to the Respondent. The Respondent was informed that he had to comply with the decision within seven days. He was asked to provide evidence that he had sent a credit note to Mr D and issued a new bill. The Respondent failed to comply or respond at all to the decision.

92. As a result, on 20 October 2010 an LCS case worker wrote to the Respondent and stated:

> "If you fail to comply with the adjudicator's direction to specific action we may treat this as further poor service. This may result in further directions being made and increased compensation for the customer.
>
> It is also my intention, subsequently, to refer this matter to the Solicitors Regulation Authority for further action".

93. On 22 October 2010 the Respondent e-mailed the case worker to say that he would respond in the next week. On 2 November 2010 another LCS case worker wrote to the Respondent to say that no further correspondence had been received from him. The case worker stated that if the Respondent failed to comply with the Adjudicator's direction within the next seven days she would take "immediate steps and will refer Mr D to your insurers. I will also be referring your conduct to the Solicitors Regulation Authority for investigation".

94. On 2 November 2010 Respondent notified the Legal Ombudsman enquiries team that he wished to appeal the Adjudicator's decision. This was passed to the LCS and the case worker wrote to the Respondent on 10 November 2010 and informed him that there was no right of appeal against the Adjudicator's decision. The case worker said "If you do feel strongly about the decision we have made, then your only option is to consider making an application for judicial review".

95. On 16 November 2011 the case worker wrote to the Respondent again to confirm that the LCS file had been closed but that the matter had been referred to the Applicant.

96. On 30 March 2011 a case worker of the Applicant wrote to the Respondent in relation to the Respondent's failure to pay the costs awarded by the Adjudicator in the supplemental decision and requested a response by 14 April 2011. The case worker outlined the allegation against the Respondent and stated:

> "You have breached rule 1.06 of the Solicitors' Code of Conduct 2007 (as amended) in that you have behaved in a way that is likely to diminish the trust

> the public places in you or the profession by reason of the fact that you have failed to comply with a Costs Direction made by the Legal Complaints Service Adjudicator on 11 October 2010 in relation to matter CRO/116514 – 2010".

97. On 31 March 2011 a case worker of the Applicant wrote to the Respondent in relation to the Respondent's failure to comply with the Adjudicator's decision (to pay compensation and limit the firm's costs) and requested a response by 15 April 2011. The case worker outlined the allegation against the Respondent and stated:

> "You failed to comply with the Formal Decision of the Legal Complaints Service Adjudicator dated 11 October 2010 in breach of rule 1.02 and 1.06 of the Solicitors' Code of Conduct 2007".

98. The Respondent e-mailed the case worker on 7 April 2011 and said "We had concurrent proceedings regarding recovery of the fees and also we had to consider with our experts whether or not to seek judicial review". The case worker replied on 8 April 2011 and extended the deadline for the Respondent's response until 21 April 2011.

99. On 14 April 2011 the Respondent provided a response by e-mail, seemingly in relation to the failure to pay the costs, which stated:

> "There has been no unwillingness on my part to discharge what is due but my attempt to effect an informal arrangement with creditors did not succeed when one creditor wanted to take unilateral action. As a result I have had to put in place an IVA on 23rd March… Given the size of your claim I believe it can be admitted and they will be in touch direct with yourselves. The time span is one year where it is anticipated all of the work in progress will have been realised".

100. On 18 April 2011 Mr P of RM Solicitors sent an e-mail to the case worker and stated "It is our client's position that the Ds [Mr and Mrs D] were entitled to either complain to the Legal Complaints Service, which they did, or proceed by way of an assessment for costs, but that they could not proceed both avenues…". From subsequent correspondence, it appeared that RM were not acting on behalf of the Respondent.

101. On 19 April 2011 the case worker sent an e-mail to the Respondent and said that his primary concern was that he did not "consider that you [the Respondent] have provided substantive responses to the Allegations set out in our letters of 30 March, 31 March and 1 April 2011 on the 3 open matters I am currently investigating". The case worker specifically asked the Respondent to explain why he had not paid the costs. The case worker also wrote to the Respondent by letter dated 19 April 2011 and requested a substantive response within the next eight days to the previous letter of 30 March 2011.

102. By letter dated 20 April 2011 the case worker wrote to the Respondent and requested a substantive reply to the letter of 31 March 2011.

103. On 3 May 2011 the Respondent telephoned the case worker in order to apologise for not responding and explained that he had had a chest infection. The Respondent said

that he would send a reply by e-mail and by hard copy that day. On 3 May 2011 the Respondent replied by e-mail which stated:

> "1. After repeated delays by the D's solicitors we issued proceedings months before the adjudicators (sic) findings…
>
> 2. The findings ran to 14 closely reasoned pages and acknowledged that a substantial proportion of fees remained outstanding and so far as paragraph 5.1 was concerned we would be deemed to have complied with that direction if credit were given for the £1500. It was therefore appreciated that time would be needed to resolve the outstanding costs issues which themselves impacted upon the adjudicators findings.
>
> 3. There was a CMC after the findings at which the court's guidance was sought… It was acknowledged that grounds existed for judicial review…
>
> 4. As an example of continuing difficulties we have had to issue an application in respect of the costs of proceedings and interest.
>
> 5. We did advise you in respect of our wish to appeal".

104. The Respondent's e-mail dated 3 May 2011 did not reach the case worker due to a mistake in the spelling of the case worker's e-mail address. The Respondent forwarded the e-mail to the case worker regain on 8 May 2011.

105. On 3 May 2011 the Respondent sent a further e-mail to the case worker, which stated:

> "The costs issue could only be considered when the main issues arising from the adjudicators findings had been resolved. That took us into January when financial difficulties were becoming more acute and where such limited funds as available had to go to accountants to prepare accounts for creditors and the revenue. Without those no agreement was possible and the figures formed the basis of the proposal leading to the IVA. There has been nothing deliberate but rather the financial circumstances consequent upon the closure of the firm on 30th June last year".

106. On 9 May 2011 the case worker responded by e-mail to the Respondent and asked for further clarification on certain points. No further correspondence was received from the Respondent in relation to this matter.

Failure to Comply with Terms of Regulatory Settlement Agreement

107. On 19 May 2011 the Respondent entered into a Regulatory Settlement Agreement ("RSA") with the Applicant. The RSA included the following undertaking:

> "Anthony Thomas Bryson confirms that he has reviewed all matters referred to him by Justice Direct and identified all clients for whom the firm acted and on whose behalf the firm made payments to Justice Direct. Mr Bryson confirms that there are only two clients for whom the firm acted and from

whose damages deductions were made in respect of the broker's fee: R – £1,175 deducted; W – £2,875 deducted. He undertakes that he will:

1. Within three months of the date of this agreement make all reasonable efforts to trace and contact Mr R and Mr W.

2. Within 28 days of each client being traced Mr Bryson will repay the broker's fee including VAT with interest at a reasonable level.

3. Provide monthly updates as to progress to the SRA including a list of all clients' names and addresses and amounts reimbursed and/or such other information or documentation as the SRA may require from time to time.

4. Within 6 months of this agreement provide the SRA with a list of all untraced clients together with a request for authorisation to pay the balance relating to those clients to a charity of Mr Bryson's choice.

5. Within 1 month of receiving the SRA's authorisation pay the outstanding balance to a charity of his choice and provide the SRA with written evidence to that effect.".

108. The Respondent further agreed to pay the costs of the investigation and the Applicant in the sum of £9000 inclusive of VAT and disbursements, such sum to be paid within six months of the date of the agreement.

109. On 29 July 2010 Ms A of the Legal Department of the Applicant wrote to the Respondent and sought his confirmation as to whether he had been able to comply with the undertaking referred to at paragraph 4 of the RSA and requested documentary evidence as to the steps he had taken. The Respondent replied by e-mail dated 13 August 2010. He explained that he had recently had to close his firm. He confirmed that he had located addresses for Mr R and Mr W although it was apparent that payment had not been made to them.

110. On 15 August 2010 the Respondent wrote again and enclosed copy correspondence relating to the proposed merger between his firm and a JO'N & Company. The enclosures included a letter from JO'N & Company dated 9 March 2010 which stated "I do not feel that my firm should continue with the proposed merger".

111. Ms A wrote again on 5 October 2010 and requested information as to the steps taken to comply with the undertaking in the RSA. On 15 October 2010 the Respondent sent an e-mail to Ms F at the Applicant in which he stated that the clients under the Justice Direct scheme would be a priority within the scheme to be drawn up.

112. On 11 November 2010 Ms A sent an e-mail to the Respondent again asking for evidence of his attempts to comply with the undertakings given in the RSA. The Respondent replied on 23 November 2010 and explained that there was no difficulty in contacting the two individuals but the problem was in awaiting figures from his accountant as to a figure for work in progress and his own financial situation.

113. Ms A wrote again on 23 November and reiterated that the Respondent had still not provided evidence to show what steps he was taking to comply with his undertaking.

114. The Respondent replied on 7 December 2010 and stated that:

> "The whereabouts of Mr R and Ms (sic) W are known to me and have been known to me throughout and I am sorry that was not made clear… I am sorry if non-reporting on a monthly basis appears to have been ignored on my part. I simply assumed that with my no longer being in practice and with no income other than a pension the only development awaited would be production of accounts, valuation of work in progress and an offer by way of informal arrangements to creditors".

115. Ms A wrote again on 9 December 2010 and asked for the position to be clarified with regard to Mr R and Mr W and in the event of their not having been paid she requested specific payment proposals.

116. On 17 January 2011 the Respondent wrote to Ms A and indicated that "Once monies start coming in I can discharge the liability to the two clients in full under the RSA and propose an offer to creditors". The Respondent indicated that his accountants needed until February to complete the accounts and valuation of work in progress.

117. Ms A wrote again on 27 January 2011. She made it clear that the Applicant expected the Respondent to comply with the undertaking given. The Respondent did not reply and Ms A wrote again on 10 February 2011.

118. On 21 February 2011 the Respondent e-mailed Ms A and informed her that he had had to seek an Interim Order under the Insolvency Act. He confirmed that he had notified his insurers of the breach of undertaking but stated "I anticipate the fees to be realised will be sufficient cover all liabilities or substantively so". The Respondent provided details of the addresses of the two clients concerned. His e-mail also contained details of his income, which consisted of a pension of £20,000 and his unsecured liabilities of £170,000.

Witnesses

119. None.

Findings of Fact and Law

120. **Allegation 1.1. He failed to provide his client Mr B with information about costs and other matters in breach of rule 15 of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rule 2.02 and 2.03 of the Solicitors Code of conduct 2007;**

Allegation 1.2. He failed to act in the best interests of his client, Mr B, in breach of rule 1 (c) of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rule 1.04 of the Solicitors Code of Conduct 2007;

Allegation 1.3. He failed to act with integrity and/or behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession in breach of rules 1 (a) and 1 (d) of the Solicitors Practice Rules 1990 and in respect of actions after 1 July 2007 in breach of rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 by virtue:

1.3.1 Of his conduct towards Mr B;

1.3.2 His failure to comply with the terms of his agreement to pay monthly instalments to Miss R;

1.3.3 His failure to comply with his assurance given on 15 April 2010 in the R matter to pay the agreed instalment during the course of the next week;

1.3.4 His failure to comply within the time specified with the directions of the Adjudicator dated 11 October 2010 to pay compensation to Mr and Mrs D and costs to the LCS.

Allegation 1.4. He failed to comply with the terms of an undertaking given in a Regulatory Settlement Agreement dated 19 May 2010.

Submissions on behalf of the Applicant

120.1 Mrs Bromley confirmed that the Respondent had now admitted all of the allegations against him and referred the Tribunal to his recent statement dated 22 April 2012 and the additional bundle of correspondence filed on behalf of the Applicant which detailed the Respondent's admissions.

120.2 The Respondent confirmed to the Tribunal that he had made admissions in relation to all of the allegations.

120.3 Mrs Bromley referred the Tribunal to the Rule 5 Statement upon which she relied and her additional bundle of correspondence. She confirmed that three of the allegations related to Mr and Mrs B, two related to Miss IR, one related to Mr and Mrs D and the final allegation related to breach of undertakings in a Regulatory Settlement Agreement.

120.4 Mrs Bromley informed the Tribunal that the Respondent was not practising and no longer held a practising certificate. She said that he had indicated that it was not his intention to practise again due to his age.

120.5 Mrs Bromley referred the Tribunal to the Rule 5 Statement and the particulars of the allegations, taking each in turn.

Mr and Mrs B

120.6 Mrs Bromley said that this had been a complex medical negligence matter in relation to which the Respondent had been instructed on behalf of Mr B in July 2005. The Respondent had written to the clients on 12 July 2005 and stated:

> "… I will discuss with you the terms upon which we can agree preliminary work should be carried out. The firm does Conditional Fee Agreements ("No Win No Fee") but in clinical negligence cases it would not be proper to enter into such an agreement until an expert's report had been obtained…".

120.7 Mrs B had replied by letter dated 21 July 2005 and stated:

> "I wish to know the procedures for this Conditional Fee Agreements (sic) and wish to know what is involved and I would like to know something about this quickly...".

120.8 Mrs Bromley said that there had been a mismatch between the Respondent's understanding and that of Mrs B in relation to the "No Win No Fee" but he had not corrected her misunderstanding. She said that in relation to Allianz, they had written to the Respondent by letter dated 16 January 2006, having been passed correspondence from the Respondent dated 20 October 2005 which requested authority to act under the terms of Mr B's legal expenses policy. Mrs Bromley said that their letter set out in detail what they would and would not pay for and stated:

> "During the course of the matter we will set costs limitations which include all disbursements and counsel's fees, but exclude VAT and you are required to work within the limits set. In the event that you exceed those limits set, we will not accept any liability for such costs, disbursements, counsel's fees etc above the set limit".

120.9 The Respondent signed the letter from Allianz on 6 February 2006. Mrs Bromley said that he replied to Allianz on 19 January 2006 and that whilst he had stated the number of hours spent to date working on the case and estimated that up to ten additional hours work would be required, he had not linked that to the two hourly rates provided for himself and another fee earner. Mrs Bromley submitted that it was impossible to work out the cost estimate.

120.10 Mrs Bromley said that by that point, the Respondent had been instructed by Mr B for approximately seven months yet at no stage had the Respondent set out to the clients the range of funding options, including legal expenses insurance and Conditional Fee Agreements. At no stage had the Respondent explained to the clients how the Allianz funding fitted into the funding arrangements.

120.11 Mrs Bromley said that as a result and the matter dragging on, Mrs B had written numerous letters of concern to the Respondent. He had replied to Mr and Mrs B by letter dated 27 November 2007 which stated:

> "Under the legal expenses policy, insurers will indemnify your costs and also liability for the other side's costs (in the event of proceedings being commenced and unsuccessful) but have stated they will make no payments on account. That is particularly hard in a case like this where expert's fees are so high. I am afraid in less demanding days we could carry disbursements for all clients but that is no longer possible. As a general rule, experts who are paid promptly are more accommodating so far as conferences and accessibility are concerned. May I ask you therefore please to settle the experts fees yourselves

> on the basis that they have been approved b y (sic) the insurers and when this case is concluded (or in the event of insurers deciding they wish to go no further) then a claim will be made to them for reimbursement...
>
> So far as Counsel and this firm is concerned, we will await the conclusion of the case before submitting our costs to the insurers. You may be interested to know that so far we have done 65 hours work…".

120.12 Mrs Bromley said that whilst the Respondent had referred to having undertaken sixty-five hours of work to date, he had not provided the clients with any information as to the actual amount of costs incurred or likely to be incurred. She said that it became clear subsequently that the cover under the Allianz policy amounted to £50,000. On 14 March 2008 the Respondent had written to Allianz to provide an update of the case and costs incurred to date. His letter stated:

> "–Our costs to conclusion estimated at £40,000 plus VAT;
> – Our disbursements to conclusion estimated at £40,000;
> – Other side's costs and disbursements to conclusion estimated at £60,000 plus VAT".

120.13 Mrs Bromley said that it was evident that the Respondent's estimates were substantially in excess of the cover available under the Allianz policy and the letter had not been copied to the clients.

120.14 By Summer 2008 Mrs Bromley said that it had become very clear that a new basis of funding was essential. She said that the Respondent had written to the clients by letter dated 2 June 2008, which stated:

> "… we will shortly have to agree new terms of acting. Given that we will no longer be acting under the basis of the cover provided by your insurer when the maximum level of indemnity is reached. We will also have to make enquiries with alternative legal expenses insurers with a view to obtaining further insurance cover to protect you in the event that your claim does not succeed... " .

120.15 Mrs Bromley said that the clients met with the Respondent on 12 June 2008 and the Respondent's attendance note of that meeting recorded his advice to the clients including advice in relation to funding by way of "privately paying or under a "no – win no – fee" CFA". Mrs Bromley said that in Mrs B's witness statement she referred to the meeting on 12 June 2008 and stated:

> "15 At that meeting, Mr Bryson talked about no win, no fee agreements and the need to obtain an after the event insurance policy. I couldn't understand what he was talking about and why he was arranging another No Win No Fee. Mr Bryson didn't give definite answers to questions. My understanding was that we had been on a No Win No Fee basis from the beginning as that was the only basis on which I would have instructed Mr Bryson.

16 On 26th June, Mr Bryson sent us two copies of a no win, no fee agreement for us to sign. I just assumed that this was a document that needed to be signed and couldn't understand why it had taken so long...".

120.16 Mrs Bromley said that on 9 July 2008 the Respondent had written to Allianz and stated:

> "We enclose our final account together with copy disbursement vouchers. We anticipate the matter will take a further 12 – 18 months to conclude, we believe the matter may go to mediation. You will see our costs are significantly less than our previous estimate".

120.17 Mrs Bromley said that Allianz refused to pay the invoice dated 9 July 2008 from the Respondent on the basis that they had already stated they would not pay interim invoices.

120.18 The Respondent wrote to the clients on 1 December 2008 and Mrs Bromley said that he informed them that he proposed to render an account for all work done under the policy, which he did by letter dated 3 December 2008, the bill having been rendered in the clients' names dated 27 November 2008 in the sum of £32,525.70. Mrs Bromley said that in relation to the complaint by the Respondent to the insurers, this had not been upheld.

120.19 Mrs Bromley referred the Tribunal to Mrs B's witness statement which stated:

> "27 At some stage I spoke to Mr Bryson on the telephone about his bill and said "You don't really expect me to pay this do you?" He said "of course I do." He said we were private clients. I said we were on No Win No Fee.
>
> 28 On 15th January 2009, Mr Bryson wrote again and requested a cheque in payment of his bill.
>
> 29 Mr B and I went in to see Mr Bryson in his office. I think Mr B's carer also came to help Mr B. I said I had no objection to paying disbursements but I objected to paying his fees as we were on No Win No Fee. Mr Bryson said if we could pay something off the bill he would continue. My real concern was that Mr Bryson would refuse to continue to deal with the case and I think it was at this meeting that I agreed to pay £10,000. I only did this because I felt I had no choice. I thought I would have a terrible time trying to get another solicitor at this stage if Mr Bryson refused to continue…".

120.20 Mrs Bromley submitted that this was understandable, as some three years into the action the last thing the clients would have wanted to do would have been to change solicitors. She said that the Respondent continued to negotiate with the clients for payment of his bills and a further meeting took place on 26 February 2009. The Respondent's attendance note of that meeting stated:

> "Mrs B raised concerns about having to pay the bill we are chasing up as she thought the terms of acting were along the lines of "no – win no – fee" from the outset. Whilst she has no objection to paying for disbursements as the matter progresses she doesn't believe that she should have to pay our fees…
>
> Mrs B also stating that both her and Mr B made it clear from the outset that they wanted us to work on a "no – win no – fee" basis...
>
> Both sides stating that they didn't wish to see the relationship breaking down at this stage. However Mrs B did wonder where do we go from here if concerns over fees weren't resolved.
>
> ATB and Mrs B to think about matters overnight and ATB to return to her tomorrow".

120.21 Mrs Bromley said that it was clear that Mrs B had been concerned regarding fees but the Respondent had been adamant that payment was due from the clients if they wished him to continue with their case. She referred the Tribunal to the Respondent's letter dated 3 March 2009 which stated:

> "... Even if there had been no legal expenses policy, we would not have been able to enter into a conditional fee agreement immediately because we would not have been able to carry out any sort of risk assessment, which in this sort of case is essential...
>
> I am afraid that without settlement of the account we simply cannot get on and do any further work in Mr B's case and given that the defendants have now said in principle that they are prepared to agree to mediation that much work remains to be done; time will pass very quickly between now and the Autumn".

120.22 Mrs Bromley submitted that this was information the clients should have been given at the outset of their matter. She said that the Respondent had effectively given the clients an ultimatum, namely pay up or he would do no further work on their behalf. She referred the Tribunal to a further attendance note dated 4 March 2009 which stated:

> "In speaking to Mrs B and going through the position again – she said he had been to another solicitor BH who said she did not have to pay".

120.23 Mrs Bromley said that Mrs B had subsequently agreed to make some payments. In her witness statement, Mrs B stated:

> "35... However Mr Bryson was adamant that he would not continue without payment of his fees. Despite the advice I had received from BH I agreed to pay Mr Bryson's fees because of the position I was in. The case was over 3 years down the line and Mr Bryson was going to drop the case if I didn't agree" .

120.24 Mrs Bromley said that a further meeting had taken place on 16 March 2009 when the same costs points had been discussed and the client had agreed to pay a further sum of £8000 for the Respondent to chase up the expert. The clients had already paid £10,000 making a total paid to the Respondent of £18,000.

120.25 By letter dated 2 April 2009, Mrs Bromley said that Mrs B had written to the Respondent and stated:

> "1. I understand that we entered into a "no win no fee" situation on the 21st July 2008 but I would like to know have you obtained a TOP UP INSURANCE TO COVER ALL COSTS which should be in place now…
>
> 2. I am fully aware I am liable for disbursements costs which are the Expert Witnesses fees and the only one outstanding is Mr B [Professor B]. The Barrister is On (sic) a 'no-win no fee situation'".

120.26 Mrs Bromley said that at no point had the Respondent put in place an ATE insurance policy. She said that the Respondent did not reply to Mrs B's letter dated 2 April, despite the fact that he wrote to the clients on 29 April 2009 and he made no reference to counsel being party to a "no win no fee" agreement. Mrs Bromley said that Mrs B wrote again to the Respondent on 12 June 2009, some two months after her letter of 2 April and it was only in his reply dated 24 June 2009 that the Respondent stated:

> "I will write to you again shortly but enclose Counsel's fee note. The Conditional Fee Agreement provides that this firm is on a no win – no fee but that does not apply to Counsel. He will be on the usual paid retainer with yourselves. He does not insist upon payment of all his fees but in all matters such as this making reasonably regular payment on account assists Counsel generally with his endeavours…".

120.27 Mrs Bromley said that it was only by his letter dated 24 June 2009 that the Respondent stated that the no win no fee arrangement did not apply to counsel. By a subsequent telephone conversation, Mrs Bromley said that Mrs B told the Respondent that counsel's fees were his responsibility. The Respondent then wrote to the clients by letter dated 21 July 2009 in which he terminated his retainer with the clients on the basis that Mr B had refused to be responsible for payment of counsel's fees and that he had alleged that the Respondent had not acted in his best interests. Mrs Bromley said that these were not grounds upon which the Respondent was entitled to terminate the retainer under the CFA.

120.28 Mrs Bromley said that the Respondent had subsequently rendered a further bill for the period 21 July 2008 to 21 July 2009 in the sum of £14,398.31 and had required payment before he would be prepared to release the clients' papers to new solicitors. Negotiations had taken place with the clients' new solicitors which resulted in the clients having to pay a further £3000 before the Respondent would release their papers. Mrs Bromley said that the Respondent had not explored the possibility of Mr B's solicitors providing an undertaking in respect of his costs which in any event were covered by the legal expenses insurance policy. She said that as a result, exercise of the lien had not been justified.

120.29 Mrs Bromley said that the clients had then complained to the Legal Complaints Service ("LCS") and the matter had subsequently been transferred to the Applicant. In his response to the LCS dated 5 November 2009, Mrs Bromley said that the Respondent stated:

> "3. ... We did accept the conditions and noted that no interim payments would be made...
>
> 4. ... As to there not being a client care letter we could not issue one which would conflict with the terms of the Allianz Cornhill. Their letter of 16 January fulfils the requirements of a client care letter and we were content to be bound by the terms".

120.30 Mrs Bromley referred the Tribunal to the letter from Allianz dated 16 January 2006 and the letter dated 19 January 2006 from the Respondent to Allianz. She said that neither constituted client care letters and that to suggest so suggested a woeful misunderstanding as to the Respondent's responsibilities for client care.

120.31 Mrs Bromley informed the Tribunal that the Respondent had always maintained his denial of the allegations relating to Mr and Mrs B until approximately eight/nine days prior to the substantive hearing. She referred the Tribunal to the Respondent's letter dated 31 January 2012 which stated:

> "a The firm's normal client care letter was not appropriate where there was a legal expenses policy. The effect of the policy, the need for it and the production to the clients of the insurers (sic) letter of instruction were sufficient notice of the conditions of business under which the firm was to operate. The clients were under no misapprehension as to what the firm was to (sic) required to do on Mr B's behalf and their own obligations".

120.32 Mrs Bromley referred again to the inadequacy of the insurer's correspondence and said that it was clear from that correspondence and Mrs B's own witness statement that she genuinely believed that Mr B's case was being dealt with on the basis of a "no win no fee" agreement. Mrs Bromley submitted that the Respondent had been a very experienced solicitor and his conduct in the matter of Mr and Mrs B had shown a complete lack of understanding of his obligations towards them.

120.33 The Respondent's letter continued:

> "e ... the clients at no time complained about our action and when they came to a decision Mrs B expressed their willingness to continue with their instructions to us...
>
> ... we responded to the client's refusal to pay counsel's fees as another breach of the CFA".

120.34 Mrs Bromley submitted that the clients had only continued to instruct the Respondent as a result of Mrs B having considered that she and Mr B had no choice but to continue to instruct him and his firm. Mrs Bromley further submitted that it had never been made clear to the clients that they were responsible for counsel's fees.

120.35 Mrs Bromley informed the Tribunal that it had only been in the Respondent's statement dated 22 April 2012 that he had admitted the allegations in relation to the matter of Mr and Mrs B, wherein he had stated:

> "... The clients would believe on the limited information provided to them that the firm would not be looking to them for costs or disbursements".

120.36 Mrs Bromley submitted that by virtue of the Respondent's conduct pertaining to the case of Mr and Mrs B he had failed to provide information about costs, had failed to act in the best interests of Mr B and he had failed to act with integrity by virtue of his conduct towards Mr B and/or had acted in a way that was likely to diminish the trust the public placed in him or in the legal profession.

Miss IR

120.37 Mrs Bromley referred the Tribunal to the matter of Miss IR in relation to which the Respondent had failed to issue proceedings, as a result of which Miss IR's claim had been statute barred. Miss IR had instructed new solicitors, RRJ Solicitors LLP, who had commenced proceedings against the Respondent for professional negligence.

120.38 In June 2008, Mrs Bromley said that a Part 36 offer had been accepted by the Respondent in a letter dated 19 September 2008. The Respondent had agreed to pay by monthly instalments of £500 but he had paid nothing for four months until on 28 January 2009 the Respondent had written to RRJ and enclosed a cheque in the sum of £250 in part payment. Mrs Bromley said that had the Respondent continued to pay the monthly instalments of £500 as agreed, he would have discharged the debt by January 2009.

120.39 Mrs Bromley said that RRJ for Miss IR did not chase the Respondent for payment until 13 April 2010 when they wrote to him and required payment of the outstanding sum of £1700 within seven days and if not, that they would issue court proceedings without further notice and make a formal complaint to the Applicant in respect of the Respondent's conduct. The Respondent replied on 15 April 2010 and agreed to pay within the course of the next week. Mrs Bromley said that the Respondent did not pay as promised, but did on 30 April 2010 send a cheque for £300 which was returned by his bank.

120.40 Mrs Bromley said that the Respondent had indicated that his inability to pay had been due to financial difficulties but she said he had first offered to make payment in September 2008, some two years before the firm had closed and in February/March 2009, Mrs B had paid the Respondent in the region of £18,000.

120.41 Mrs Bromley said that the Respondent had made no payments to Miss IR and she had complained to the LCS by a Report form dated 2 November 2010, which stated:

> "... I have been patient with Mr Bryson in the hope that I would not have to incur the cost of issuing small claims proceedings and have relied on his word as a solicitor that payment would be made. It would appear that Mr Bryson has no intention of making payment to me".

120.42 Mrs Bromley submitted that this demonstrated clearly how Miss IR had viewed the Respondent's conduct, namely that he had given his word as a solicitor on two separate occasions that he would pay and yet on both of those occasions he had not done so. Mrs Bromley said that whilst Miss IR had not been paid by the Respondent, she had subsequently been paid by his insurers.

120.43 Mrs Bromley submitted that by his failure to comply with the terms of his agreement to pay monthly instalments to Miss IR and his failure to comply with his assurance given on 15 April 2010 in Miss IR's matter to pay the agreed instalment during the course of the next week, he had failed to act with integrity and/or had behaved in a way likely to diminish the trust the public placed in him or in the legal profession.

Mr and Mrs D

120.44 Mrs Bromley said that the case of Mr and Mrs D related to an inadequate professional service award made by an LCS Adjudicator on 11 October 2010. The Adjudicator had found the services provided by the Respondent's firm to have been inadequate namely that:

> "1.1 They failed to provide Mr and Mrs D with adequate costs information as their case progressed.
>
> 1.2 They failed to set out their complaints procedure in their initial client care letter.
>
> 1.3 They failed to consider with Mr and Mrs D whether the benefit to be gained in taking action to have Mr D made an executor of the estate, would be worth the amount such action would cost".

120.45 Mrs Bromley said that the compensation had effectively been paid by deduction such that the firm were to be deemed to have complied with the direction if they credited Mr and Mrs D with the sum of £1500 against the monies outstanding from them. She said that the Adjudicator had further directed the Respondent to limit the firm's costs and disbursements in Mr and Mrs D's matter to a total of £13,803.88. The Adjudicator required that the directions were carried out within seven days of the date of the letter enclosing the decision and the Respondent had been informed that non-compliance would result in the matter being referred to the Applicant without further notice to consider referral on to the Tribunal.

120.46 Mrs Bromley said that the Adjudicator had made a supplemental decision directing that the Respondent pay the LCS' fixed costs in the sum of £1080. She said that the Applicant had required a credit note as proof of the Respondent's compliance, but this had never been provided. Mrs Bromley said that the costs due to the LCS in the sum of £1080 remained owing and the Respondent had accepted that they had not been paid due to his financial circumstances. Mrs Bromley referred the Tribunal to the Respondent's e-mail dated 27 April 2012, which stated:

> "... D is admitted, but I must make it clear that within the three month limit allowed for judicial review which I took advice about the estate solicitors were authorised to make the deductions as ordered by the adjudicator and make payment to the Ds. I have asked my solicitors to produce the correspondence".

120.47 Mrs Bromley said that no such correspondence had been seen and whilst the Respondent's e-mail suggested that the deductions had been made, it was for the Respondent to confirm his compliance to the LCS and no evidence of that had been provided.

120.48 In relation to the matter of Mr and Mrs D, Mrs Bromley submitted that by his conduct, the Respondent had failed to act with integrity and/or had behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession by virtue of his failure to comply within the time specified with the directions of the Adjudicator to pay compensation to Mr and Mrs D and costs to the LCS.

120.49 In response to a question from the Tribunal, Mrs Bromley said that in relation to the matter of enforcement, she had included in her originating application a request that the Tribunal direct that the Directions of the Adjudicator dated 11 October 2010 be treated for the purposes of enforcement as if they were contained in an Order of the High Court. Mrs Bromley confirmed that the amount outstanding was the costs due to the LCS in the sum of £1080.

120.50 Mrs Bromley referred the Tribunal to the extract from the Legal Services Act 2007 ("LSA"), section 157 which stated:

> "Approved regulators not to make provision for redress.
>
> (1) The regulatory arrangements of an approved regulator must not include any provision relating to redress".

120.51 Mrs Bromley said that it was this provision which now prevented the regulator from ordering redress for inadequate professional service and this no longer remained available under the LSA. She said that transitional provisions had however been put in place which allowed the Tribunal to make enforcement orders after Schedule 1A had been repealed. Mrs Bromley referred the Tribunal to transitional provision 6, which stated:

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

120.52 Mrs Bromley said that the Directions of the LCS Adjudicator had been made on 11 October 2010 and therefore as at 6 October 2010 there had not been a determination and the complaint of Mr and Mrs D was still pending. Mrs Bromley submitted that it therefore fell within transitional provision 6 and allowed the Tribunal to make the enforcement order.

120.53 In relation to transitional provision 7, Mrs Bromley said that might be seen as providing a cut-off date for the making of enforcement orders of 1 April 2011 but that could not be right, such that the decision of the Adjudicator was dated 11 October 2010 and if the Tribunal did not have the power to make the enforcement order then it became unenforceable and would effectively be left languishing in "no man's land". Mrs Bromley said that there was now no power for an Adjudicator to make inadequate professional service awards and these had to be dealt with by the Legal Ombudsman and would not come before the Tribunal in future.

120.54 Mrs Bromley submitted that the Tribunal retained the power under the transitional provisions of the old regime to make the enforcement order sought.

Regulatory Settlement Agreement

120.55 Mrs Bromley informed the Tribunal that on 19 May 2010 the Respondent had entered into an RSA, which included undertakings, namely:

> "Anthony Thomas Bryson confirms that he has reviewed all matters referred to him by Justice Direct and identified all clients for whom the firm acted and on whose behalf the firm made payments to Justice Direct. Mr Bryson confirms that there are only two clients for whom the firm acted and from whose damages deductions were made in respect of the broker's fee: R – £1,175 deducted; W – £2,875 deducted. He undertakes that he will:
>
> 1 Within three months of the date of this agreement make all reasonable efforts to trace and contact Mr R and Mr W.
>
> 2 Within 28 days of each client being traced Mr Bryson will repay the broker's fee including VAT with interest at a reasonable level.
>
> 3 Provide monthly updates as to progress to the SRA including a list of all clients' names and addresses and amounts reimbursed and/or such other information or documentation as the SRA may require from time to time.
>
> 4 Within 6 months of this agreement provide the SRA with a list of all untraced clients together with a request for authorisation to pay the balance relating to those clients to a charity of Mr Bryson's choice.
>
> 5 Within 1 month of receiving the SRA's authorisation pay the outstanding balance to a charity of his choice and provide the SRA with written evidence to that effect".

120.56 Mrs Bromley said that under the terms of the undertakings, the Respondent should have repaid broker's fees to two clients within 28 days of 19 May 2010 and that whilst he had given an undertaking to trace and contact the two clients within three months of the date of the RSA, he had in fact known of their whereabouts.

120.57 Mrs Bromley informed the Tribunal that there had been various correspondence between the Respondent and the Applicant regarding the RSA and the Respondent had accepted that he had not paid clients R and W nor had he complied with his undertakings to keep the Applicant updated. He had told the Applicant that non-payment was due to his financial circumstances and inability to pay.

120.58 Mrs Bromley submitted that had that been the case, the Respondent should not have entered into an undertaking to make payments unless he had been absolutely certain that he could comply with that undertaking. Mrs Bromley referred the Tribunal back to the matter of Miss IR and that on 30 April 2010, some nineteen days prior to the Respondent entering into the RSA he had paid out a cheque for £300 which had been returned by his bank. She said that the Respondent had known that and yet, notwithstanding, he had agreed to give an undertaking to pay approximately £4000 within 28 days.

120.59 Mrs Bromley informed the Tribunal that the Respondent had avoided Tribunal proceedings by having entered into the RSA. She confirmed that by his e-mail dated 27 April 2012, the Respondent had admitted allegation 1.4, namely that he had failed to comply with the terms of an undertaking given in the RSA dated 19 May 2010. She said that he had also made admissions in relation to the RSA in his letter dated 31 January 2012.

120.60 Mrs Bromley submitted that these were serious matters faced by the Respondent. She said that he was a solicitor of great experience, in excess of forty years. In the case of Mr B, Mrs Bromley submitted that the Respondent had got fundamental things badly wrong; it had been a complex case, he had not provided the client with basic information and he had refused to continue acting unless the clients paid his costs in spite of the insurance policy. Mrs Bromley said that the Respondent's conduct had caused considerable distress and upset to the clients and that this was borne out by the witness statement of Mrs B.

120.61 Mrs Bromley submitted that the Respondent’s conduct in all of the matters had been very damaging to the profession's reputation and to the public's confidence in that reputation. She said it evidenced a clear lack of integrity on his part. She said it was evident that the Respondent had entered into commitments which he had not honoured, including having given undertakings to his regulatory body.

120.62 Mrs Bromley said that the Respondent sought to rely on the case of Bland which had come before the Tribunal on 14 July 2010. She said that case had included an allegation of conduct unbefitting a solicitor, which was not an allegation faced by this Respondent. Mrs Bromley submitted that the facts of the Bland case were very different from those of the Respondent and it could therefore be distinguished.

Submissions of the Respondent

120.63 The Respondent informed the Tribunal that he relied upon his letter dated 31 January 2012, his Defence Statement and exhibit bundle dated 22 April 2012 and his various correspondence with Mrs Bromley on behalf of the Applicant. He said that he did not intend to reiterate those documents before the Tribunal. He confirmed that he had

filed and served his Defence Statement, having taken advice which had resulted in his having admitted all of the allegations against him.

120.64 The Respondent said that in the Mr and Mrs B matter, the claim had easily been within the competence of the firm. He said that their case should be seen against a background of success since Mr B had been advised by two strong legal opinions that if he went to trial, he would lose. However, the Respondent said that due to work undertaken by him and RM Solicitors, Mr B's claim had succeeded and that was due in some part to the measure of skill of the practitioners which had dealt with it.

120.65 The Respondent acknowledged that it was not always possible to manage clients' expectations but said that in the matter of Mr and Mrs B a £75,000 claim had succeeded. He said that in relation to the costs of that matter, assessment could now proceed and he was confident that as his firm had been the first firm to deal with the matter, it had laid the groundwork and a significant amount of the work done would stand up to detailed assessment. The Respondent said that he anticipated Mr and Mrs B would recover what they had paid him unless there was a question mark in relation to the obtaining of additional experts' reports, if not agreed.

120.66 In response to a question from the Tribunal, the Respondent acknowledged that the main thrust of the allegations in relation to Mr and Mrs B's matter related to advice given or not given as to costs and confusion as to the basis of the retainer. The Respondent confirmed that he admitted the allegations pertaining to Mr and Mrs Brown and that he could say no more than as set out in his Defence Statement.

120.67 The Respondent informed the Tribunal that Mr and Mrs B had been focused on CFAs and said that in his letter dated 12 July 2005 he had stated:

> "... The firm does Conditional Fee Agreements ("No Win No Fee") but in clinical negligence cases it would not be proper to enter into such an agreement until an expert's report had been obtained dealing with the question of breach of the standard of case (sic) and clinical negligence. Until such a report is obtained proceedings cannot be started and it is at that point that a Conditional Fee Agreement can be entered into".

120.68 The Respondent said that he had been obliged to use the legal expenses insurance cover with Allianz. He said that he had thought naïvely that Allianz would be more accommodating as the matter progressed but he accepted that his client care letter should have addressed the position if not; it had not done so and he accepted that had been his own shortcoming.

120.69 In relation to termination of his retainer with Mr and Mrs B, the Respondent said that it had been a big step to take but he felt that the clients had had a complete lack of understanding of the firm's position and had accused him of not having acted in their best interests. He said that despite explanations given by him in relation to the proceedings and conferences with Counsel, to have been faced with an allegation such as that from his clients had proved unbearable. He said that had Mrs B been more reasonable, perhaps he could have dealt with the situation but he had ultimately taken the decision to terminate the retainer and believed it had been the right decision. He said that he had seen a letter detailing their response to a settlement offer which they

had regarded as derisory and he had been cynical of this on the basis that the clients were extremely wealthy. He said it had been very difficult to manage their expectations.

120.70 In response to a question from the Tribunal, the Respondent acknowledged that the clients' stress could have been alleviated had he given them the advice they needed as to funding of their action but said that he had believed them to be "business people" and that Mrs B had been very capable. He said that he maintained it would have been apparent to an objective observer that he had not entered into a CFA with the client by virtue of his letter dated 12 July 2005.

120.71 The Respondent agreed that as an experienced practitioner, costs should always have been under constant review by him and that there was an obligation on solicitors to keep costs under review and update them to clients, which appeared to have been lacking in this case. He said that he had believed it to have been clear to the clients that at the outset there had only been two alternatives to a CFA, namely the legal expenses insurance with Allianz or for the clients to have paid privately.

120.72 The Respondent said that by way of background, he had practised under his own name of Anthony T Bryson & Co from 1985 but due to the financial crisis, had closed his firm in December 2008. He said that his professional indemnity insurance premiums had been too high and the practice had been unsustainable. He had then set up Grey Street Property Lawyers with a colleague and in partnership from December 2008 but that had only continued until June 2010 when, as a result of cash flow difficulties, that practice had also had to close. The Respondent said that since then he had been retired. He said that he felt it was an enforced retirement and he would have wished to continue working if it had proved possible.

120.73 The Respondent said that since 2008 he had been unable to meet all of his financial obligations.

120.74 In relation to Mr and Mrs D, the Respondent said that when the Adjudicator's Decisions had been made in October 2010, he had already issued proceedings for recovery of the remainder of his costs, the clients having paid some of the costs.

120.75 He said that the LCS had then become involved, made their findings and deducted substantial sums from his costs. He told the Tribunal that he had found it grossly unfair. The Respondent informed the Tribunal that monies had been held by the estate solicitors and that it had been his firm who had got a new firm on board and got the estate moving. He said that the costs had been due to him from the estate itself.

120.76 In relation to the LCS' involvement, the Respondent said that he had told the LCS he needed time to consider an application for judicial review. He said that they had given him seven to ten days but he had had no money with which to pursue a judicial review. He said that he had sought advice from counsel and a costs draftsman. The Respondent told the Tribunal that RM Solicitors had written to the estate solicitors and had asked them to adjust his costs to allow for the Adjudicator's award of £1500 and the reduction in the costs. He said that he had received a cheque for approximately £3000 and that it had been done within three months, albeit not immediately due to his financial difficulties.

120.77 The Respondent said that he did not have all of his correspondence but he thought that the LCS had been advised of his compliance in the matter of Mr and Mrs D. He said that he had thought the allegation related to his not having complied within the required timescale, not the compensatory award itself. He acknowledged it had been late but submitted that he had done what had been required of him. He said that he was unable to produce any written evidence before the Tribunal to support his submissions and that he had not produced any such evidence to the Applicant/its legal representative. The Respondent said that he had thought his word would be sufficient and that he had in the previous week requested his solicitors to obtain documentary proof but that had not been forthcoming.

120.78 The Respondent confirmed that he had not paid the LCS' costs.

120.79 In relation to the RSA, the Respondent said that at the time he entered into the RSA he had been living month by month. He said that by way of background, his firm had been experienced employment lawyers and they had received a small tranche of cases from Justice Direct having been approached by them. He said that he had not known at the time that Justice Direct were being investigated in relation to their Scheme 1 but his firm had entered into Scheme 2 when they had been audited and as a result, had entered into the RSA.

120.80 The Respondent said that he had hoped he would be able to make the payments under the RSA but that unfortunately, he had not anticipated having to close his firm in June 2010 and as a result of that, he had been unable to comply with the RSA.

120.81 In response to a question from the Tribunal in relation to the cheque of £300 in Miss IR's matter which had been returned a few days prior to his having entered into the RSA, the Respondent said that at the time he had had one or two large bills and had then had to close his practice but it had not been anticipated by him. He said that the negotiations for the RSA had been ongoing for some time and that he had entered into it in good faith and with the expectation that some monies would be received by him to meet his obligations under the RSA.

120.82 In relation to his financial circumstances, the Respondent referred the Tribunal to the information in his exhibit bundle relating to his Individual Voluntary Arrangement ("IVA"), which he had entered into on 4 April 2012. He said that he had tried to enter into an informal arrangement with his creditors and had instructed solicitors to deal with his work in progress. It was anticipated that the work in progress would take approximately one year to be realised. He informed the Tribunal that he had hoped to save costs by entering into an informal arrangement but unfortunately, one creditor had "broken ranks" which had resulted in the IVA in April 2012.

120.83 The Respondent confirmed that the work in progress had not yet been realised and his IVA had been extended to March 2013. He said that he paid £200 per month in relation to his IVA and he referred the Tribunal to his Statement of Means. He said that his creditors were reliant on realisation of the work in progress.

120.84 The Respondent acknowledged that looking at his IVA, whilst he was not employed and he was only in receipt of pensions, it did appear that there was a surplus of

income but that was not the reality. He said that he still had two dependent children and his wife only worked part-time. He said that if the Tribunal was minded to impose a financial penalty, he was not in a position to pay that nor could he meet any order for costs. The Respondent indicated that if such were to happen, he would have to place himself in bankruptcy.

120.85 In response to a question from the Tribunal, the Respondent said that his only capital was as stated in his Statement of Means namely a Nationwide building society account with a current balance of £1800.93. He said that he had given up his equity interest in the matrimonial home in 2005 and that this had been disclosed to the Supervisor of his IVA and had been accepted. He said that he had no other capital.

120.86 The Respondent said that he currently did some charity work. He said that he had a teaching qualification to teach English as a foreign language but grants were no longer available for additional training and jobs would be difficult to come by in the current economic climate.

120.87 The Respondent confirmed that he no longer held a practising certificate and whilst he still wished to work, he would not practice law again. He acknowledged that he had to be realistic, given his age as he was nearly seventy and taking into consideration how his legal practices had ended.

120.88 The Respondent said that he wished to apologise to the Tribunal and he expressed that he was very sorry that his legal career had ended in this way.

The Tribunal's Findings

120.89 The Tribunal applied its usual standard of proof namely beyond reasonable doubt.

120.90 The Tribunal had listened very carefully to the submissions on behalf of the Applicant and those of the Respondent and had read all of the documentation to which it had been referred. The Tribunal found all of the allegations against the Respondent proved on the facts and on the documents. It noted that the Respondent had admitted all of the allegations.

120.91 The Tribunal had heard that cumulatively, all of the allegations were deemed serious by the Applicant and the Tribunal agreed with that analysis. The Tribunal noted that the allegations dated back to 2005, in the case of Mr and Mrs B. There had been a crucial lack of costs information provided by the Respondent to Mr and Mrs B and the Tribunal referred to the relevant paragraphs of the Rule 5 Statement in this regard which detailed the Respondent's failure to provide costs information, namely that he failed to advise Mr B as to the different funding options available to him, failed to make clear at the outset of the retainer the basis on which he was acting for Mr B and did not send Mr B an initial client care letter, failed to provide Mr B at the outset or as the matter progressed with any information as to the likely costs of the matter, failed to inform Mr B of his potential liability for the other side's costs, failed to provide any information as to the basis of how his firm's fees were calculated and failed to make clear to Mr B the basis on which he was instructing counsel or his liability to pay counsel's fees.

120.92 The Tribunal was satisfied that the Respondent, by failing to explain clearly at the outset the different funding options available to Mr B and the basis upon which the Respondent was agreeing to act, had not acted in Mr B's best interests. The Tribunal was satisfied that although the Respondent had indicated in writing that his firm and counsel would await conclusion of the case before submitting their costs to the insurers, he had subsequently demanded payment from the clients of both his costs and those of counsel.

120.93 The Tribunal was satisfied and the Respondent admitted that he had not put in place alternative ATE cover and had thereby left Mr B exposed to possible liability to pay the defendant's costs. The Tribunal also accepted that the Respondent had submitted an invoice to Allianz before the conclusion of the case and notwithstanding that he had agreed the terms and conditions of Allianz which had included that they would not pay interim invoices. The Tribunal found that when Allianz had maintained their refusal to pay the Respondent, he had rendered an account to Mr B and had then refused to do any further work on Mr B's case until his account was settled.

120.94 The Tribunal was satisfied that the Respondent had not properly advised Mr B in relation to operation of the CFA and he had not sought to agree with counsel either a CFA or that counsel would wait until the conclusion of the matter for payment of his fees; the Respondent had demanded payment of counsel's fees from Mr B.

120.95 The Tribunal found that the Respondent's termination of his retainer with Mr B in July 2009 had not been proper grounds upon which he was entitled to terminate the retainer under the CFA, namely Mr B's refusal to be responsible for payment of counsel's fees and his allegation that the Respondent was not acting in his best interests.

120.96 The Tribunal was satisfied that by virtue of his conduct towards Mr B, the Respondent had failed to act with integrity and had behaved in a way likely to diminish the trust the public placed in him or in the legal profession.

120.97 The Tribunal found that the Respondent had shown a complete disregard for complying with the terms of agreement to make instalment payments to Miss IR and the subsequent assurance he gave in April 2010 to pay an instalment. The Tribunal was satisfied that by the Respondent's failure to comply with the terms of his agreement to pay monthly instalments to Miss IR and his failure to comply with his assurance given on 15 April 2010 in that matter to pay the agreed instalment, he had failed to act with integrity and had behaved in a way that was likely to diminish the trust the public placed in him or the legal profession. The Tribunal had noted in particular Miss IR's comments in her complaint to the Applicant when she said:

> "... I have been patient with Mr Bryson in the hope that I would not have to incur the cost of issuing small claims proceedings and have relied on his word as a solicitor that payment would be made. It would appear that Mr Bryson has no intention of making payment to me".

120.98 In the case of Mr and Mrs D, the Tribunal found that the Respondent had failed to comply with the directions of an LCS Adjudicator dated 11 October 2010. The Tribunal noted that the LCS' costs remained unpaid. So far as the credit note to Mr

and Mrs D was concerned the Tribunal noted that it had no written evidence of that having been done other than the Respondent having informed the Tribunal that the necessary paperwork had been raised. As a result of the Respondent's conduct in the matter of Mr and Mrs D, the Tribunal was satisfied that his failure to comply within the time specified with the Adjudicator's directions was evidence of his failure to act with integrity and that he had behaved in a way that was likely to diminish the trust the public placed in him or in the legal profession.

120.99 In relation to the RSA, the Tribunal was very concerned that the Respondent had been prepared to enter into an RSA which contained undertakings to make payments when only recently he had been unable to pay £300 of the sum he had agreed to pay to Miss IR. The Tribunal noted that regrettably he had failed to make those payments under the RSA and certain elements of the undertaking remained outstanding. The Respondent had said that he had been "living from month to month" at the relevant time but the Tribunal concluded that his "good faith" in being prepared to give an undertaking in such circumstances had to have been open to question.

Previous Disciplinary Matters

121. None.

Sanction

122. The Tribunal had found all of the allegations against the Respondent proved.

123. The Tribunal took all of the matters raised against the Respondent very seriously as all of them had affected individual clients.

124. Other than in relation to the Respondent's failure to provide Mr B with costs information and other client care information and his failure to comply with the undertakings given in the RSA, the remaining allegations related to breaches of the core duties which of themselves underpinned a solicitor's professional obligations and responsibilities, not just to his clients but to his regulator.

125. The Tribunal found that the Respondent had failed to act in the best interests of one of his clients and in relation to three clients he had failed to act with integrity and had behaved in a way likely to diminish the trust the public placed in him or in the legal profession. The Tribunal had a duty to act in the public interest and to maintain the public's confidence in the profession together with maintaining the profession's own reputation.

126. Having considered all of the sanctions available to it, the Tribunal had deliberated whether to strike off the Respondent having regard to the seriousness of the allegations and in particular the breach of undertakings but it decided in all the circumstances of the case that the Respondent should be indefinitely suspended from practice as a solicitor. No lesser sanction could be justified in view of the Tribunal's view of the seriousness of the Respondent's misconduct, and the danger to the public and to the reputation of the profession of his continuing in practice. A lesser sanction than strike off could be justified in view of the unlikelihood of the Respondent being in a position to practice again owing to his age and financial position.

127. The Tribunal also decided to order that the decisions of the LCS Adjudicator be enforced as if they were contained in an order of the High Court.

Costs

128. In relation to costs, Mrs Bromley referred the Tribunal to the Applicant's Schedule of Costs dated 26 April 2012 and confirmed that this included her costs and those of the various case workers of the Applicant. Mrs Bromley asked the Tribunal to make an order for costs in the sum sought of £23,020.15 and for the costs to be summarily assessed.

129. In response to a question from the Tribunal, Mrs Bromley said that the drafting and preparation had been between forty to fifty hours as the Rule 5 Statement had been twenty-five pages and there had been a substantial bundle. She said that her own costs were approximately £13,000 added to which were disbursements and the case workers' costs of the Applicant for the various matters. Mrs Bromley confirmed that the reason for different hourly rates was that this was the agreement between the Applicant and her firm. She said however that the vast majority of work had been hers whilst some had been undertaken by an assistant.

130. Mrs Bromley acknowledged that it was not uncommon for the Tribunal to make a costs order not to be enforced without leave. She said that this provided comfort since there would have to be a change in a Respondent's financial circumstances for a viable application to be made to the Tribunal to enforce the costs order.

131. In relation to the costs of the proceedings the Respondent, in reply to a question from the Tribunal, said that his IVA placed very serious obligations on him and if he were ordered to pay costs, he would have to become bankrupt. He said that he had deliberately chosen to enter the IVA over bankruptcy in order to realise his work in progress and pay his creditors.

132. The Respondent said that he had seen the Applicant's Schedule of Costs and that he considered the costs to be on the high side and it was difficult to see who had done what due to the lack of narrative. He said that he would have presumed that the Applicant would have presented its documentation well-prepared in advance and that it would be unnecessary for its legal representative to start from scratch. He said that on the basis he had admitted all of the allegations he considered the costs to be excessive. He indicated to the Tribunal that he would be aged seventy in 2013 and that a costs order hanging over him would not be fair. He reiterated that he had lost his means to generate income, was subject to his IVA and only in receipt of limited pension income. In conclusion, the Respondent said that if the costs order were made against him he would find it onerous and unjust.

133. The Tribunal had listened carefully to the parties' respective submissions as to costs. It decided to summarily assess the Applicant's costs in the sum of £20,000 and ordered that the Respondent pay those costs, said order not to be enforced without leave of the Tribunal.

Statement of Full Order

134. The Tribunal Ordered that the Respondent, Anthony Thomas Bryson, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 1st day of May 2012 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00, such costs not to be enforced without leave of the Tribunal.

The Tribunal further Ordered that the Directions of the Adjudicator of the Legal Complaints Service dated 11 October 2010 be treated for the purposes of enforcement as if they were contained in an Order of the High Court.

Dated this 15th day of May 2012
On behalf of the Tribunal

A N Spooner
Chairman