The Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 27 June 2014 in respect of its decision to proceed with the substantive hearing in his absence, findings, sanction and costs. The appeal was heard by Mr Justice Edis on 17 March 2015, with Judgment reserved to 27 March 2015. The appeal was dismissed. Schools v Solicitors Regulation Authority [2015] EWHC 872 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10968-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TIMOTHY PAUL SCHOOLS Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Miss J. Devonish
Mrs V. Murray-Chandra

Date of Hearing: 12-14 May 2014

Appearances

Mark Cunningham QC of Maitland Chambers, 7 Stone Buildings, Lincoln's Inn, London WC2 3SZ instructed by Morgan Cole LLP, Bradley Court, Park Place, Cardiff, CF10 3DP for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent Timothy Paul Schools as amended by the direction of the Tribunal, were:

1.1 He has acted where there existed a conflict of interest contrary to Rule 3.01 of the Solicitors Code of Conduct 2007;

1.2 He failed to provide information to clients which may have been material to their decision to instruct his firm, ATM Solicitors Limited;

1.3 [Struck out]

1.4 In his relationship with third parties who have introduced work to ATM Solicitors Limited, he has failed to comply with the requirements of Rule 9.01 of the Solicitors Code of Conduct 2007;

1.5 He has allowed third parties to exercise an inappropriate level of control and influence over the activities of ATM Solicitors Limited;

1.6 He has failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007;

1.7 He has acted in a manner which has led to his independence and that of ATM Solicitors Limited being compromised contrary to Rule 1.03 of the Solicitors Code of Conduct 2007;

1.8 He has failed to act in the best interests of clients contrary to Rule 1.04 of the Solicitors Code of Conduct 2007;

1.9 He has behaved in a way which was likely to diminish the trust the public places in him and/or the legal profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007;

1.10 He has acted recklessly;

1.11 He has failed to maintain proper books of account and financial records contrary to Rule 32 of the Solicitors Accounts Rules 1998.

Documents

2. The Tribunal reviewed all the documents including:

Applicant:-

- Hearing bundle comprising:
    - Rule 5 Statement dated 5 April 2012
    - Respondent's Answer to the Rule 5 Statement dated 28 August 2012
    - Respondent's application to dismiss dated 13 November 2012

  - Applicant's response to Respondent's application to dismiss dated 6 March 2013
  - Memoranda of case management hearings on 19 July 2012 dated 25 July 2012, on 9 October 2013 of even date, on 15 April dated 17 April 2014 and redacted version of the memorandum of the hearing on 4 April and 28 May 2013 dated 29 July 2013 showing directions only
  - Applicant's additional disclosure
  - Previous Findings of the Tribunal in case nos. 9567-2006 and 10048-2008
  - Medical evidence comprising letter from Dr C. Hunt dated 25 March 2014, Psychiatric report of Dr R. Lingam dated 26 April 2014 and letter from Dr A. Buckley dated 30 April 2014
- Applicant's bundle of documents Volume 1
- Applicant's bundle of documents Volume 2
- Materials bundle comprising:
  - Applicant's skeleton argument by Mr Cunningham QC with Schedules A and B
  - Authorities
- Memorandum of case management hearing on 26 November 2012 dated 30 November 2012
- E-mail from Mr Havard dated 8 May 2014 to the Tribunal
- Extract from the Solicitors Handbook 2013 regarding appeals from the Tribunal
- Schedule of costs

The Tribunal also had sight of:-

- Letter from Warren's Law and Advocacy to the Tribunal dated 30 April 2014
- Memorandum of case management hearing and application to adjourn on 2 May 2014 dated 7 May 2014

Respondent:-

- Letter from the Respondent to the Tribunal dated 8 May 2014 with attached:
  - Letter from Dr Buckley at Respondent's GP dated 30 April 2014 (also in Applicant's hearing bundle
  - Letter from Locum at Respondent's GP dated 8 May 2014 enclosing;
    - Letter from NHS hospital dated 2 May 2014
- Email dated 12 May 2014 timed at 09.06 from the Respondent to the Tribunal with enclosed
  - Notes re Memorandum dated 7 May 2014 from Tribunal and request for adjournment

- E-mail from the Respondent to the Tribunal dated 12 May 2014 timed at 11.17
- Letter from Warren's Law and Advocacy to the Tribunal dated 13 May 2014
- E-mail from Warren's Law and Advocacy to the Tribunal dated 13 May 2014 with attached letter and
    - Personal financial statement of the Respondent
- Letter from Warren's Law and Advocacy to the Tribunal dated 14 May 2014 with enclosed
    - Financial documents
- E-mail from Warren's Law and Advocacy to the Tribunal dated 14 May 2014 regarding bank statements
- Worldwide freezing order sealed on 20 May 2013

Preliminary Issues

3. The Respondent applied in advance for an adjournment of the substantive hearing of the application which was heard on 2 May 2014. The application was refused. The Respondent then communicated with the Tribunal renewing the application. He did not appear at the substantive hearing commencing on 12 May 2014. The further adjournment application was heard on 12 May 2014 in his absence.

4. For the Applicant, Mr Cunningham submitted that the Respondent was not present or represented but previously he had legal representation including by Leading Counsel. Mr Cunningham asked that the Tribunal look at the latest adjournment application in the context of what had gone before. This case had a lengthy history of applications to adjourn the substantive hearing. He referred the Tribunal to his skeleton argument where he had set out the history of the case to the effect that during the early months of 2014, the Respondent began to suggest that he was suffering from health problems that would necessitate an adjournment. He produced a letter from his GP Dr Hunt dated 26 March 2014 which stated:

> "He is suffering symptoms akin to post traumatic stress disorder and is finding it very difficult to cope with the demands that he is being faced with. This is affecting his mood, sleep and principally his ability to concentrate.
>
> Please take this into consideration in your dealings with him. He is not fit to face a tribunal without adequate representation."

As the Respondent made no formal application to adjourn, the Applicant took matters into its own hands and arranged a case management hearing ("CMH") to deal with this issue. This CMH was heard on 15 April 2014. The Respondent was represented by Mr Rodney Warren of Warren's Law and Advocacy ("Warren's"). The Memorandum of the hearing included a reference to Dr Hunt's letter and that in a note from the Respondent to the Tribunal of 5 April 2014 seeking an adjournment, the Respondent made other points recorded in the Memorandum as:

> "he had been made the subject of a worldwide asset freezing order of his assets on 20 May 2013 and had no funds with which to pay legal fees. As the

> Applicant had a very experienced Leading Counsel to represent it this caused an imbalance which was highly unjust;
>
> he had suffered from extreme periods of anxiety and stress due to the circumstances that he found himself in;"

Mr Cunningham had made the point at the April CMH hearing that the Tribunal's Policy/Practice Note on Adjournments stated at paragraph 4:

> "The following reasons will NOT generally be regarded as providing justification for an adjournment.
>
> ...
>
> d) Inability to Secure Representation
>
> The inability of the Respondent for financial or other reasons to secure the services of a representative at the hearing or financial reasons for the non-attendance of the Respondent."

At the CMH, Mr Cunningham had concluded by observing that there were serious continuing investigations into the Respondent's conduct but acknowledged that there was no Rule 5 Statement at present although it was likely that there would be one in the future. He also observed that the Respondent had not complied with the Tribunal's directions. The Memorandum recorded that Mr Warren had then told the Tribunal that there remained only two substantive grounds before it, the Respondent's finances and his health. Mr Cunningham submitted that both these issues had therefore been in play throughout 2014. The Tribunal had made directions including that the Respondent should attend to be examined before a consultant psychiatrist, Dr Ravi Lingam on 25 April 2014, and that there should be a further CMH to be held on 2 May 2014, at which the issue of whether this substantive hearing should proceed would be determined.

5. Mr Cunningham submitted that the Respondent duly attended upon Dr Lingam on 25 April 2014 and on the following day Dr Lingam produced his report which made an unqualified statement that:

> "15.1 [The Respondent], in my view, is fit to attend and proceed with the Hearing."

Mr Cunningham submitted that the Respondent did not challenge that statement. He went on to tell Dr Lingam that he would not attend the hearing in any event:

> "7.13 [The Respondent] told me that he does not intend to "put myself through" the [substantive] Hearing. [The Respondent] told me that his reasons are that the case against him is "unjust", the process is "unfair" and he anticipates having a number of highly qualified QCs against him and being not able to adequately defend his case …

Mr Cunningham pointed out that he was the only QC involved. The report continued:

> "15.2 With regard to the vexing question of [the Respondent] being fit to represent himself at the Hearing [the Respondent] told me that he does not intend to attend the Hearing and in my view this is, in the main, because he does not think he is legally competent to represent his case and anticipates that he would be overwhelmed by being confronted by the QCs. [The Respondent] states that he would prefer that the matter is postponed until he is able to release the funds to pay for his legal representation."

The report was sent to the Respondent shortly after it was released and was available to his representatives at the hearing on 2 May 2014. The Applicant took these reported assertions at face value as they had not been challenged or resiled from. Accordingly it was not anticipated that the Respondent would attend, or be represented, at the final hearing.

6. The GP's letter of March 2014 was relied on by Mr Carter of Warren's at the CMH on 2 May 2014 when he made an application to adjourn the substantive hearing. He told the Tribunal that the Respondent was unwell in two significant regards. Financial resources were not deployed as a ground for the adjournment application. The new health issue was DVT; on 30 April 2014 (i.e. two days before the scheduled CMH) the Respondent produced a further doctor's letter, this time from Dr Buckley, stating that he had been "diagnosed with a deep vein thrombosis in his leg." Mr Cunningham referred the Tribunal to the detail of Mr Carter's representations about Respondent's DVT in the Memorandum of the hearing which set out that in response to a question from the Chairman, Mr Carter confirmed that the application was based solely on the Respondent's ill-health. The Memorandum also included:

> "The Chair commented that this application was based largely on the diagnosis of DVT, which Mr Carter confirmed was the immediate threat to the hearing."

7. Mr Cunningham submitted that at the 2 May hearing he had put the Applicant's position quite high; he:

> "...submitted that the issue of DVT had been deployed by the Respondent at the eleventh hour. The matter of DVT should not be the escape that the Respondent craved… there was support for the proposition that the Respondent did not intend to attend the Tribunal in any event... the Respondent had told Dr Lingam, on Friday 25 April that he did not intend to attend the Tribunal. This was before the diagnosis of DVT was made... the Respondent was trying to do everything possible to avoid the hearing… Mr Cunningham invited the Tribunal to be sceptical about the Respondent's application. The true position, it was submitted, was that the Respondent was apprehensive about the proceedings and had chosen not to attend…"

8. Mr Cunningham stated that he had relied on what the Respondent told Dr Lingam at the 2 May hearing and relied on it at this hearing. Mr Cunningham also submitted that while Mr Carter did not raise financial indisposition the Tribunal did consider it. The Memorandum recorded:

> "These proceedings had been underway before the injunction was granted and there appears to be authority (Halifax plc v Chandler [2001] EWCA Civ 1750) suggesting that in these circumstances the Respondent should be able to obtain funds for legal representation. This raised some issues concerning what the Respondent had told the Tribunal.
>
> Mr Cunningham told the Tribunal that he had not made submissions on this point as it was not formally advanced on behalf of the Respondent as a ground for adjournment. The Applicant was not a party to the High Court proceedings. In so far as it was relevant the Tribunal's Practice Note on Adjournments paragraph 4 (d) covered the point..."

The Memorandum went on to record that attention was drawn to paragraphs 7.13 and 15.2 of Dr Lingam's report (quoted above) and Mr Carter was asked to comment. Mr Carter told the Tribunal that;

> "he did not know if the Respondent had made up his mind on this point, although it appeared he had told Dr Lingam he did not intend to attend..."

9. Mr Cunningham then referred the Tribunal to the decision of the Tribunal on 2 May 2014 which included that the Tribunal set out Dr Lingam's headline view at paragraph 14.10 of his report:

> "[The Respondent] in my view, is fit to attend and proceed with the hearing."

and the Tribunal cited the Respondent's stated intention not to put himself through the hearing. The Memorandum continued:

> "This, then, was a preference the Respondent expressed for non-medical reasons."
>
> ...
>
> The Tribunal noted that these issues* were not strictly relevant to its decision, but it underlined the fact, as reported by Dr Lingam, that the Respondent had formed an intention not to attend prior to being diagnosed with DVT, for reasons unconnected with his health."
>
> (*That is his position regarding the freezing order; his application to release funds having been refused on the basis that he had failed to make adequate disclosure to the Claimants and that the Respondent intended to make a further application, having made further disclosure.)

10. On 2 May 2014, the Tribunal dismissed the Respondent's application to adjourn and directed that this substantive hearing should proceed as listed. Mr Cunningham submitted that the Tribunal had said that if someone was not represented or even if they were not present it did not prevent a fair hearing. The Tribunal would therefore be acting fairly if it now decided to proceed with the substantive hearing.

11. At the conclusion of the CMH on 2 May 2014, the Respondent's solicitor accepted the invitation made by the Applicant, and conveyed by the Tribunal, that he should confirm that the Respondent would indeed not be attending at this hearing. On 7 May

2014, the Respondent's solicitor wrote to Morgan Cole LLP confirming that he had not received instructions one way or the other that the Respondent intended to attend. In the same letter, it was requested that all future correspondence should be with the Respondent. A further e-mail was sent to the Respondent on 7 May 2014, requesting confirmation as to his intentions, but nothing had since been heard from him as to his attendance. However two e-mails had been received by the Tribunal, one at 09.06 immediately before this hearing with Notes regarding the Memorandum of the 2 May 2014 hearing. Mr Cunningham submitted that this was more of the same relating to the two grounds already relied on, in this Note described as "[1] Financial constraints [2] Health Grounds". The Note included:

> "My financial circumstances were not considered at all [2]. The reasons for rejecting an adjournment on account of the DVT I have been diagnosed with are flawed and I outline below the reasons why."

Mr Cunningham submitted that the Respondent distanced himself in the Note from his representative at the hearing when he said:

> "Mr Carter was not fully familiar with the basis of my application to adjourn, which was initially placed before the Tribunal on 15 April 2014..."

and

> "Just so as to be clear on this, my position has been that I have no money to pay for accommodation for 5 days in London, due to the Freezing order against me..."

The Respondent rejected Mr Carter's confirmation at the 2 May hearing that the sole basis of his application was his medical condition and stated:

> "This is incorrect as I made, and continue to make, an application for adjournment on both health and financial grounds…"

Mr Cunningham submitted that the Respondent went on to take exception to the contents of the Memorandum in which he took the view it was reported that:

> "Mr Cunningham insinuates that the prognosis of the DVT was some kind of 11th hour attempt to create a further escape route to avoid attendance at the substantive hearing... I cannot invent the existence of a DVT, and I am not prepared to take the significant health risk of ignoring the medical advice not to travel... The letter I managed to obtain from Dr Buckley may well have been short on detail but was obtained the morning after my diagnosis at the hospital when the records had not yet landed at the doctors (sic) surgery. Given more time, and had I been made aware that the doctor's letter/evidence was being questioned in such a manner I would have tried my best to obtain whatever else may have proved my condition and the advice given. As it stands I have only just received and read the memorandum which questions the medical advice and evidence provided."

Mr Cunningham submitted that while critical of him, the paragraph quoted above did not address the two paragraphs in Dr Lingam's report that the Respondent's stated

position was that he would not attend in any event. The Respondent missed the central point that the Applicant relied on. The Respondent made no attempt to distance himself from paragraph 15 of Dr Lingam's report. Mr Cunningham submitted that he detected nothing new in the latest application to adjourn made under cover of the e-mail of 09.06. There was a later e-mail timed at 11.17 in which the Respondent stated:

> "I have also now had the opportunity to speak to Dr Hunt, my GP, who was away last week so this is the first opportunity I have had to discuss this with her. Unfortunately she is busy in surgery this morning so cannot immediately write a note for the attention of the Tribunal to confirm her opinion, and advice, that I should not travel by air, car, train or any other form of transport linked to causing DVT's. She told me that in her opinion this was a "no-brainer" and such advice would apply to any of her patients diagnosed with a DVT not just me. She is going to record our conversation in my medical records so that should the Tribunal wish, they could subsequently obtain a copy of those records identifying the advice provided. Given more time I would also seek further evidence from the hospital. Once again I am not going to go against medical advice not to travel and the Tribunal must make up its own mind as to whether it considers it appropriate to proceed with the hearing in my absence, given such clear medical advice."

Mr Cunningham submitted that he could not say whether the Respondent was right about DVT, probably he was but that was not the point as he had already stated his intention not to attend the hearing. Mr Cunningham asked the Tribunal to dismiss the informal application for an adjournment. If the Respondent could attend the hearing he would not do so, he had told Dr Lingam that and not resiled from his intention not to attend in any event.

12. The Tribunal had regard to its Policy/Practice Note on Adjournments, the report of the hearing on 2 May 2014 contained in the Memorandum dated 7 May 2014, the Note from the Respondent regarding the Memorandum, the letters from the various doctors and the psychiatric report of Dr Ravi Lingam which had been before the Tribunal on 2 May 2014, a letter from an NHS hospital dated 29 April 2014 which had been typed on 2 May 2014, a letter from the Respondent's GP practice dated 8 May 2014 and the submissions from Mr Cunningham for the Applicant. The Respondent's submissions about his inability to secure representation for financial reasons were not in view of the Tribunal such as to cause it to depart from its policy on adjournments.

13. Having regard to the Respondent's medical condition, the Tribunal's Policy/Practice Note on Adjournments stated at paragraph 4(c) included among the reasons that would not generally be regarded as providing justification for an adjournment:

> "The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient."

The Tribunal considered that there was nothing substantively new or exceptional before it which had not been considered by the earlier division of the Tribunal on 2 May 2014. The medical information which the Tribunal had been presented with concerning the Respondent suffering from DVT did not in the Tribunal's opinion constitute "a reasoned opinion of an appropriate medical adviser". At most it stated that the Respondent suffered a recurrence of DVT by way of the 29 April letter from an NHS hospital, which did not give any opinion about the impact of his DVT upon his ability to attend and participate in the hearing. The letter from his GP practice dated 8 May 2014 stated that the Respondent reported hospital advice not to travel long distances at this time but made no comment about that. The Respondent's email of 12 May 2014 referred to speaking to his GP who had been away the previous week whom he said advised him not to travel by air, car, train or any other form of transport linked to causing DVTs. The Tribunal also had the benefit of Dr Lingam's report which had been before the earlier division of the Tribunal on 2 May 2014 with its telling information about the Respondent's intentions. Dr Lingam had also stated that the Respondent would be aided in the legal process as a whole and in particular with regard to the hearing, were he to have access to legal representation but this was not expressed as a medical opinion. The Tribunal had in mind the various authorities relating to proceeding with a disciplinary hearing in the absence of the practitioner including R v Hayward, Jones and Purvis [2001] QB 862 CA. It was very aware that the discretion to proceed in absence was one which had to be exercised with the utmost care. Given the Respondent's clear indications to Dr Lingam that he did not intend to attend the hearing (which indications he had not addressed or resiled from in any of the documents before the Tribunal) the Tribunal considered that the Respondent had voluntarily absented himself from the hearing and that even if it adjourned the matter for say six months there was a serious question that the Respondent would not attend in any event. The allegations brought against the Respondent were serious and the Tribunal considered that in the interests of justice it needed to consider them as planned.

Consideration of further application to adjourn on 13 May 2014

14. During a break taken during the morning of 13 May 2014, it came to the attention of the Tribunal that Warren's had e-mailed a letter dated 13 May 2014 to the Tribunal office. The firm stated that it was supporting, but not representing the Respondent and were not on the record but the letter made representations which the Respondent had asked them to submit. Warren's stated that:

> "As previously stated and supported by medical evidence, [the Respondent] is seriously ill and unable to attend the hearing scheduled for today. He is presently suffering a deep vein thrombosis, a life-threatening condition, for which he is required to rest and not travel by any means. A request for an adjournment of this hearing was considered by the Tribunal and rejected. On behalf of [the Respondent], that rejection is now to be the subject of an appeal and accordingly there should be an adjournment of today's hearing for the substantive reason of [the Respondent's] inability to attend the hearing on health grounds and on the basis of a stated appeal against the refusal to adjourn."

There was a repetition of the reference to the Respondent's inability to retain solicitors to represent him for financial reasons.

15. Mr Cunningham submitted that the letter from Warren's did not address the Respondent's express intention not to attend stated to Dr Lingam before the DVT problem arose and in spite of the second e-mail received by the Tribunal the previous day at 11.17 reporting that the Respondent had been to see his GP, no further medical evidence had been forthcoming and that if it had been appropriate to proceed on the first day of the hearing it was more appropriate to proceed now considering how far the matter had progressed.

16. The Tribunal considered the contents of Warren's letter; the Respondent's reliance on DVT as a medical condition was still not supported by medical evidence that would satisfy the requirements of its Policy/Practice Note on adjournments at paragraph 4(c) and no new circumstances had been disclosed. The Tribunal also had continued regard to the Respondent's stated intention made to Dr Lingam not to attend. The Tribunal did not consider that it would be in the interests of justice to halt the trial at this advanced stage and refused the renewed adjournment application.

Evidential Matters

17. For the Applicant, Mr Cunningham submitted that he relied on the absence of any evidence from the Respondent and that the only evidence in play was the Rule 5 Statement, the Forensic Investigation ("FI") Report and the documents referred to in those two documents. The Answer to the Rule 5 Statement filed in August 2013, drafted by Mr Myerson QC bore no statement of truth and did not constitute the evidence of the Respondent; it was not advanced as such and Mr Cunningham could not cross-examine the Respondent upon it but it was in the hearing bundle before the Tribunal. The Tribunal expressed the view that the Answer contained a lot of helpful information and could form the basis for any questions it wished to put to witnesses. It would give such weight to the Answer as it thought the Answer deserved which was the usual way that the Tribunal treated documentation before it if it was not proved in any way. Mr Cunningham stated that his submissions did not take account of the Answer but he would remind himself of it. The Answer was documentary material and he was not seeking to make it inadmissible or to have it excluded.

Factual Background

18. The Respondent was born in 1961 and admitted in 1999. At all material times, the Respondent practised as a director of ATM Solicitors Limited ("ATM" or "the firm") in Preston Lancashire.

19. On 12 January 2010, an Investigation Officer ("IO") from the Applicant, Ms Valerie Smith, commenced an investigation of the firm by attending its offices which at that time were located in Sale, Cheshire. On 22 February 2010, the firm relocated to other premises in Sale.

20. Following the first visit, the investigation was undertaken by both Ms Smith and another IO from the Applicant, Mr Bob Copeland. An FI Report dated 28 July 2010 was prepared based on the investigation.

21. On 4 February 2010, Mrs G became a director of the firm. She resigned on 5 May 2010 but was to remain with the firm as senior solicitor until a leaving date had been agreed with the Respondent.

22. At the commencement of the investigation, the Respondent and Mrs G indicated that the work of the firm comprised civil litigation, largely focusing on financial mis-selling claims and a small volume of personal injury work.

23. In addition to the Respondent and Mrs G as at the date of conclusion of the investigation, there were seven admitted fee earners, plus additional unadmitted fee earners and administrative staff. It was understood from the Respondent that subsequently there were staffing changes within the firm with various roles and responsibilities being split and additional staff joining the firm, including personnel to undertake compliance functions. When Mrs G was asked for and provided an updated staff list in April 2010, the list was divided into management – 16, fee earners - 21 described as undertaking UCCA cases with "some more are involved with litigated files dependent on experience". There was also a Letter of Claim team – three; Client care team – nine; and Admin Assistants – three.

24. The allegations arose out of:

- The involvement of the Respondent's firm in acting on behalf of clients who sought to challenge the enforceability of various types of Consumer Credit Agreements ("CCAs");

- The manner in which the Respondent acted for such clients;

- The involvement of, and interest held by, the Respondent in other organisations involved in the litigation;

- The way in which the work and thereby the firm, was funded.

25. The claims were based on financial mis-selling under the Consumer Credit Act 1974 whereby breaches of the requirements of consumer credit legislation were alleged to render an agreement unenforceable. There might be other issues forming part of the claims such as mis-sold payment protection insurance ("PPI") as part of the loan or undisclosed commission by brokers. CCA related claims dealt with by solicitors included claims in respect of personal loan agreements, credit card agreements, store card agreements, mortgage agreements, bank charges and PPI cases.

26. The role of the solicitor was to seek to establish that the CCA was unenforceable for example by identifying inaccuracies in the agreement or breaches of the Consumer Credit Act by the credit provider. As a result, the client might be entitled to cease making payments to the credit provider or, in the case of PPI claims the payments made by the client would be recovered, plus interest.

<u>Unenforceable Consumer Credit Act Claims ("UCCA Claims")</u>

27. The claim process described in the FI Report included that on receiving instructions to challenge the enforceability of a CCA:

- The instructed solicitor would pursue the credit provider for disclosure of all relevant executed agreements and associated documents and information under sections 77 to 79 of the Consumer Credit Act 1974;

- An assessment would be undertaken of the CCA and debt outstanding with regard to its enforceability, the conclusions of such assessment being contained in an Audit Report;

- The solicitor would advise the client as to the enforceability of the CCA;

- The solicitor would then contact the credit provider and attempt to persuade them that the loan should be cancelled;

- If the claim of unenforceability was rejected by the credit provider, the solicitor would consider taking legal proceedings to obtain a declaration from the Court, and such litigation would ordinarily be funded by an After The Event ("ATE") insurance policy;

- Based on the Audit Report, the solicitor would advise the client whether to adopt a proactive or reactive approach, that is whether to continue or to cease making payments under the CCA which would then determine whether the credit provider would be forced to apply to the Court for an enforcement order or whether the client instigated proceedings seeking a declaration under section 142 of the Consumer Credit Act 1974 to rule the CCA unenforceable.

The firm's involvement in UCCA claims

28. The firm was established in July 2009. At the time, the Applicant had concerns generally about how this type of work had originated and had issued Guidance on the area of law in April 2009 before the firm came into existence. The Guidance stated:

> "The risks posed
>
> 1. [The Applicant] is concerned by reports that members of the public are
>
> - being misled about their chances of writing off loans, credit balances etc; and
> - being tricked into making payments for services which are never provided.
>
> You need to be alert to the risks that some introducers may not be acting in the best interests of clients. You should, therefore, be particularly vigilant. You must act with integrity and in the best interests of each client, and comply with the Solicitors Code of Conduct."

At the final meeting with the IOs on 17 June 2010, the Respondent confirmed that he had been aware of the Guidance.

29. The firm's standard basis of charging for its services in UCCA matters was to charge on a time costing basis in accordance with entering into Conditional Fee Agreements ("CFAs").

30. The firm was noted to be using loan agreement checking services provided by a number of companies; in some instances, the checking service appeared to have been provided by the introducer and in other cases the firm would arrange for a CCA to be audited. The loan agreement checking company used by the firm was CM Audits Ltd ("CM"). The Respondent explained in a meeting in January 2010 that CM was his company, set up a number of years previously and formerly known by another name. He said that it serviced claims for the firm, as well as other firms of solicitors and claims management companies. A company search undertaken against CM on 3 June 2010 showed the Respondent as a director and a shareholder of the company. The Respondent's wife was the company secretary and had held shares but had disposed of them.

31. Where audits were carried out by CM a fee of £460 was due and it was not disputed that the Respondent did not declare his interest to clients in CM as a director of the company.

Referrals from Introducers

32. The IOs reported that while some cases had been received by the firm from client recommendation and through publicity on its website, the majority of UCCA cases dealt with by the firm were received from introducers, to whom the firm was agreeing to pay a referral fee under the terms of a referral agreement with the introducer. The FI Report referred to eight introducers. The IOs considered that the main referrer of such work to the firm had been an introducer K Ltd ("K").

33. Mrs G provided copies of the referral agreements with introducers. She explained that the firm was not paying fixed referral fees, instead it would make a payment to the introducer of a percentage of any success fees it received as a result of the proceedings, which would vary according to the agreement with the introducer concerned. Success fees with five of the introducers were 20%, with one 15% and with two were nil.

34. It was recorded in the FI Report that the information supplied to the IOs by Mrs G on 14 April 2010 including details of current cases handled by the firm, indicated that there were 5,880 cases "assigned to fee earners". The information also indicated that the firm had ceased accepting new referrals from three of the eight introducers including K. The Respondent explained that as a result, the firm was mainly using an entity CMS also known as KN or a panel of sub-agents.

35. K referred approximately 2,600 cases to the firm. During the initial attendance at the firm between 12 and 14 January 2010, it was noted that the offices of the firm were in the same building as K. It was understood that remained the case until the firm moved its offices.

36. The referral agreement between the firm and K was entered into in August 2009.

37. Ms Smith met with Ms JO and a colleague, who explained that they carried out accounting and cashier functions for the R group. They explained that R comprised a number of companies including R UK and K, some of which were based at the same premises as the firm. They said that in addition to R, they dealt with the accounting systems of the firm and maintained the books of account for the firm and for R within one accounts office.

38. A company search against K undertaken on 26 March 2010 showed K as being at the same premises as the firm at the outset of the investigation. K remained in those offices from the outset of the firm's existence until the firm moved to its subsequent office. As at 21 June 2010, K had a new address in Salford.

39. On files inspected by the IOs, they noted references to a Mr KRD of K who resigned as a director of K in December 2009. As at 6 January 2010, the firm's website showed KRD as a contact with an e-mail address at the firm.

40. During a meeting with the Respondent on 14 January 2010, Mr Copeland asked him whether KRD had any connection with the firm. The Respondent replied:

> "he acts as a consultant to the firm. Has interests in [R] and other businesses, day-to-day management none… [Mrs G] who manages the firm".

The Respondent explained that KRD had helped to develop the firm's claims management software. When the IOs queried the proximity of K and the firm, the Respondent commented "we share the office… we've been cramped for space". He explained that the firm was intending to move premises in three or four weeks' time. He also stated "it doesn't look great that we're in a building with a referrer".

41. KRD signed the referral agreement on behalf of K. It was not dated but the Respondent and Mrs G said that it would have been signed in about August 2009. The structure of the referral agreements with the original introducers to the firm was in broadly similar form for each referrer.

42. During the closing meeting on 17 June 2010, the IOs further discussed with the Respondent and Mrs G the relationship between K and the firm. The Respondent explained that the firm's former premises had been sublet to it by K and that K had recommended the claims management system software.

<u>Introducers' upfront fees</u>

43. In a meeting on 17 June 2010, the IOs drew the attention of the Respondent and Mrs G to the Applicant's Guidance which stated:

> "If an arrangement involves the claimant client incurring fees before the solicitor is instructed, these may be irrecoverable. For this reason the [the Applicant's] view is that such arrangements will not usually be in the best interests of the client and should be avoided."

Ms Smith asked in that meeting if the firm had taken action to clarify the actual amount of upfront fees charged clients by introducers. The Respondent stated: "no, as

I've said before we were just aware that most of them were…" With regard to the guidance the Respondent said:

> "The way I interpreted the guidelines were that they were not telling you not to act for clients who were charged but it may not be in the clients' best interests if they had other means of pursuing this sort of claim..."

During the closing meeting, the IOs referred the Respondent to fees charged by K. He said:

> "I was aware that they charged clients an upfront fee"

although he did not know the amount the charges involved. Other comments of the Respondent are referred to in the Findings of fact and law below.

44. The K website described the claims process, including:

> "2. We send you documentation for you to complete and return to us with details of your creditors.
>
> 3. Once we have received that information it will be passed upstairs for a free initial review to identify potential breeches (sic) that would warrant a claim. If you don't have a copy of your credit agreement, we can make accurate assumptions based on the lender and the date you took out the agreement as to whether or not you will have a claim.
>
> 4 If we think you have a claim, we will then contact you with the good news. If you wish to pursue the claim we require that you then pay the cost for the audit report; we need this report to carry out a detailed analysis of your credit agreement. The report will cost you between £300-£500 (depending on the complexities of your claim) per claim. (If you have funds available on your card we would put the cost of the report on to the card so it would not cost you anything.
>
> 5 At this stage we will complete a full Audit report. If breaches are found we will pass the case to a Panel Solicitor, if no breaches are found then we will refund your money without question."

The website also referred to two categories of fees; Verification Fee, which was for PPI £345, Loan Overturn £495 and Credit Card Overturn £495 and Back end fee which was 25% of claim for PPI and nothing for the other two categories (where no money would be recovered).

45. The Respondent indicated in the 17 June 2010 meeting that no K cases had yet been concluded. In UCCA cases no monies would be recovered and the IOs noted that in successful PPI claims the firm might not make a deduction for K's charges from monies recovered. The Respondent indicated that having been made aware of such provisions he might write to clients to check whether charges were being made by K on recovered damages. In the meeting on 17 June 2010, Mrs G said she thought it

possible that the Ministry of Justice ("MOJ") had suspended K "for trying to get fees from clients".

Funding Arrangements

46. The IOs asked the Respondent in the meeting on 17 June 2010 to clarify the source of funding and his e-mail response dated 24 June 2010 included:

> "… You asked that I confirm exactly how many cases have been funded on each of the three funding arrangements involving ATM and how much per case had been drawn down. I can clarify as follows:
>
> [SR] Funding case (staged) = 238 cases @ a total drawdown value of £2,100 per (sic)
>
> [AX] Fund (staged) = 1714 cases @ a total drawdown value of £2,100 per case
>
> [TR] Fund (staged) = 1325 cases at a total drawdown value of £2,000 per case."

47. In respect of SR Funding, the Respondent explained that a wealthy individual had proposed to invest approximately £500,000 in a funding scheme which had not yet been launched (the AX Fund -see below). The SR Funding was not the subject of any allegations.

48. The total sum drawn down as at 24 June 2010 was £6,749,200.

SY/AX Fund

49. During the initial investigation in January 2010, Ms Smith had noted on the firm's accounts records various reference to an entity called SY S or SY (IOM), which was making regular credit into the firm's office account between August 2009 and 29 December 2009. Subsequently monies were received from an entity called SY in March 2010. It was noted that the firm had an office account ledger in the name of SY S Loan. It showed a total credit of £1,360,300 as at 31 March 2010. The Respondent explained that it was in respect of funding provided to the firm by SY.

50. During meetings with the IOs on 14 January 2010 and 16 April 2010, the Respondent explained that his background in financial services and undertaking financial mis-selling claims cases had brought him into contact with a corporate entity called SY which was created some time ago to facilitate lawyers and other professionals who wanted finance for projects, one such being in the financial mis-selling sector. The intention was that a funding arrangement was to be created for firms of solicitors undertaking such cases which would enable them to conduct cases on a no win no fee basis, by providing the firm with funds until the costs and disbursements were received from the losing party.

51. The Respondent explained that there were two branches of SY, being SY S Ltd ("SY UK") and SY (IOM) based in the Isle of Man. The Respondent was a director of SY UK. He said that it was "purely the broker".

52. Regarding SY IOM, the Respondent explained that the company was set up to "facilitate the process on behalf of some investors who would prefer to lend money to an offshore company than onshore" for tax reasons. He said that he had a beneficial interest in SY IOM, through being a shareholder in the company but not a director. A company search did not indicate the identity of the shareholders.

53. In the meeting on 14 January 2010, the Respondent said that SY IOM had been approached by firms wanting funding, and asked if it could help develop projects for litigation. He said that ultimately SY was led, through the Respondent's business partner Mr KY, director of SY UK to a Mr CW who the Respondent said was running an entity called NII Ltd ("NII"). He said NII stated that it could put a fund together in the Cayman Islands. The fund was to be formed to attract investments to generate legal funding, financed by commercial and individual investors worldwide.

54. The fund set up was called the AX Fund based in the Cayman Islands. The Respondent was named on its website as a member of the" [AX] Team"

55. During the January meeting, the Respondent said that "SY... exclusive rights to that fund into the UK" and brokered the arrangements for funding, whilst the AX Fund provided the finance. He explained that they were "all independent from each other". He indicated that one of the concerns of the directors was that they wanted control over those dealing with the cases. He said:

> "They were steering me to open a law firm where the controls would be implemented."

The Respondent stated that because of the issue of financial control, his firm had been created as a result of the funding arrangements, and was conducting cases through funding by the AX Fund. He said that the funding was an allocation of money made to the firm and not to individual clients and that: "...utilising about £2,000 per case therefore if… lend you £1,000,000 it's funding 500 cases" and that about 2,000 cases were funded under the AX Fund arrangement and that this was "partly to finance a range of fees, there is a work in progress element to the drawdown,"

56. The Respondent said that the loan facility totalled £4 million and that under the funding agreement terms and conditions, the loan was repayable within 18 months. There was a £2,000 or £2,100 lump sum at the outset, with some fees paid directly to the insurer or the audit company, leaving £950 for the firm which covered both court fees and work in progress.

57. An agreement was in place between SY IOM acting as loan manager and agent for the AX Fund scheme, SY UK as the investment manager and the relevant panel Solicitor. The agreement was called "The [SY] Litigation Funding Scheme Panel Solicitor Services Agreement" ("the SY agreement").

58. The Respondent explained when the case was settled, the funding loan would be repaid to the AX Fund, plus interest calculated by E. He confirmed that, in essence, the funds were held in the AX Fund in the Cayman Islands, transferred to SY IOM then distributed to law firms in the UK, with SY UK doing some administration but with E administering the funding through its tracking procedures.

59. The issue of receipts of money by the firm from the AX Fund was discussed in April 2010 and in the closing meeting on 17 June 2010. The Respondent explained that the amount available to lend as practice funding was driven by the amount of capital the fund collected in the previous month. He said:

> "each month they collect investment money and know how much they've got to lend out… so it may be £3,000,000 rather than 4… we divide by £2,100 so we know cases for payment e.g. 500 cases… we submit bordereaux of cases."

Ms Smith asked if all cases were funded by the AX Fund and the Respondent said that it was "simply down to the number of investments in the fund… we've taken on more cases than they had the investment for."

60. Schedule 2 to the SY agreement set out the "Scheme Drawdown Structure as follows:

"Stage 1 (On case acceptance)		Amount
Audit Report	[SY IOM]	£460
Insurance Arrangement Fee	[SY]	£50
Enquiry Agent	[SY]	£130
The Investment Manager	[SY]	£300
Courts Fees and Wip	Solicitors	£950
Administration	[AX Fund]	£210

Total £2,100.00

Maximum Borrowing = £2,100

PLEASE NOTE THE ABOVE SUMS MAY ALTER AT THE DISCRETION OF THE INVESTMENT MANAGER AND AGREEMENT OF PANEL SOLICITOR IF INSURANCE PREMIUMS FLUCTUATE"

61. During the June meeting, the IOs discussed with the Respondent the detail of monies drawn down as part of the funding arrangements shown in the schedule above and the Respondent said that all the costs were "legal costs" but that they might not be incurred if the firm settled the matter before it was issued at court. Also disbursements might not be expended. He said that if they had spent £2,000, assuming that they had won they would collect from the third party and repay the AX Fund. The payments for the enquiry agent and the investment manager were made to SY UK and for the Audit Report to SY IOM, the latter for onward transmission to the Respondent's company CM. The payment for insuring the loan was to protect the fund and its investors in the event the panel solicitor failed to repay the loan. In the meeting on 17 June 2010, the Respondent explained that the funding was "one lump sum

drawdown... you use it as you need it" and confirmed there were "no more [AX Fund] drawdowns… no funds repaid so far…"

62. During the initial investigation in January 2010, the Respondent said that to date only the firm had borrowed money under this funding arrangement but said that "The intention is not for ATM to be exclusive" and that additional firms were to be brought within the arrangements of the AX Fund. During the IO's return visit on 14 April 2010, the Respondent said that three more firms had joined the panel and on 17 June 2010 he stated that "the intention is to grow that". On both occasions he declined to provide the names of firms and on the latter occasion stated that he would check whether the information could be disclosed.

Lien over clients' files

63. During the investigation in April 2010, Mr Copeland asks the Respondent whether there was any security for the AX Fund loans. The Respondent said that there was not, "it's a practice loan to each firm." He explained that all panel firms within the funding arrangement scheme would agree to place a lien on the file in favour of the funder. He said that if the firm did not make progress on cases or otherwise did not comply with the AX Fund requirements, the fund managers would appoint with the client's consent another firm of solicitors who could act to protect the Fund's financial position.

64. It was noted from the Scheme Drawdown Structure in Schedule 2 to the SY agreement that from each of the loans of £2,100 the firm would receive £950 for court fees and work in progress ("WIP"). The Respondent stated that of all of the fees paid, the firm would seek to recover the audit fee, enquiry agent fee, the court fees and the WIP. He said that the firm would not charge any disbursements to the client if the firm failed to recover them.

65. In the meeting on 16 April 2010, Mr Copeland asked the Respondent what would happen to the loan to the firm if all the investors wanted to withdraw their funds from the AX Fund. The Respondent said there would be no impact on the firm because the agreement was to retain the money for 24 months:

> "but if every investor put in a notice to withdraw in 30 days there would be a problem."

The Respondent said it was only occasionally that an investor would want to withdraw from the fund.

TR Ltd Litigation Fund

66. On 16 April 2010, the Respondent informed the IOs that the firm had been in dialogue with another potential funder", TR One Ltd Litigation Fund ("TR Fund") which had not been launched as at that date. He explained that TR was based in Gibraltar and that it was a new fund, and that he had been talking to its representatives about investing in the AX Fund but "they liked it so much they gone off and set up on their own." The Respondent said he had no connection with them. He explained that TR Fund:

> "want to use ATM as an outlet for their funding but want exclusive rights… don't want us to be dealing with the [AX] Fund. It has commercial advantages and standing back from it I don't want to be seen as having any conflicts in [AX]."

The Respondent explained that the TR Fund would not take on any cases previously funded. He also explained that the firm would in future receive funding from the TR Fund, but other panel solicitors signed up under the AX Fund scheme would remain in that funding arrangement.

67. Ms Smith asked the Respondent for a copy of an agreement with the TR Fund, and Mrs G supplied this under cover of an e-mail dated 30 April 2010. The documents for the TR Fund consisted of a Tripartite Agreement dated 25 March 2010 between the TR Fund, CSG Ltd and the firm together with a Private Placement Memorandum ("PPM") dated 25 March 2010. The IOs discussed issues arising from the Tripartite Agreement and the PPM with the Respondent in the meeting on 17 June 2010.

TR Fund Tripartite agreement

68. The Agreement set out the relationship between the TR Fund, the firm and the introducer of UCCA claims to the firm, CSG Ltd. The Respondent explained that CSG Ltd was the administrator for a claims management company called KN, with whom the firm had an introducer's agreement in place dated 1 August 2009, as set out above.

69. It was noted in the FI Report that paragraphs 1 – 8 inclusive to Schedule 1 of the Agreement entitled "Terms of Loan to ATM" were not completed to include details of the loan and repayment dates. The Respondent explained that it was because the fund had not been launched at the time the Agreement was drawn up. He said that he could provide the missing information and that the Agreement was an "exclusive five-year agreement" and that the TR Fund would be launching new funds, so full schedules would be completed and attached at that stage. This was the first such fund hence its name TR One.

70. Paragraph 1 of Schedule 2 of the Agreement stated that CSG Ltd would: "direct Claims Portfolios… to ATM to the extent [the TR Fund] shall have funding to deal with them". Paragraph 2 highlighted the exclusive nature of the arrangements. The Respondent said that the firm was continuing to work on matters that were the subject of AX funding and that references to exclusivity were "badly worded" as the exclusive nature of the arrangement was in relation to funding being made exclusively to the firm and no other solicitors.

71. The IOs interpreted paragraph 3 of Schedule 2 as meaning that CSG Ltd would supply the firm with an "Information Pack" consisting of an audit report CFA, loan protection insurance policy and an ATE policy. The IOs queried this with the Respondent during the meeting on 17 June 2010 and the Respondent clarified his position in an e-mail dated 24 June 2010.

72. Schedule 3 of the Agreement detailed the "Payment Obligations of [the TR Fund]. The amount of each loan was for £2,000 per claim, for which the repayment was

£2,660 per claim. The Respondent said that the Fund had paid the firm £300,000 to date and none had been repaid. Paragraph 2 of Schedule 3 set out the costs involved, disbursements, administrative costs and stage payments to the firm. The Respondent explained that the firm would advise CSG Ltd and the TR Fund that it had accepted a case and would authorise invoices for payment by the TR Fund to the third parties, except for court fees, payable by the firm.

73. The Respondent stated that the intention was for the firm to draw £5 million from the TR Fund but that would depend on how much the Fund received from investors.

Private Placement Memorandum

74. The PPM document was for the benefit of prospective investors to the TR Fund. It stated:

> "The investment objective and policy of the Fund is to achieve a secure, stable return through making of a discounted loan to ATM Solicitors ("the Loan") to enable ATM Solicitors to finance Claims in respect of the Consumer Credit Regulations in the UK…"

and

> "The Fund is seeking up to £5 million of aggregate subscriptions by investors ("Subscriptions") in the form of subscriptions for Notes, although the Fund at the sole discretion of the Directors may accept less than that amount."

and

> "The minimum investment by each investor is £100,000 or its equivalent."

With regard to investment return, the PPM stated that:

> "The Notes are intended to repay a sum equal to 15% of the total par value of each Note together with the full subscribed amount on the expiry (sic) 9 calendar months from issue and a further sum equal to 8% of the par value of each Note on the expiry of 15 calendar months from the date of issue of each Note..."

In a section entitled "INVESTMENT OBJECTIVES, STRATEGY AND POLICY" the document stated:

> "The Fund aims to provide investors with an annualised rate of return of 26.4%."

The FI Report recorded that the Respondent said that the 15 month expiry date was less than the AX Fund and as a result, he said he was "being aggressive in issuing proceedings in 35 days" after issuing letters before action in the proceedings. The Respondent disputed that this was his motivation.

75. A section in the PPM entitled "The Fund" stated that the Fund was seeking to finance 2,500 claims and that "the capacity is in place to process in excess of 5,000 claims per month."

76. The PPM document was discussed with the Respondent during the meeting on 17 June 2010. Mr Copeland queried with the Respondent the deadlines, that if the firm had not repaid the loan in nine months, the fund was still required to repay the investors plus 15%. The Respondent said that meeting the deadlines for repayment would be achievable "if we don't get bogged down with stays etc."

77. The section in the PPM relating to "The Process" said that the TR Fund arrangement continued to use the services of CM to supply audit reports.

78. As with the AX Fund arrangement, a lien was placed over the clients' files. The section headed "The Process" stated:

> "A Loan will be made directly to ATM against which a lien is taken, by the fund, of each claim…"

79. The PPM document confirmed the amount repayable by the firm as being "£2,660 for each £2,000 lent"

<u>After the event insurance policies</u>

80. During the investigation it was noted that the firm effected ATE policies in respect of its financial mis-selling claims work. The firm signed an agreement with U Insurance Co Ltd ("U") in 2009 although the Respondent was unable to say exactly when it would have been signed, other than when the firm started with the SR funding arrangement. A copy of the signed agreement entitled "[U] Panel Solicitors Appointment Agreement ATM SOLICITORS" was before the Tribunal.

81. At the outset of the investigation in January 2010, the firm was using U insurance for the ATE policies. In a meeting on 14 January 2010, Mr Copeland drew the attention of the Respondent to the fact that U was an Isle of Man-based company, governed by the Isle of Man regulatory regime. As it was therefore not regulated by the then Financial Services Authority ("FSA"), it was doing business in the UK when it was not authorised to do so. Mr Copeland said that in order to conduct business in the UK when not authorised in the UK, U should have an entity in the UK which was FSA authorised, either an intermediary or a third party broker. Mr Copeland advised the Respondent to consider discussing this issue with U. The Respondent said that U had been providing cover to UK individuals for a number of years, to which Mr Copeland confirmed that firms wishing to use such a company needed to operate through an FSA authorised entity and not deal direct with the Isle of Man insurer. The Respondent asked whether there were any issues with the firm using U and Mr Copeland said that if the insurer was not FSA authorised this could create a challenge to the validity of the policies. The IOs agreed to review the position on their return to the firm.

82. When the IOs returned to the firm in April 2010 to continue the investigation they noted that the firm had ceased using U as an insurer and instead was arranging policies through F Insurance Company Ltd ("F"). According to the information supplied to the IOs by Mrs G on 14 April 2010, the firm had issued proceedings on 167 cases by that date.

83. When the IOs asked the Respondent about the ATE insurance arrangements in the meeting on 14 April 2010, he explained that U had been unable to give authority to issue proceedings, so, as the firm had been unable to progress cases without adequate insurance in place, they had to look for another provider, and accordingly entered into an agreement with F. In the meeting on 17 June 2010, the Respondent said that the firm had no further contact with U and it was not pursuing the firm for any insurance premiums under its deferred premium payments arrangements.

84. On 17 December 2010, U wrote a formal letter of complaint to the Applicant about the firm arising:

> "out of ATM's handling of a large number of After The Event ("ATE") insurance policies issued by [U] pursuant to an [U] Panel Solicitors Appointment Agreement..."

The letter continued:

> "it appears that ATM created its own proposal form...and asked Clients to sign this. ATM then signed the [U] Proposal Form, which ATM did not ask the Clients to sign. In fact it appears that ATM did not even show the Clients the [U] Proposal Form at all...On this basis, [U] issued approximately 239 LEI Policies to Clients of ATM all with a commencement date of 1 October 2009...In respect of some Clients, ATM requested [U's] consent to issue proceedings. [U] gave that consent on the basis of ATM' representations about the prospects of success."

The complaint did not give rise to any allegations in this matter.

85. The firm signed an agreement with F on 1 February 2010. The company although based in Gibraltar was properly authorised as a European Economic Area country for insurance mediation activities, and therefore was required to provide equivalent protection to UK insurers.

86. The Respondent confirmed in the meeting on 17 June 2010 that all clients previously the subject of ATE insurance with U were now covered by policies with F. He said that he had no interest in the underwriting or profits of F and that he was not aware of any connection between F and the TR Fund. Apart from the premiums being higher than those for U, the FI Report recorded no issues in respect of this policy.

Accounting Systems and Procedures

87. When the IOs attended the firm in January 2010, it was noted that the firm's books were being maintained by the accounts staff who dealt with the accounting functions for the R Group as noted above. The FI Report recorded that there were no adequate bookkeeping systems in place. The firm was maintaining a case management system using particular software, which provided details of time costing, also disbursements, but this was not client specific and no cash book or independent client ledgers were being maintained. In addition the books were not being reconciled. The firm stated that it was preparing a trial balance and a balance sheet but this did not address monies regarding individual clients.

88. Ms Smith held a meeting with Mrs G on 13 January 2010 to discuss the accounts procedures. Ms Smith drew the attention of Mrs G to the provisions of the Solicitors Accounts Rules 1998 ("SARs") regarding bookkeeping procedures and referred to Rule 1(e) being the need to establish and maintain proper accounting systems. Ms Smith also referred to Rule 32(1) relating to the need for accounts records to be properly written up to show the solicitors' dealings with any office money relating to any client or trust matter. In addition she explained that under Rule 32(4) all dealings with office money relating to any client matter must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account. Mrs G stated:

> "We haven't got records up to date… case management system to have client and office set up."

With regard to having client specific ledger records, she said "I don't think we have", and said that it would be necessary to consult the case management system for details of individual clients.

89. When the IOs met with the Respondent and Mrs G on 14 January 2010, they referred to the meeting the previous day and for the need for an adequate accounts system to be set up. The Respondent said that the "focus... to look at accounts integration with ... software... Accountant been down on weekly basis – will make sure… tracking it properly". The IOs emphasised the importance of getting the accounts system running adequately to comply with the SARs. They pointed out that, whilst there was at that time no client money being received by the firm, there could be future monies received in respect of clients or from clients in respect of unpaid disbursements which the firm would need to deal with appropriately.

90. When the IOs attended the firm on 14 April 2010, Mrs G provided them with a list of information referred to earlier. Paragraph 8 of this note requested "details of the steps taken by your firm ... to address the issues arising in respect of the lack of appropriate accounting systems." The firm's response set out the action taken to address the shortcomings, including the appointment of a full-time book-keeper and implementation of an appropriate legal accounting software package, as well as posting transactions onto individual client ledgers. Ms Smith examined the systems and inspected the bank reconciliations which had been undertaken and was satisfied that the matters had been resolved.

Witnesses

91. **Ms Valerie Smith** gave evidence. She had been involved in the investigation into the Respondent's firm from the outset and prepared the FI Report, the truth of the contents of which she confirmed. In respect of the proximity of the firm to K, the witness stated that at the commencement of the investigation, the firm was in the same building as K which was in one office downstairs while the firm was upstairs but there was a clear intermingling on the ground floor. There were more of the firm's fee earners and staff members on the first floor than the ground floor. The witness gained the impression that the firm's staff were mixed with K's staff. Although Mrs G's office was in the open plan area there were filing cabinets behind her with K on the cover indicating that they were K's papers and the Respondent told the IOs that

the office which they were to use for the investigation was an office which KRD used when in the office. The office was in the firm's part of the building. The witness confirmed that the entire building was used by the firm and K; it just consisted of a ground and first floor and the Respondent said that it was an apartment building which had been specially converted. The Respondent described KRD as a consultant and there was a mingling of staff on the first floor which the IOs were told was the firm's.

92. As to the initials which comprised the name of the firm ATM, the witness stated that when at the firm she was interested in the significance of its name as she could see no connection between ATM and the name of the Respondent or anyone else. In the presence of Mr Copeland she asked the Respondent about the firm's name and had a note in her files to the effect that the Respondent said that the letters stood for Automated Teller Machine and that it was a cash generating business.

93. As to whether the witness had asked about the type of work done by the firm, how it originated and whether she could ascertain the firm's role in dealing with clients, the witness stated that it was difficult; each client file was dealt with in a different way. There was a large number of fee earners dealing with claims and it was not clear how the claims were dealt with and how they were passed between K's and the firm's staff. She had looked at 11 files in total. File notes suggested that it was not clear what was told to the clients and whether K or the firm was dealing with particular parts of the case. She and Mr Copeland were confused and they thought that the clients would be confused about who was dealing with a case.

94. As to the type of work carried on by the firm, the witness stated that this was not a High Street practice and there was no evidence of high-street style conveyancing or the type of work that she found on investigations into other firms. The FI Report gave details about the type of work found to be carried on by the firm, as set out in the background to this judgment. The Respondent was the sole Director. Mrs G became a director in February 2010 and resigned in May 2010; she clearly became concerned about various issues arising; whether this was partly about the investigation or otherwise, the witness did not know. During the closing meeting Mrs G stated that she was staying on to do client file management issues and help fee earners with claims. By the time Mrs G was asked for and provided an updated list of the firm's fee earners in April 2010, K had moved from the offices and was no longer in the same building as the firm. The witness had not met all the staff.

95. As to the audit process, information had been supplied by the Respondent in the first meeting about CM and his connection to it. The IOs were aware that the audit process was done differently according to whether it was carried out by the firm or the introducer. It was not clear who was dealing with it; it was a computer process. Information was put through a computer regarding the UCCA agreement; the IOs did not know what the process was. It was not clear what the client was told whether at the introduction stage or when the case was referred to the firm and it arranged for the audit to be carried out.

96. As to how the firm recorded complaints, the witness stated that there was a ring binder with notes of complaints. The firm had a form of complaint record and attached copy correspondence to it. In the main, the complaints related to confusion

between K and the firm about which entity with dealing with the case: about upfront fees where clients were not clear if it was an audit fee or enquiry agent's fees and the time taken to process claims and clients not being told about them. The difficulty came when cases became the subject of litigation and clients were not kept involved or informed about what was happening and there were also concerns when clients made contact about whether they got the firm or K and it was not clear which. The impression that the witness gained from the complaints that U made to the Applicant was that there was evidence of some confusion. The clients were made aware that there were two entities but the witness did not know how clear the firm made it about the connection between K and the firm.

97. As to whether an upfront fee was paid by the clients, the witness stated that looking at client complaints, there was an indication that K asked clients to pay a fee and she understood from the complaints that it was the audit assessment fee but without looking at the complaints it was hard to see what was paid and what it was for. The witness stated that there was no evidence regarding the Respondent being involved in the audit. There was certainly a lack of clarity for clients. The Respondent made it clear that he did not tell clients how much the audit fees were and that he was a director and shareholder in the audit company [CM].

98. Regarding the books of account, the notes which Mrs G had provided in April 2010 (the same notes which gave updated details of staff) indicated that initially there was a balance of unidentified client disbursements by way of court fees totalling around £12,000 [£12,495] not allocated to specific clients; the firm would need to inspect records to create individual client dealings and credit them to the office account side of the client ledgers. The witness stated that there was not necessarily any money coming in on current client files because they were not yet at the litigation stage. She had asked for books of account and the firm did not have any and it did not do bank reconciliations but there was no requirement for it to do so because it was not holding client money. However firms which she had looked at previously would carry out reconciliations on office as well as client account for good bookkeeping purposes. In re-examination, the witness stated that so little personal injury work was being done, where the firm would expect to receive client money that the firm had not yet received client money and she did not feel that they needed a client account in place in respect of that work. The IOs had visited the firm at a very early stage; things had not really got off the ground. The firm would address the client account requirement when needed. The witness agreed that the firm was holding vast sums of money from funders and stated that that was the IOs' concern: large sums were coming in and she asked where from and that was when the accounts staff said that they were part of the R Group and that there was a link to SY.

99. **Mr Robert Copeland** gave evidence. He stated that at the time of the investigation he was working in the Applicant's Forensic Investigation Department and he had retired in 2012. He was Ms Smith's manager and when she started the investigation she soon thought that she needed assistance and so from an early stage the witness had attended on each occasion that Ms Smith visited the firm. Ms Smith started on 12 January 2010 and the witness became involved on 13 January 2010. The witness confirmed that Ms Smith produced the FI Report and as her manager he reviewed it before it was produced in final form. The witness confirmed the truth of the FI Report.

100. The witness stated that he and Ms Smith were not clear about all the relationships involving the firm even when they concluded the investigation. The most obvious relationship was between K and the firm and the Tribunal had heard evidence about the office building and sharing of premises and bookkeeping facilities provided by R Group which the witness described as a parent company of K. He stated that it was clear from the start that there was a very close relationship between K and the firm and the latter was heavily dependent on referrals from K which had a network of other referrers and passed on work from them to the firm. KRD was a director of K and closely associated with the firm; there was a reference to him on the firm's website with an e-mail address at the firm. There was a very close intermingling of files and K and the firm's documentation on files. It was not quite clear when a document appeared on a file where it originated from and clients would contact K or the firm and it was not always clear who was dealing with their case.

101. The witness stated that the Respondent used the term "consultant" in respect of KRD and said he was helping the firm to set up the claims procedure. The Respondent did not go further about what the consultancy role was. In respect of the Respondent using the same office as KRD, the witness stated that the Respondent was not often at the firm. Mrs G was in day-to-day charge of the firm. The Respondent came in for meetings and then he would go off somewhere else. The Respondent was not present at the firm every day when the IOs were there. The witness had gained the impression that he was involved in a number of other businesses and spent most of his time on funding arrangement businesses. In respect of other financial relationships which the Respondent had, the witness stated that the closest relationship appeared to be with the AX Fund. The other relationship with the SR Fund appeared to be just a private investor which the Respondent was aware of. It was a one-off funding arrangement and it was not clear that there was any intention to pursue it further.

102. The witness believed that the AX Fund had subsequently gone into liquidation and it was never quite clear who was behind it by virtue of it being in the Cayman Islands. The Respondent referred to be AX Fund as "them" not him but he was referred to as being part of the AX Team on its website. He was also connected with SY IOM, and with SY UK which was mainly responsible for distributing funding. In the documentation it was shown that a lot of money for each client matter was paid out to companies that the Respondent had a connection with, SY IOM and SY UK, for their services. Only £900 of the £2,600 [sic - £2,000 in the agreement] went to the firm to use for the general litigation process for court fees etc. The fee for the ATE insurance was also paid out of the loan amount.

103. The witness stated that the TR Fund was a stand-alone entity set up in Gibraltar by other parties that the Respondent knew but not otherwise connected with him. The witness did not believe the Respondent had a direct interest in any of the TR Funds although there was a close relationship because its funds were to be used. The witness thought that it was fair to say that the TR Fund was at arm's length.

104. In respect of the ATE insurance, the witness found no connection between U and SY IOM save that they were both Isle of Man companies. When the firm stopped using U, it sent a letter of complaint to the Applicant.

105. In respect of the TR Fund agreement when there was a reference to CFAs, the witness stated that it was difficult to say from the client files who completed the CFA and at what stage. The documents indicated that CSG was involved in the initial stages. The Respondent was keen that the case came packaged to the firm. CSG instructed CM to do the audit and so when the case came to the fee earner the work has already been done and it was for the fee earner to process the case and had a narrow timeframe in which to do it. The witness stated that he was not aware of the firm offering advice to clients (about the CFA); it appeared that any advice was offered by CSG as part of the claims packaging service. The files contained mainly documents and notes of telephone conversations. As to whether there was a client care letter, the firm did have a client agreement but the witness did not recall seeing one on the files. The witness would need to discuss with Ms Smith whether they had one. [At the conclusion of his evidence the witness was permitted to consult the files and it was pointed out that there was a client agreement in the documents before the Tribunal. The particular agreement to which the Tribunal's attention was directed related to a case introduced by KN.]

106. The witness confirmed that he had seen the complaint letters and agreed with the evidence of Ms Smith and the evidence in the bundle regarding complaints and the references from U to complaints from clients that they did not understand what was going on and were not aware that they had signed up for an ATE policy.

107. In respect of public trust, the witness stated that a general concern about these types of cases had prompted the Applicant to issue Guidance because this was a wholly untested area of law. There was concern that clients were being misled that they could write off their debts. The impression the witness gained from speaking to the Respondent was that he thought the firm would be successful with the claims. The witness would have expected the firm to pay close attention to the regulatory obligations that would arise; to look closely at the referral arrangements because they were heavily reliant on referrals especially from one referrer K and also if they were doing UCCA claims the witness would have thought that they would have regard to the Guidance issued some months before they embarked on the work. The witness did not get the impression that close attention had been paid to the Guidance by either the Respondent or Mrs G. He agreed that they said they were aware of it. There was a reference in the Respondent's Answer to the guidance being a publicity exercise which might indicate the degree of scrutiny they gave to it. The guidance was not a publicity exercise but a clear warning that there could be difficulties regarding claims. The witness stated that the firm should pay attention to the difficulties and the possibility of claims being misstated especially because this was an untested area of law.

108. The witness confirmed that the involvement of the Respondent meant there were difficulties regarding conflict of interest. He stated this was particularly in respect of CM; the clients paid £460 for a report, although not initially. The witness was not alleging that there was anything wrong with the Audit Report; he had not given any consideration to whether it was good value, whether the clients would go elsewhere or if the report would stand up in court, especially as the clients were not aware of the Respondent's connection to CM. A lot of his concerns were about the numbers of claims: he would expect the Respondent's connection to be discussed with the client.

A lot of money was going to SY companies and that would raise issues of potential conflict if not of an actual conflict.

109. As to the level of control and influence by other entities on the way cases were conducted and whether the Respondent was a common denominator seeming to control everything, the witness said that money was central; there was a lien in favour of the AX Fund and the TR Fund with the funds claiming that they owned the cases and if the AX Fund was not satisfied with the firm's performance they could take the case to another firm which indicated a high degree of control for the AX Fund to which the Respondent was connected

110. In re-examination, the witness was referred to the SY Agreement in respect of the AX Fund dated 1 June 2010 between SY IOM, SY UK and the firm and the Scheme Drawdown Structure which was quoted in the background to this judgment. The witness stated that it clearly showed that the majority of the funds borrowed did not go to the firm but to the companies that the Respondent was connected to, SY and the AX Fund. The Audit Report was referred to as being paid for to SY IOM. There was no evidence where the funds went after the payment but the witness understood that the £460 referred to in respect of the audit report was paid for the CM report. As to the other four items listed (aside from WIP), the insurance arrangement fee, enquiry agent, the investment manager all went to SY and administration to AX Fund. The witness stated that the Respondent explained the fees were for work that SY and the AX Fund had done but it was not clear to the witness what services they had been providing. He agreed that the administration fee to the AX Fund at £210 equalled 10% of the loan but was not told what the AX fund had done for it.

Findings of Fact and Law

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

(The submissions recorded below include those made orally at the hearing and those in the documents. Paragraph numbers are included in quotations only where they aid comprehension.)

112. The Tribunal had regard, in arriving at its findings of fact and law, to the Answer to the Rule 5 Statement which had been prepared for the Respondent by Leading Counsel and filed in August 2012. The Tribunal did not attach the same weight to the Answer that it would have done to a witness statement had the Respondent filed such a statement and attended to be cross examined. However having regard to the seriousness of the allegations and their possible consequences for the Respondent if found proved and the fact that the Respondent was not present, the Tribunal elected to raise certain issues and asked Mr Cunningham to address them. Reference is also made in the submissions in respect of each allegation to the Answer because the Tribunal had regard to it, however the Tribunal wished to emphasise that it was not the role of the Tribunal to raise a defence on behalf of the Respondent if he had chosen not to do so himself. The Tribunal noted that in his Answer the Respondent qualified its contents by stating that it was impossible to file the fullest possible

response, dealing in full with each allegation as based on the Applicant's case. The Tribunal considered the evidence before it and based its conclusions on that evidence, the submissions for the Applicant and the Respondent's Answer.

113. The Tribunal considered that the Respondent had by referring to one of the two earlier sets of proceedings against him in the Tribunal waived his right that both earlier findings should not be disclosed until the Tribunal had arrived at its findings in this matter. As an expert Tribunal, the members were able to have regard only to the earlier proceedings cited by the Respondent in the way he referred to them until the appropriate stage of the hearing and the other earlier proceedings not at all until that stage.

General submissions for the Applicant in respect of the allegations

114. For the Applicant, Mr Cunningham submitted that the allegations fell into three groups. Allegations 1.1, 1.2, 1.4, 1.5 and 1.11 related to the way the firm's business was conducted. Allegations 1.6 and 1.10, lack of integrity and recklessness respectively were characterisations of the Respondent's conduct in respect of the first set of allegations. Allegations 1.7, 1.8 and 1.9 were the consequences of the misconduct which was the subject of the first group of allegations.

115. Mr Cunningham submitted that although the Applicant recognised that the practice of the Tribunal reflected in Rules 16(3) of the Solicitors (Disciplinary Proceedings) Regulations 2007 was for previous disciplinary matters only to come into play if the allegations were found to be substantiated, the position had been changed by the Respondent who relied on one of his two previous matters in his Answer to the Rule 5 Statement, where he said:

> "The Applicant has previously successfully brought disciplinary proceedings against the Respondent, arising from the demise of the Life Repair Group. On that occasion, the basis of the finding against the Respondent was that the Respondent's interest in the firm of solicitors was in conflict with his clients' interests, because the Respondent had an interest in the fund supporting the litigation. Accordingly, when setting up ATM the Respondent avoided that conflict by ensuring that [AX Fund] was a wholly separate entity in which the Respondent had no interest. In so doing, the Respondent exercised his honest and genuine judgement as regards his professional obligations, taking into account the decision of the SDT in the previous case – in which no dishonesty was alleged by the Applicant. It is unreasonable to criticise him for doing so, at the error alleged by the Applicant does not ground the charges of breach of professional standards. Connolly v The Law Society [2007] EWHC 1175 (Admin)."
>
> "The Applicant has previously successfully brought disciplinary proceedings against the Respondent arising from the needs of the Life Repair Group."

Given the Respondent's reference to, and reliance on, those earlier proceedings, the Applicant had thought it appropriate to include the Tribunal's findings dated 5 July 2007 in the hearing bundle. Mr Cunningham submitted that it could be seen from the Findings that three of the five allegations, 1, 3, and 5 were substantiated and that the

Respondent was ordered to pay a fine of £12,000 and costs of £12,000. Mr Cunningham submitted that these earlier findings had resonance with this case. The allegations included that the Respondent had:

> "1. Failed to act in the best interests of his clients contrary to Rule 1(c) of the Solicitors Practice Rules 1990;
>
> 3. Acted in breach of Rule 3 of the Solicitors Practice Rules 1990 and the Solicitors Introduction and Referral Code 1990;
>
> 5. Acted for clients in a situation where their interests conflicted with his own."

In its judgment the Tribunal stated:

> "The Tribunal was satisfied that allegations 1, 3 and 5 were substantiated. In relation to allegations 1 and 5, the Respondent was not sufficiently independent to act in the best interests of his clients. He gained financially from the fees paid to companies of which he was a director. Clients should have been given advice as to whether or not they were actually contractually bound to pay the fees. Had the Respondent not taken on these "fait accompli" cases clients would not have been left in difficulties when the funding had been withdrawn. Although the Respondent had given evidence which was accepted that the client had ultimately not had to pay anything, the letter the Respondent had sent to the clients had not been reassuring and they would have felt very concerned after the withdrawal of the insurers. The tribunal was satisfied that both allegations 1 and 5 were substantiated.
>
> ...
>
> No dishonesty had been alleged against the Respondent and none was found. Nevertheless, the Respondent's conduct had not been of the standard expected of solicitors. Clients had to be confident that their interests were paramount and were not in conflict with their solicitor's own interests. The Tribunal would impose a financial penalty on the Respondent at a level which showed the Tribunal's serious concern about this matter. The Tribunal would impose a maximum fine of £5,000 in respect of allegation 5, £4,000 in respect of allegation 1 and £3,000 in respect of allegation 3 together with payment of the Applicant's agreed costs."

Mr Cunningham submitted that the Respondent had not learnt his lesson and his position was aggravated because he had been the subject of previous proceedings with similar allegations. The passage from the Respondent's Answer might be read as an assertion by him that he had only faced one previous set of disciplinary proceedings but in fact further proceedings were brought and substantiated, related to unpaid Counsels' fees. The Tribunal's findings in that matter dated 25 February 2009 were also in the hearing bundle. The Respondent had been ordered to pay a fine of £1,000 and costs of £2,892.19. Mr Cunningham submitted that he would not refer to these second set of proceedings until later. The Respondent admitted those allegations and

they had probably arisen out of the circumstances which gave rise to the earlier set of proceedings.

116. Mr Cunningham submitted that there was one other contextual matter which the Tribunal should be aware of; the Respondent along with a number of other solicitors and firms was the subject of ongoing further investigation by the Applicant relating to the AX Fund and these investigations were likely to eventuate in a further Rule 5 Statement being served on the Respondent at some future date. This matter had been drawn to the attention of earlier divisions of the Tribunal. Mr Cunningham submitted that the subsistence of other investigations and the probability of a further Rule 5 Statement should not have any bearing on how this Tribunal approached the question of whether the allegations in the present proceedings were substantiated and the possibility of further proceedings should not affect or inhibit the way in which this Tribunal dealt with sanction if sanction arose. This case was freestanding and should be considered and disposed of on its own account. The Tribunal agreed with Mr Cunningham's submissions. It completely disregarded the possibility of further proceedings.

117**. The allegations against the Respondent Timothy Paul Schools as amended by the direction of the Tribunal were:**

118. **Allegation 1.1 - He has acted where there existed a conflict of interest contrary to Rule 3.01 of the Solicitors Code of Conduct 2007;**

118.1 For the Applicant, Mr Cunningham submitted that the Applicant's Guidance reflecting the Applicant's concerns about the type of work undertaken by the Respondent, was in the public domain and constituted a general amber light regarding conduct of this type of business in the context of the solicitor's profession. The FI Report recorded that Ms Smith referred the Respondent and Mrs G during the closing meeting on 17 June 2010 to the April 2009 Guidance. She asked them if they were aware of its contents. The Respondent was recorded as stating "I couldn't recite them but have taken them into account and also "we weren't trading until August 2009 so didn't carry out any review." It appeared from this that the Guidance was on the Respondent's radar screen but it was not very obvious how clearly.

118.2 Mr Cunningham cited the Code; Rule 3 imposed a duty:

> "(1). You must not act where there is a conflict of interests (except in limited circumstances dealt with in 3.02)
> (2) There is a conflict of interests if:
>
> (a) ...
> (b) Your duty to act in the best interests of any client in relation to a matter conflicts, or there is a significant risk that it may conflict, with your own interests in relation to that or a related matter."

118.3 With particular regard to the role of CM, Mr Cunningham submitted that the Respondent and the firm were referring the loan agreements and other documentation obtained from the credit provider to CM for it to carry out an assessment as to the agreement's enforceability at the conclusion of which CM prepared an Audit Report.

A company search showed that the Respondent was sole director of CM and the shares were held in his name and that of his wife. It was alleged that there was clear conflict of interest. The Respondent should have disclosed that he was involved in one stage of the process even though he said that the money he drew down was a loan to the practice which the Applicant regarded as window dressing but even if the Respondent thought it was such a loan he should have disclosed it to the client. (See also allegation 1.2.) Mr Cunningham submitted that the Respondent's interest in CM was clear from the company search and the potential conflict of interest was what was driving him in that he made £460 per case from CM and that the streamlined approach to claims was in his own interest rather than those of the client. As to the risk (as opposed to the fact of conflict) referred to in the Respondent's Answer, Mr Cunningham submitted that this was a matter for speculation. The audit program referred to in the Answer operated by CM might be a good programme but the Applicant's complaint was about the Respondent's nondisclosure of his interest in the company operating the programme. Mr Cunningham submitted that there was a conflict between the client's interest in the outcome of the case and the Respondent receiving £460 per audit. The Tribunal raised the point that in the Answer it was asserted that the Audit Report did not cost the client £460 and there was no evidence that it did and that the report was paid for by the firm and was not charged to the client, but recovered from the Defendant in the litigation or written off. The payment was made to a company of which the Respondent was not a director and then paid to CM. Mr Cunningham submitted that the problem was not the amount of money involved although he submitted that there was no evidence to the contrary but that the Respondent did not disclose that he had a £460 interest in each claim that CM processed.

118.4 In respect of referrals from introducers, the scale of the work was described in the FI Report when it was indicated that 5,880 cases had been assigned to fee earners. As the fees of the firm were based on time spent with a CFA rather than paying fixed referral fees, payments to the introducers would represent a percentage of any success fee it received. This of itself might encourage the firm to pursue claims to litigation when not necessarily in the best interests of the client. As at 14 April 2010, it was indicated to the IOs that referrals were by that stage being received primarily from CSG/KN but there were issues of concern discovered about the relationship between the Respondent and the firm, and K. Mr Cunningham referred the Tribunal to the facts set out in the Rule 5 Statement:

- K referred approximately 2,600 cases to the firm;
- K and the firm initially shared the same premises;
- Staff responsible for the accounting function in R of which K was a subsidiary also conducted the accounting function of the firm and purported to maintain the firm's books of account, all within one office
- On files that were inspected by the IOs, the name KRD of K was observed. KRD resigned as a director of K in December 2009 but as at 6 January 2010, the firm's website showed him as a contact denoting an interest in or connection with the firm which the Respondent subsequently stated was as a consultant.

- The Referral Agreement between K and the firm was signed by KRD.

It was alleged that, as a result of the close relationship between the Respondent's firm and K, the Respondent had allowed the situation to develop where there was a conflict of interest or a significant risk of a conflict of interests, namely between the reliance of the firm on K as an introducer and their obligation to act in the best interests of each client referred to the firm by K in the clients having their claim pursued.

118.5 In respect of introducers' upfront fees, it was submitted that the concerns regarding the relationship between the firm and introducers, and K in particular continued with the discovery by the IOs of the Respondent's attitude towards and lack of detailed knowledge of, upfront fees being paid by clients to introducers despite clear guidance being given by the Applicant. During the investigation, the IOs asked whether the introducers of work to the firm charged the clients an upfront fee, prior to the case being referred to the firm. At his interview in April 2010, the Respondent said "some do/most do for whatever services they provide to the clients. All different services for fees…" and "I don't get particularly involved between referrer and the client what arrangements they have." The Respondent was unable to provide any details. His comments indicated an abrogation on his part to ensure that the best interests of his clients were protected. Despite these issues being raised in April 2010, when Ms Smith met the Respondent again on 17 June 2010, it was apparent that he had taken no action to investigate this particular issue which indicated that he was content for the firm to receive referrals from introducers but paid little or no regard to whether the arrangement reached with the client was in that client's best interests. As to the Respondent asserting that there was no need to tell the client in respect of the fees having been paid upfront, Mr Cunningham suggested the Tribunal put itself in the shoes of the client and consider what the client's reaction would be if told that £460 was being taken by the Respondent's undisclosed company. As to the Answer stating that there was no evidence that the Audit Report cost £460 to the client, Mr Cunningham stated that there was no evidence to the contrary but whatever the position, the Respondent had an interest in each claim that CM processed and according to the Respondent's e-mail to the Applicant of 24 March 2010 this involved 4,500 cases and a substantial amount of money. This was all upfront and gain for the solicitor and one had to wait and see if the actual litigation warranted these fees.

118.6 In respect of funding arrangements, the Tribunal was referred to the e-mail from the Respondent dated 24 June 2010 which outlined the source and the scale of funding illustrating the total sum drawn down as at 24 June 2010 of £6,749,200. Mr Cunningham provided to the Tribunal the total sum derived from the numbers of cases for each funder and the loan per case, as follows; SR funding £499,800, AX Fund £3,599,400 and TR Fund £2,650,000. Mr Cunningham explained that the information about SR funding was by way of narrative only. An office account ledger in the name of SY UK Loan showed that as at 31 March 2010 there was a total credit of £1,360,000 standing to this account. Mr Cunningham referred to the relationships involving the Respondent, leading to the setting up of the AX Fund in the Cayman Islands. It was disputed that the firm, SY and NII/AX Fund were independent from each other. Whilst they might be separate companies, the Respondent was a director and shareholder of the firm, a director and shareholder of SY UK and SY IOM respectively, and was described on the AX fund website as a member of the AX Team. The SY Agreement outlined the way in which the litigation was to be funded.

In the meeting on 17 June 2010, Ms Smith asked whether the Respondent accepted that as the agreement was between the parties: SY IOM of which he was a shareholder, SY UK of which he was a director, and his firm, he was therefore connected to all three parties to the agreement. The Respondent replied "yes... beneficial owner… certainly got an equal interest in it."

118.7 The Respondent said that R had attracted him into the AX Fund and that the R Group dealt with personal injury claims for banks and insurers. At the 16 April meeting he said that RB (former director of K) had been involved in the commercial arrangements between AX and another entity E (see below) but was not involved in the funding. The attention of the Tribunal was also drawn to the role of the entity E. It was set out in the FI Report that E was stated to be part of the R Group and was responsible for tracking the movement of the fund money and reporting to the fund.

118.8 Looking at the payments made out of the sum of £2,100 drawn down from the AX Fund at the inception of each claim, it was noted in the FI Report that the Respondent had an interest in all of them. Indeed in respect of the Audit Report, costing the client £460 which might not be recoverable, the payment was made to SY IOM of which the Respondent was a shareholder and which in turn would be paid to CM of which the Respondent was a director and shareholder. As the £460 fee for the Audit Report was a disbursement, it was possible that clients might have to bear the cost of this payment to CM if it could not be recovered during the legal proceedings. Therefore there was a potential for conflict of interest to arise between the client's interests and those of the Respondent as a director in CM. There was also a conflict for the Respondent as a director of SY UK to which payments were being made and in respect of SY IOM. The Respondent did not disclose his interest in SY UK as a director of the company, nor in SY IOM in which he had a beneficial interest. When asked whether he declared his interest in the SY funding arrangements to clients, he replied:

> "no, I haven't felt I need to because it's been a practice loan rather than a loan to the client."

118.9 A lien was exercised over clients' files which also gave rise to a conflict of interest. In the SY agreement at paragraph 9.3 it was stated:

> "The Panel Solicitor agrees that their lien over each and every Client's file is assigned to the Loan Manager and this includes circumstances where the file is transferred to another firm of Solicitors or the Firm goes into administration. The Panel Solicitor Terms of Business must include an agreement by the Client for this lien to be granted in favour of the Loan Manager."

Mr Cunningham submitted that this led to the extraordinary position where the owner was not the client but the funder AX. Its website stated:

> "The terms of agreement with each law firm are such that a lien is placed on each case financed through the scheme in favour of the funder. In other words, the fund owns the legal action…"

The IOs discussed with the Respondent the issue of the lien over the clients' files during meetings on 14 April 2010 and 17 June 2010; when asked by Mr Copeland whether the AX Fund owned the cases, the Respondent said:

> "No, they're protecting their position on the cases… We've taken opinion on the lien… I don't think it's enforceable."

The Respondent commented that the directors had taken the view that the lien could not be relied upon. On files inspected by the IOs, it was noted that the firm's Terms of Business stated:

> "Please note that ATM will obtain and use funding from a third party Funder in order to run your case and meet disbursements incurred on your behalf i.e. court. In order to obtain and use this funding it is a requirement a formal lien is granted on your file of papers in favour of the Funder. By signing and returning these Terms of Business, you agree to grant the Funder, in favour of the Funder, a proper and enforceable lien on your file of papers."

The firm amended the Terms of Business subsequently but the amended version continued to refer to a "lien". Mr Cunningham submitted that the Terms of Business appeared to contradict what the Respondent had told the IOs in interview that the lien was unenforceable.

118.10 It was set out in the FI Report that the Respondent said that if every investor in the AX Fund put in notice to withdraw in 30 days there would be a problem. It was submitted that it was apparent that over and above his role as a director of the firm, the Respondent had failed to inform the firm's clients of his significant involvement in the organisations playing an important part in the process. It was alleged that such involvement represented a clear and obvious risk of a conflict-of-interest.

118.11 Mr Cunningham submitted that the driver for all of the relationships was the making of money; the Respondent was not conducting a conventional solicitor's practice. With regard to the investors, the Respondent had stated to the IOs:

> "I'm not close to the coalface on that. They're provided with some level of return from [AX] around 9, 10, 11%…"

118.12 In respect of the TR Fund and the PPM document, the Tribunal was referred to the description of the process in the document which included:

> "The claims will be audited by using specialised software, called [CM]... A Loan will be made directly to ATM against which a lien is taken, by the fund over each claim."

The fact that the audit was undertaken by the Respondent's company CM again gave rise to conflict of interest.

The Respondent's Answer

118.13 In respect of allegation 1.1 regarding CM, the Answer stated that the only evidence relied on was the Respondent's interest in CM about which he told the IOs and his statement that he did not tell his clients about that interest. It was asserted that it was the Applicant's duty to identify in respect of the allegation, the Respondents interest, the potential conflict and the significant risk and that the latter two factors were not addressed. The Respondent relied on Rule 3.01(2) of the Code as making clear that the Applicant's evidence was insufficient. The Answer continued that:

> "In fact, [CM] used a computer software programme to ascertain whether an agreement may be enforceable. That programme was written by a professional mathematician and was provided by a company called [CC] in which the Respondent had no interest. The legal parts of the programme were written by [DB] QC. All that information was readily available to the Investigators. [CM] was, therefore, an eminently sensible choice for any client. It is correct that the clients were not told that the Respondent had an interest in [CM]. There was no need to do so. [CM's] fee was paid upfront by the solicitors. If the client was successful it was recoverable from the Defendant (which was the point of recording it as a disbursement). If the client was unsuccessful, [CM's] fee was not repayable by the client in any event."

The Answer asserted that the highest the case was put was where the FI Report referred to the possibility that clients might have to pay for the audit and that the possibility had transmuted, without any evidence, into a conflict of interest in the Rule 5 Statement. However Rule 3 required a significant risk or a proven conflict. There was no evidence of a proven conflict.

118.14 In respect of referrals from introducers, the Answer asserted that it was clear from the Rule 5 Statement that the Applicant could not prove its case using the words "may encourage" the firm to pursue litigation in respect of the firm's fees being based on time spent with a conditional fee agreement. It was again asserted that there was no evidence for allegation 1.1 in this connection.

118.15 In respect of K, the Answer pointed out that the Applicant had been given information by the Respondent and Mrs G about the relationship between the firm and K rather than IOs having "discovered" it. The Answer asserted the points made as follows:

- The firm and K did not share the same premises. They had offices in the same block.

- K was not a subsidiary of R. The Applicant had searched and obtained company details of K but not of R (surprisingly). The search made it clear that all shares in K were allocated and that R did not own them. Mr WB owned 50% of the shares in K and he owned R.

- R was a fraud investigator, working for insurance companies. It ran the BoS financial tracking service. That programme was one the firm was keen to use pursuing cases for clients and the other shareholder in K, KRD became briefly, a consultant to the firm. Because of the potential conflict, he resigned as a

director of K. He signed the referral agreement on behalf of K when he was a director.

- R, with whom the Respondent had no relationship other than as a software supplier, also provided an accounting function for about the first five months of the firm's existence. R were conveniently placed and very little was required at that stage. Because the firm was new and cases were taken on the basis of the CFA no client monies were then being held. The accounts were part of the rental payment and consisted of a nominal ledger account. A bookkeeper was appointed in January 2010.

- The relationship between K and the firm was at arm's length. KRD resigned from K and the firm carried on doing business with K for a further three months.

118.16 Mr Cunningham conceded in response to it being raised by the Tribunal that the word "discovered" in the FI Report might not be a good word but suggested that the Respondent's submissions were semantics and not of substance. Mr Cunningham accepted that K was not a subsidiary of R. Both of them were owned by Mr RB; he and KRD owned 50 shares each in K; the entities were siblings not parent and child. Both used the same premises and KRD was on the contact page of the firm's website. The Applicant could not say that he was a director or shareholder of the firm but was on its e-mail list while the Respondent was not; direct e-mail contact could not be made with the Respondent.

118.17 In respect of introducers' upfront fees, the Answer stated that there was no conflict of interest; the Applicant's case was that the Respondent did not know the position.

118.18 In respect of the funding arrangements, the Answer stated that the AX Fund was set up as an investment for wealthy individuals. SY IOM in which the Respondent had shares was the loan manager for AX loans. SY UK of which the Respondent was a director would recommend investments to AX and SY IOM would then release the money. AX had no discretion to refuse a recommendation. Not all the firm's cases were funded by AX. As a director of SY UK, the Respondent screened cases for AX. It was far from unusual for a solicitor raising funding to allow clients to enter into a CFA to have to provide the funder with an opinion as to the prospects of success - this related to the part of the Rule 5 Statement which referred to the Respondent being named as a member of the AX team. As to the Applicant disputing that the firm, SY and NII/AX Fund were independent from each other, the Answer stated that the companies were separate. The Respondent had no interest in AX and the reference on the website made it clear that the Respondent's part in the AX Team was as a director of the corporate investment manager with which AX dealt. Accordingly there was no evidence of any conflict of interest and nor was there such a conflict. The Respondent was not a director of the loan manager and had no interest in the fund.

118.19 The Answer asserted that the Respondent's involvement in other organisations was irrelevant to the client as those organisations were paid, if at all, by the Defendant. The Applicant's use of the phrase "the process" was undefined. In reality CM provided part of the evidence in the case and SY dealt only with the funds which were owed by the firm, not the client. There was no conflict of interest as the client's

interests and the firm's interests coincided at the point at which both SY and CM were involved.

118.20 The Answer also asserted that every CFA had an inbuilt conflict between the interests of the legal representatives and the interest of the client; the representatives were paid only if they succeeded; the client might well want a larger settlement than was offered. The fact that the funders might have the same interest in recovering damages, and thus their investment, did not alter that conflict.

118.21 The fact that the funder might have a lien on the client's papers which the Respondent believed to be unenforceable did not preclude the client's ownership of the legal action. Nor did it preclude the solicitor exercising a lien against the client. Equally, the client's agreement to grant an enforceable lien did not operate to make a lien enforceable if it was not. Nor was there proof of any allegation that the firm entered into inconsistent agreements, agreeing that its lien could be assigned, and then failing to assign, whilst simultaneously asking clients to grant to funders a lien. It was proof of the fact that AX wished to protect their position but accepted that they could not. Accordingly there was no conflict of interest.

118.22 The Answer concluded with the submissions about the earlier Tribunal proceedings quoted above.

Tribunal's findings in respect of allegation 1.1

118.23 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. Regarding CM, the Tribunal found as a fact that the Respondent was not telling clients that he was using his own company potentially to make money by carrying out audits for them. It was not the usual business of a solicitor to undertake such audits. The Tribunal noted particularly the information on the K website stating that if clients had funds available on a credit card, K would put the cost of the report onto the card and asserted that it would not cost them anything. The Respondent claimed that clients would not have to pay anything. The Tribunal found that however the use of the credit card actually operated and whether or not a payment was made, the Respondent admitted in the Answer "It is correct that the clients were not told that the Respondent had an interest in CM." and his interest in CM created a conflict between the clients' interest in prosecuting the action and his interest in profiting from his ownership of CM.

118.24 In respect of referrals from introducers, six of the eight introducers with whom the Respondent was at various times involved had agreements which involved payment of a percentage of success fees ranging from 15% in one agreement to 20% in all the others. The Tribunal found that the nature of the CFA with the payment to the introducer representing a percentage of any success fee the firm received, by its existence created a conflict. In his Answer, the Respondent said that the Applicant had confused a reply to a particular question from the IOs with a general statement about the clients' interests and that permitting a commercial organisation 35 days to respond to a claim against it by an individual was a more than reasonable time and the Respondent's stance was entirely in keeping with the Civil Procedure Rules. The Tribunal could not be sure on the evidence whether the percentage arrangements in

fact encouraged the Respondent and the firm to litigation because at the same time at least in respect of the TR Fund arrangement the Respondent referred to the possibility of stays in terms of potentially slowing the process of litigation. In any event the Tribunal was satisfied that the Respondent had put himself in a position of potential conflict in respect of referrals.

118.25 In respect of the Respondent and the firm's relationship with K, the Tribunal found that there was inappropriate proximity between the two. The Tribunal particularly noted the evidence of the IOs about the sharing of space and the intermingling of staff; the fact that filing cabinets belonging to K were located behind Mrs G who worked for the firm; that KRD and the Respondent used the same office; that it was impossible to tell from files who was doing what on a case; the nature of the role played by KRD whom the Respondent described as a consultant to the firm and who had an e-mail address at the firm while having signed the referral agreement between K and the firm on behalf of K. There was also the fact that the R Group to which K was connected provided accounting functions for the firm. The Tribunal considered it irrelevant whether K and R were parent and child or sibling entities. The Tribunal found that there was an inappropriate proximity between K and the firm which created a conflict of interest.

118.26 In respect of introducers' upfront fees, the Tribunal found that the Respondent had displayed little interest in upfront fees charged by referrers. He needed the cases to go ahead in his own financial interests and so was not prepared to unpick the arrangements which clients had already entered into when they were referred to him. The Tribunal found allegation 1.1 proved to the required standard in respect of introducers' upfront fees.

118.27 In respect of funding arrangements, the Tribunal noted that no allegations arose out of the Respondent's relationship to the SR Fund. However the Tribunal had particularly noted that the Respondent was tied in, in some way to all the organisations involved in cases funded by the AX Fund. He was a shareholder of AX IOM, a director of SY UK and described as part of the AX Team. The Tribunal also found that the lien arrangements involved in cases funded by the AX Fund created a clear conflict between the interests of the client and the interests of the Respondent. The Tribunal did not accept his explanation that the loan from the AX Fund was a loan to the practice and therefore it did not create a conflict; whatever its nature it aligned the Respondent with the interests of the funders rather than those of his clients and there was a conflict.

118.28 In respect of the TR Fund and the PPM document the Tribunal particularly noted the return on investment which the Fund required and the timescales for generating it. The Fund aimed to provide investors with an annualised rate of return of 26.4%. The deadline for a return of 15% on the Notes was nine months from the issue of the Note rather than from the date of the issue of proceedings. The Tribunal was particularly concerned by the attitude displayed by the Respondent in respect of his commitments when in discussing the PPM with the IOs; the Respondent said that the deadlines for repayment would be achievable "if we don't get bogged down with stays etc" by which he showed that his loan obligations to the TR Fund were his overriding concern and that there was a conflict between his interests and those of the clients.

118.29 The Tribunal found all aspects of allegation 1.1 proved to the required standard.

119. **Allegation 1.2 - He [the Respondent] failed to provide information to clients which may have been material to their decision to instruct his firm, ATM Solicitors Limited;**

119.1 For the Applicant, Mr Cunningham relied upon the facts relating to CM, introducers' upfront fees, funding arrangements and TR. He clarified for the Tribunal that it was not necessary for this allegation to be rule based because it was based on broad policy that a solicitor must give clients fair and full information about how their claim would be handled, who would process it and profit from it. Mr Cunningham made the following submissions.

- It was not disputed that the Respondent did not declare to clients his interest in CM to which a fee of £460 would be paid for the Audit Report and which the Applicant asserted was potentially irrecoverable. It was submitted in the Rule 5 Statement in respect of introducers' upfront fees, that by reference to K and its website which the Respondent could just as easily have accessed, the IOs discovered there was clear reference to upfront fees being payable in respect of an Audit Report which was presumably to be undertaken by CM. There was then a reference quoted in the background to this judgment which suggested that the cost of the Audit Report could be added to the debt owed to the credit provider under the CCA which K also stated was unenforceable. By doing so, K stated that the cost of the Audit Report would not have to be repaid. However the client would still have to pay the liability on the credit card. It was contended that this was highly improper and not only should the Respondent have been aware of this but should have refused to accept further claims from K.

- The Applicant also referred to the Terms of Engagement into which clients would enter with K. These Terms set out the circumstances in which K was entitled to claim funds from the client but it appeared that, at no stage, did the Respondent familiarise himself with the Terms of Engagement letter let alone advise the client on what the terms were and whether such terms were in their best interests such as not only the upfront fee payable but also the "back end" fee payable out of any sums recovered. Indeed in the course of his interview, the Respondent accepted that stage payments were not in the best interests of the clients (see allegation 1.8 below). The Tribunal and the Applicant did not ban introducers' upfront fees but gave clear warnings. Mr Cunningham again drew the attention of the Tribunal to the SRA guidance which stated:

  > "If an arrangement involves the claimant client incurring fees before the solicitor is instructed, these may be irrecoverable. For this reason, the SRA's view is that such arrangements will not usually be in the best interests of the client and should be avoided.

  In a recent case, Beresford and Smith 9666 – 2007... the Solicitors Disciplinary Tribunal noted that the attitude of the firm was that clients had entered into an agreement with introducers:

> "... Before they instructed the firm and therefore [the firm] had not been concerned with it [the terms of the agreement]".

The Tribunal concluded that:

> "In the circumstances of the case, the Tribunal did not find this acceptable."

Mr Cunningham submitted that the Guidance to avoid such arrangements was a pretty firm amber light which was underpinned by the reference to the Tribunal case of Beresford. In respect of the Respondent's challenge in his Answer, to the Guidance and the relevance of the Beresford case, Mr Cunningham submitted that the Applicant accepted that the facts of all cases were different but regarded the Beresford case as having some wider significance. Even without Beresford, the Guidance set out that upfront fees should be avoided; the reference to Beresford made the amber light shine from two sources. The Respondent's attitude to upfront fees was shown in the FI Report. Mr Copeland referred the Respondent to K's Terms of Engagement in the meeting on 17 June 2010. The Terms related to various charges being payable by clients to K at different stages of the claims process and stated:

> "the fee of 25% plus VAT of the recovered debt payable to [K] for the services carried out and includes a minimum fee of £75 + VAT regardless of the amount recovered and £150 + VAT if proceedings are issued. If the cost of issuing proceedings are (sic) not recovered from the court this shall be charged to the client over and above these costs."

When asked by Ms Smith on 17 June 2010 if the firm had taken action to clarify the actual amount of upfront fees charged to clients by introducers, he said "no, as I've said before we were just aware that most of them were…" Mr Cunningham submitted that the Respondent recognised the phenomenon of upfront fees being present but said that he did not get particularly involved. Also the Respondent's interpretation of the Guidance differed from what it meant when he said:

> "The way I interpreted the guidelines were that they were not telling you not to act for clients who were charged but it may not be in the clients' best interests if they had other means of pursuing this sort of claim..."

The Respondent overlaid his own interpretation to suit his own ends. The Respondent acknowledged an awareness of the fee during the closing meeting when he was referred to fees charged by K. In respect of CM's fees, K's website quoted in the background to this judgment set out that the Audit Report would cost between £300 and £500 and detailed the verification fee and back end fee for each claim type. Mr Cunningham submitted that the website put flesh on what K was up to and that K was in the same office as the firm. The Respondent did not seem to be sufficiently au fait with what K as introducers were doing although they worked in the same office. However he also commented about whether the fees were in the client's best interests (see

allegation 1.8 below). Mr Cunningham submitted that all this was material information to clients and the firm failed to advise clients on the Terms of Engagement and whether they were in the clients' best interests.

- In respect of the funding arrangements, it was submitted that it was apparent that the Respondent had failed to inform the firm's clients of his significant involvement in the organisations playing an important role in the process where cases was funded by the AX Fund. Such involvement was information that should have been explained clearly to the clients at the outset of the retainer.

- In respect of the TR Fund, the Tripartite Agreement dated 25 March 2010 was reached during the currency of the Applicant's investigation which started on 12 January 2010 and was entered into while the IOs were concerned with the firm's conduct of the AX Fund. Mr Cunningham submitted that the problem was the nature of what the firm had to do and what it was presented with. It was clear from the service obligations of the introducer CSG that the Audit Report and the CFA were prepared and completed before the firm was instructed and that in the firm's service obligations set out in the Tripartite Agreement, there was no requirement for the firm to send to the client a client care letter setting out the firm's terms and conditions of the retainer, no requirement to advise the client on the terms of the CFA or on the enforceability or otherwise of the (CCA) documents in dispute. It was for the firm to advise the client on the CFA. TR did what the solicitor would be expected to do. The Respondent tried to provide an explanation in his e-mail dated 24 June 2010 to Ms Smith when he said:

  > "You also asked me to clarify the process for the firms (sic) CFAs being signed by prospective clients under the new [TR] Model. I can confirm, having checked this with our case opening team, that [CSG] collate the prospective clients information and subject to them identifying a provisional finding of Prescribed Term Breaches in accordance with our agreed acceptance criteria, ATM pre-populate the client care suite, to include the CFA, and e-mail this back to [CSG] who, acting as our agents, then arrange for the client to sign those documents, and then send the full completed signed pack back to ATM."

  Again the Respondent failed to provide at that time any documentary evidence to support what was said. Mr Cunningham submitted that the Applicant had been too generous in the FI Report in saying that the Respondent "clarified" the situation in his e-mail of 24 June 2010. In the use of words such as "pre-populate", it was very hard to understand what was designed to be achieved by the e-mail save opacity. Mr Cunningham thought the e-mail meant that the firm was saying that it was involved in the process but the terms of the Tripartite agreement did not bear this out and the e-mail did not assist the Respondent much if at all. Mr Cunningham also drew the attention of the Tribunal to what he described as the scale of the problem in the firm's dealings with TR; the firm intended to draw down £5 million, according to the Respondent in interview with the IOs and the Tripartite Document referred to

> TR seeking subscriptions of £5 million. It was not just that there was no requirement in the Tripartite Agreement but there was no opportunity for the firm to advise clients on the CFA. The firm was the last link in the process of mechanical harvesting of a large number of claims. In respect of allegation 1.2, apparently no material information was provided directly to the client.

119.2 In his Answer, the Respondent submitted that the Applicant did not identify the rule offended against and that there was no obligation to provide information that "may" be material, even if the Applicant was able to identify a test that any solicitor could apply retrospectively. The Answer stated that allegation 1.2 added nothing to allegation 1.1 but appeared to be aimed at Rule 3.02 of the Code which provided that all relevant issues must be drawn to the attention of the clients. In respect of the TR situation, the Answer stated that it was unclear whether the Applicant's case was that the CFA could not be entered into by an agent or whether such a CFA was binding; also that the Applicant's case seemed to be that there was a breach of professional conduct because the Respondent was not contractually obliged to provide a client care letter or to advise the client on the CFA. Rule 2.02 made it a professional obligation to provide the information referred to. The Answer stated that it was bizarre that the Applicant's complaint appeared to be that the Respondent permitted his professional obligations to be defined by his Code of Conduct rather than a contract.

Tribunal's findings in respect of allegation 1.2

119.3 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. In respect of CM the Tribunal had no doubt that the fact that a company owned by the Respondent provided the Audit Report was material information for the client (whether or not they ended up paying for the Audit Report), forming the basis of the decision whether or not the claim should proceed and that the clients should have had the information. The Respondent admitted he had not provided them with it.

119.4 In respect of introducers' upfront fees the Tribunal found that the Respondent should have advised the clients about the fees and K's Terms of Engagement with its fee structure, having regard to the Applicant's Guidance of April 2009 which stated:

> "If an arrangement involves the claimant client incurring fees before the solicitor is instructed, these may be irrecoverable. For this reason [the Applicant's] view is that such arrangements will not usually be in the best interests of the client and should be avoided."

The Tribunal noted that the Respondent asserted that he had not been involved in K's PPI work, fees in respect of which the Terms of Engagement also covered but he did not and could not disassociate himself from the CCA claims in respect of which upfront fees were charged.

119.5 Regarding funding arrangements, the Tribunal found that the Respondent failed to provide the clients with information and advice about his interests in several of the parties involved in the AX Funding arrangement as a director of SY UK and shareholder in SY IOM which the Tribunal considered to be material to their decision to instruct his firm. He also failed to give advice about the AX Fund's lien. The

Tribunal did not consider that the Respondent could justify his non-disclosure by distancing the different roles played by these entities from the provision of funding; they were all part of the funding process.

119.6 With particular regard to the TR Fund, the Tribunal noted that the Respondent's firm entered into the Tripartite Agreement during the currency of the Applicant's investigation and when the Respondent should have had a heightened awareness of his and the firm's responsibilities towards clients. The Respondent entered into heavy service obligations through the Tripartite Agreement. The firm received a pack with only 48 hours to confirm receipt and the firm offered the clients no advice about the pack and particularly no advice about the enforceability of the documents to which the clients had signed up. There was not even a client care letter although apparently the firm did enter into some kind of client agreement an example of which relating to the introducer KN was before the Tribunal. The Tribunal considered the Respondent's so-called clarification about the firm's role in his e-mail of 24 June 2010 to the Applicant particularly where it said:

> "[CSG] collate the prospective clients information and subject to them identifying a provisional finding of Prescribed Term Breaches in accordance with our agreed acceptance criteria, ATM pre-populate the client care suite, to include the CFA, and e-mail this back to [CSG] who, acting as our agents, then arrange for the client to sign those documents, and then send the full completed signed pack back to ATM."

The Tribunal found the e-mail to be both meaningless and unconvincing. The firm was mechanically processing large numbers of claims without giving the clients any advice and thus was not providing them with information which might have been material to their decision to instruct the firm in the TR funded cases.

119.7 The Tribunal found all aspects of allegation 1.2 proved to the required standard.

120. **Allegation 1.4 - In his relationship with third parties who have introduced work to ATM Solicitors Limited, he [the Respondent] has failed to comply with the requirements of Rule 9.01 of the Solicitors Code of Conduct 2007;**

120.1 The Applicant relied on Paragraph 6 of the Applicant's UCCA Guidance which included:

> "You should monitor and if necessary terminate agreements with introducers who act improperly."

and the requirements of Rule 9.01 of the Code which included:

> "when making or receiving referrals of clients to or from third parties you must do nothing which would compromise your independence or your ability to act and advise in the best interests of your clients."

and Rule 9.02 of the Code which covered "Financial arrangements with introducers" and stated:

> "The following additional requirements apply when you enter into a financial arrangement with an introducer.
>
> …
>
> (c) You must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities which, if done by a person regulated by the Solicitors Regulation Authority, would be in breach of any of these rules."

The guidance to Rule 9.02 (c) Publicity stated:

> "Rule 9.02 (c) requires you to be satisfied that the introducer has not acquired the client as a consequence of marketing, publicity or other activities which, if done by a person regulated by the SRA, would have been in breach of these rules (particularly rule 7 (Publicity). Three requirements of rule 7 are particularly important to bear in mind in the context of payments for referrals:
>
> (a) The general ban on misleading or inaccurate publicity;
> (b) the prohibition of unsolicited approaches in person or by telephone to a "member of the public"
> (c) the requirement that you must not authorise a third-party to publicise your firm in a way which would be contrary to rule 7."

and to Rule 9.02(e):

> "Rule 9.02(e) requires the introducer to provide the client with all information concerning the referral. It will therefore be necessary for you to agree the nature of this information with the introducer … It is recommended that you ask referred clients on a regular basis what information the introducer has provided about the referral arrangement. You should keep records of checks made with the clients for evidential purposes."

[From 13 November 2009] the Guidance to the Rule also stated:

> "It is recommended that you check any standard letters or scripts which an introducer uses when providing this information and that you ask referred clients on a regular basis what information the introducer has provided about the referral arrangement."

120.2 Mr Cunningham submitted that the guidance to the relevant paragraphs of the Code indicated that the solicitor's duty was affirmative and it created a heavy duty on the Respondent to satisfy himself that someone else was behaving properly. Mr Cunningham referred the Tribunal to those parts of the FI Report where it was recorded that:

- In the meeting in April 2010 Ms Smith asked the Respondent and Mrs G about their reasons for ceasing to accept referrals from some of the introducers. The Respondent said "If we've terminated the relationship it's because we weren't

> happy with the type of case or they weren't submitting them in the correct format… Re [L] I think they went into liquidation…"

- During the investigation Mrs G acknowledged that the firm had not put in place any arrangements for monitoring introducers. The Respondent said the firm had checked documentation from K. In April 2010, Mrs G stated that monitoring was to be implemented through the firm's newly appointed practice manager but there were no specific proposals in place at that date.

- In the meeting on 17 June 2010, the Respondent said "We did look into general telephone complaints from clients as soon as we were advised of any… with K… by clients we did look into that…" Ms Smith asked if the directors considered the firm had complied with Rule 9.02(c) and the Respondent replied "I feel we did. I think we've sought to tighten it up even further."

Mr Cunningham submitted that in spite of the Respondent saying in the meeting on 17 June 2010 that there was compliance; the evidence from what Mrs G had said was to the contrary.

120.3 In respect of the detail, Mr Cunningham also referred the Tribunal to the FI Report which it was submitted illustrated that the Respondent paid insufficient regard to the manner by which K was attracting clients contrary to Rule 9.02(c) of the Code. The FI Report recorded that Ms Smith asked the Respondent and Mrs G during the meeting on 17 June 2010, what enquiries the firm had made about K and its publicity and practices before the referral arrangement was commenced. The Respondent stated that he:

> "checked they were MOJ registered… checked the Terms and Conditions of Business… checked their arrangements with clients… their documentation… what they presented to me anyway. There were a few changes over the months that I wasn't aware of."

The Respondent was also reported as saying:

> "[K] were advertising on radio and Internet and getting people to phone them… [K] told me they had an audit from the MOJ and they were happy with their advertising..."

Ms Smith noted that since mid-2009, there had been information on the Internet that raised questions about K's marketing practices. This was noted from concerns expressed by people who made UCCA claims through K which were subsequently referred to the firm. Mr Cunningham accepted that the evidence in support of the complaint was largely in the paragraph of the FI Report which related to information on the Internet and a reference to a financial website which said: "If you put [K] Claims in the search engine you will find that this has been mentioned many times before." The Respondent was not here to challenge that the advertisement publicity was not satisfactory and the Applicant relied on this part of the FI Report and the Internet postings which were before the Tribunal.

120.4 Mr Cunningham also referred to the firm's approach to monitoring introducers in respect of the matters just mentioned and the complaints about K the firm received. Whilst there was evidence from the firm's complaints register that a number of clients had made complaints to the firm about introducers, some of which related to referrals from K and involved delays, lack of communication and misleading information as to the success of claims, there was no evidence to suggest that the conduct of introducers, to include their approach to marketing and correspondence with clients, was ever kept under review or monitored by the Respondent. Indeed it appeared that not even the most rudimentary checks were being carried out to include checking the websites of introducers such as K. Such checks were carried out by the IOs which immediately gave rise to concerns that the best interests of clients were not being met. During the closing meeting on 17 June 2010, Ms Smith asked whether the directors had been aware of there being adverse publicity regarding the company on the Internet, including delays and lack of communication with clients. The Respondent said the firm had been aware of adverse Internet publicity in around March 2010, although Mrs G said that clients had been complaining in "February… could be earlier…" It was noted from the firm's central record of complaints that the first record referring to K regarding a client D was dated 6 November 2009. Ms Smith asked what steps the firm took in the light of the publicity. Mrs G said that the firm raised matters with K when they were in the same offices and that "they said they'd do something about it but they didn't… had probably been going on a couple of months or longer." A search made on the MOJ website on 29 June 2010 showed that the authorisation of K was suspended as at 28 May 2010. Mrs G stated in her e-mail dated 22 March 2010 that as a result of the guarantee issue the firm was no longer accepting instructions from K. The Respondent explained in the meeting on 17 June 2010 that the firm was continuing to deal with K claims that it had commenced. As at 14 April 2010 it was indicated to the IOs that referrals were, by that stage, primarily received from CMS/KN. Mr Cunningham submitted that while it was to the firm's credit that its relationship with K had come to an end and that the firm had ultimately taken steps to sever the relationship, the Applicant's complaint was about what happened before the relationship came to an end.

120.5 Mr Cunningham drew the attention of the Tribunal to the actions of K in respect of a legal indemnity policy or guarantee which it was seeking to sell to the firm's clients, referred to in an e-mail exchange between the firm and the Applicant in March 2010 which it was submitted illustrated the concerns regarding the behaviour and practices of K. On 22 March 2010, Ms Smith received an e-mail from Mrs G headed "ATM Solicitors" about K:

> "It has come to our attention that [K], who were one of this firm's referral sources, have used our name and letterhead in contacting their clients to advise their case is settled and to try and sell a legal indemnity policy from ATM. They have sent these out without our knowledge or authority. When we first became aware of this practice [K] advised us that they had been sent out to a small number of people and it was a template document sent out as a "Pilot" to test a new model we have been discussing with them. [K] promised to write to those clients and explain it was a mistake, and refund any fees they had charged. However this did not happen and some of our clients, and some people who are not our clients, since contacted us in this regard. We don't know how many people [K] have contacted or sold this Legal Indemnity to,

> but as we become aware of such individuals we are advising them immediately that this is not in any way a Legal Indemnity provided by ATM and that [K] have acted without our consent or authority and they should contact [K] for a refund, if they have been charged a fee, and/or make a formal claim to the MOJ.
>
> We have formally notified [K] that they are acting without authority from us and that they must stop using this firm's name as part of their marketing strategy. We are no longer accepting instructions from them and have made a formal complaint to the MOJ about their conduct. We are really concerned that they are trying to get money out of people under false pretences. The MOJ suggested that we can collate as much information as possible and we are providing them with evidence in this regard. We are also writing to all our [K] introduced clients to advise them of our position.
>
> Our contact at the MOJ has suggested that we also notify yourselves about this issue so that you are aware of the steps we are taking to ensure that those clients, referred through [K], are receiving accurate and best advice from ATM and that the firm has not agreed or authorised such practices being carried out by K…"

Ms Smith raised various queries with Mrs G and Mrs G's response was contained in an e-mail dated 31 March 2010 which stated:

> "In response to your queries:
>
> [Q]What is the nature of the "legal indemnity policy"? Please can you send me/e-mail a copy of this document, and confirm who provides the policy. When did you become aware that it was being used by [K]?
>
> [A]I have attached details of what [K] were sending out. It is on ATM letterhead but we did not provide this policy. It was about the 24th February we found out [K] had sent some e-mails out with this indemnity attached.
>
> [Q]How did you become aware that [K] was using your firm's name and letterhead in contacting their clients?
>
> [A]A client of ours contacted us.
>
> [Q]You refer to a ""Pilot" to test a new model we had been discussing with them". Please clarify what this refers to.
>
> [A]We discussed with [K] the possibility of launching a service to investigate issues of enforceability in credit agreements and defend a claim for a client if a lender issued proceedings for the debt. [K] would have been a referrer/agent. We also looked at the possibility of offering an indemnity policy, which could offer some protection if a client had charges and interest added to the debt, but we only ever discussed this.

> [Q]Please provide details of the numbers of clients of ATM involved (if you do not have the figures, please confirm how many clients contacted you to raise concerns about this practice).
>
> [A]We have written to all clients who were referred from [K], just in case and are dealing with any queries raised from this on an ongoing basis. We have been provided with a list from [K] all clients they say they have contacted – both existing ones of ours and ones who are not our clients.
>
> We have been contacted by about 20 people..."

Mr Cunningham submitted that the answers to the first two questions quoted above addressed the problem of insufficient monitoring of what K was doing. There was some time lag between K's inappropriate activities and the firm discovering them and it was not the firm who discovered them but a tip off from a client. In some ways that took away from the proximity point but K and the firm shared the same premises and there was no sort of monitoring such as required by Rule 9.02 which in the circumstances would be straightforward. It seemed the firm left K to its own devices.

120.6 Mr Cunningham submitted that this matter was discussed with the directors in April 2010 and the IOs examined correspondence between the firm, K the MOJ and other parties. It was understood that, as a result, the firm ceased using K as a referrer. Discussions on 16 April 2010 indicated that the matter had arisen from the Respondent holding negotiations with another firm of solicitors concerning a similar form of indemnity which he stated K subsequently used, sending it to clients on the firm's headed paper as a legal document. When asked about this issue in the meeting on 17 June 2010, the Respondent said there had been no further developments on the issue of the guarantee but that he had developed increasing concerns about K because of the close proximity of K within the former office premises and the fact that the introducers of work to the firm were "all pretty much operating through K so we just wanted to disassociate ourselves." Mr Cunningham submitted that the e-mail from Mrs G of 22 March 2010 disclosed a deplorable state of affairs regarding K and that the firm could not have satisfied itself that K was proceeding properly. It was to the firm's credit that it reported itself to the Applicant but it was reporting its own breach of a positive obligation under Rule 9.02(c) of the Code. This was a pretty grave matter regarding what K was doing in contacting the firm's clients and Mr Cunningham submitted that this was seeking money under false pretences. This conduct was seriously misleading and would be quite wrong if done by a solicitor and it was still wrong if it could be done without the firm satisfying itself that K was not behaving in this way. Mr Cunningham suggested that had the relationship been subject to more regular review, the Respondent should have brought the relationship to an end at a much earlier stage. In respect of the Respondent's challenge in the Answer that the firm terminated the relationship with K four weeks after the initial discovery of the legal indemnity problem and that this period was not unreasonable, Mr Cunningham submitted that Ms Smith noted in the FI Report that since mid 2009, there had been information on the internet that raised question about K's marketing practices. This was noted from concerns by people who made UCCA claims through K which were subsequently referred onto the firm. He referred the Tribunal to the internet extracts in the papers taken on 1 July 2010 from MoneySavingExpert.com including "If you put

[K] claims in the search engine you will find that this has been mentioned many times before." The concerns had been around since 2009 but the firm did not notice until February 2010 because its focus was not on the referrer's propensities but on money making.

120.7 In his Answer, the Respondent stated that the Applicant provided no evidence of what K did which would be a breach of the rules if done by someone regulated by the Applicant. Moreover the extract of K's activities relied on by the Applicant was dated July 2010, four months after the firm ceased doing business with K. The evidence was a discussion on an Internet forum about K and it did not provide any information about K's marketing. The Respondent regarded the quotation about K being mentioned many times before on the Internet as being taken out of context and making no allegations that should reasonably have caused the Respondent to review its arrangements with K; the Respondent took the view that the allegation was unsupported by evidence. As to the suggestion that had the relationship been subject to more regular review the Respondent should have brought it to an end at a much earlier stage, the Answer asserted that was inaccurate; an earlier review would not have discovered that K had failed to fulfil a promise to withdraw an attempt at an indemnity policy using the firm's name because it had not happened; the initial discovery was made on 24 February 2010 and the relationship was terminated before 22 March; a four-week period was not unreasonable. Also the MOJ suspended K's registration on 28 May 2010, two months after the Respondent.

120.8 In respect of complaints from clients about K, the Answer asserted that these complaints involved K's performance, rather than marketing or conduct and that the matters were raised with K and K promised better performance. There was no evidence upon which the firm could reasonably have concluded that such promises were untrue and it was not unreasonable for the firm to accept what it was told. The Guidance about Rule 9 referred to in the FI Report was not in force when the relationship with K began. Also keeping written records was no more than a recommendation. The Respondent was asked (by the IOs) if he was content that he had complied with Rule 9.02(c) and he said he was. In respect of the allegation that the Respondent had failed to carry out even rudimentary checks, it was asserted that there was no evidence to support the definition of rudimentary checks used in the FI Report and that it also recorded that the Respondent said at the 17 June 2010 meeting that he had developed increasing concerns about K because of the close proximity of K within the former office premises and the fact that the introducers of work to the firm were "all pretty much operating through [K] so we just wanted to disassociate ourselves". The Respondent became cautious about K because of his knowledge of its working practices and the Applicant did not carry out these rudimentary checks until June 2010 by which time the Applicant had been investigating the Respondent for six months, a month longer than ATM dealt with K in total.

Tribunal's findings in respect of allegation 1.4

120.9 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. It considered the topic of K and monitoring introducers together. The Tribunal particularly noted the Respondent's dismissive views in the Answer; in respect of the Applicant's Guidance about UCCA work: "The Guidance cannot be

anything other than a publicity exercise..."; and about the people who became his clients "At the relevant times, the individuals were not his clients..."; and in respect of introducers' upfront fees, the Answer continued that "The complaint cannot be substantiated by the Respondent's failure to act between April 2010 in June 2010. Not only was the Respondent responding to the investigation and the numerous requests information: there was no prejudice to any client by the failure to deal with the issue within the period." The Tribunal found that the Respondent had paid insufficient regard to the manner in which K was attracting clients; its publicity was not satisfactory - the firm's register of complaints showed that there were problems with the way K conducted its publicity and marketing. The Tribunal was particularly concerned about the report made by Mrs Green in her e-mail of 22 March 2010 about the way the firm's letterhead was being used by K which the firm only found out about because it was drawn to its attention by a client. The Tribunal considered that the Respondent did not comply with either Rule 9.01 or Rule 9.02 (c). The Tribunal found allegation 1.4 proved to the required standard.

121. **Allegation 1.5 - He [the Respondent] has allowed third parties to exercise an inappropriate level of control and influence over the activities of ATM Solicitors Limited;**

121.1 For the Applicant, Mr Cunningham relied on the Rule 5 Statement including issues around referrals from introducers, funding arrangements and the TR PPM document. The scale of the work referred from introducers was described in the FI Report where it was indicated that 5,880 cases had been assigned to fee earners and that as the fees of the firm were based on time spent with a CFA rather than paying fixed referral fees, payments to the introducers would represent a percentage of the success fee the firm received. The Applicant asserted that this, of itself, might encourage the firm to pursue claims to litigation when not necessarily in the best interests of the client.

121.2 Mr Cunningham relied on the entirety of the section entitled Funding Arrangements in the FI Report and supporting documents. The Applicant asserted that the funding arrangements in relation to UCCA cases and the firm generally were from a variety of sources and complex and that the Respondent's e-mail to the Applicant of 24 June 2010 showed the total sum drawn down at that date to be £6,749,200. In respect of SY, as at 31 March 2010 there was a total credit of £1,360,300 standing to an office ledger account in its name. The SY Agreement outlined the way in which the litigation was to be funded and it was accepted by the Respondent that he was connected to all three parties to the Agreement. The Respondent stated that the directors of the AX Fund wanted control over those dealing with cases and it was for reasons of financial control that the firm had been created. In other words the viability of ATM as a firm was dependent on the AX Fund. The Applicant disputed that the firm, SY and the AX Fund were independent of each other even if they were separate companies because of the Respondent's role as a director and shareholder of the firm, director and shareholder of SY UK and SY IOM respectively and the Respondent was named as a member of the AX Team. The overall level of funding was dictated by the level of investment which in turn would dictate the amount of cases which could be taken on. The firm was the coalface for the investment activities of people investing in the AX Fund. Mr Cunningham submitted that it was axiomatic that a third party funder in the Cayman Island should not control a firm of solicitors in England. The Applicant also relied on the fact that the firm agreed to place a lien on the client's file

in favour of the funder which under the SY agreement was assigned to the Loan Manager. The level of control and influence was further illustrated by a clause found on the AX Fund website which stated: "In other words, the fund owns the legal action..." This was endorsed in the firms Terms of Business for which the Respondent was responsible. The Term about the lien was included despite the fact that the Respondent did not believe that it was enforceable.

121.3 In respect of the PPM document, Mr Cunningham referred the Tribunal to the investment objective of the TR Fund. This was clearly a business and commercial enterprise and the tail was wagging the dog because its objective was the generation of profit not the interests of the client. The minimum investment permitted in the fund was £100,000 thus it involved big players offshore who wanted to invest. For every £100,000 invested, the firm had to generate an additional £15,000 within nine months which provided very good returns for investors but said something dramatic about the impact on the firm to achieve returns. There was an additional requirement to generate a further 8% of the investment on the expiry of 15 calendar months from the date of issue of each loan Note. It was not the individual loan per claim that had to be paid but the Note, so the clock was ticking before the claims were issued. The PPM also stated that the TR Fund aimed to provide investors with an annualised rate of return of 26.4% and there was the capacity to process in excess of 5,000 claims per month. Mr Cunningham submitted that this all went to support the proposition that the driver in the arrangements was purely money, generating enough return to service the substantial interest repayment obligations the firm had entered into. (See also Mr Cunningham's submissions in respect of allegations 1.7 and 1.8 in this connection.) It was also submitted that the TR arrangements involved a lien in favour of the funders as opposed to the firm.

121.4 In the Answer, it was submitted for the Respondent that it was impossible to discern how the fees paid to the introducer were said to subject the claimant to inappropriate, undefined and unevidenced influence. It was asserted the commercial funders had stepped in to replace legal aid, calculating their decisions on the likelihood they would make a profit. The more complicated the case the more money it generated if it succeeded and accordingly the more complicated cases which required greater investment generated more profit, while a fixed referral fee produced precisely the opposite effect and would have led to meritorious cases being unfunded. It was asserted that the arrangement between the firm and the introducers meant that expensive cases were attractive. The Answer stated that there was no evidence that the AX Fund or SY IOM or SY UK exercised any control or influence over the firm and the Applicant did not seek to identify any such influence. All funders wanted control over the solicitors dealing with their cases. The position was no different when the Legal Aid Fund was responsible for most civil litigation. Also every CFA had inbuilt conflict between the interests of the legal representatives and those of the client. To jump from that proposition to the proposition that the viability of the firm was dependent on the AX Fund was an error. The firm did not have to accept cases and the Respondent did not have to recommend cases for funding. Even, if, which was not admitted, the Respondent was too closely connected to the various parties to the funding agreement it was difficult to see how the position was different to any ABS or the relationship between a firm with an overdraft and its bankers. In respect of the PPM document it was asserted that the fact that the practice had taken out a loan did not demonstrate financial dependence on the organisation providing the money. There

was no evidence of third parties exercising any level of control. In respect of the TR Fund, the Respondent in his Answer asserted that it was not suggested that the firm would not receive funding from any other organisation, the Tripartite Agreement provided that CSG would direct TR claims to the firm if TR could fund the claims. The Tripartite Agreement had no bearing upon any relationship the firm had with the AX Fund.

Tribunal's findings in respect of allegation 1.5

121.5 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. In respect of referrals from introducers the Tribunal considered that the nature of the Respondent and the firm's relationship with K meant that they were subject to inappropriate influence particularly by K.

121.6 In respect of funding arrangements, the Tribunal found based on the evidence of the FI Report recording what the Respondent had told the IOs: "They [the funders at AX] were steering me to open a law firm where the controls would be implemented" that the firm had been created as a result of those particular funding arrangements by the SY entities and the AX Fund and was designed to give effect to the controls they wanted. The Tribunal considered that the attempt by the Respondent to draw a parallel with legal aid funding or ABS arrangements was flawed. The Tribunal found allegation 1.5 proved to the required standard in respect of the funding arrangements with the AX Fund and in its arrangements with the SY entities.

121.7 In respect of the PPM document, the Tribunal particularly noted the aim of the TR Fund:

> "The investment objective and policy of the Fund is to achieve a secure, stable return through making of a discounted loan to ATM Solicitors ("the Loan") to enable ATM Solicitors to finance Claims in respect of the Consumer Credit Regulations in the UK…"

and that it promised investors a return of 26.4% with a process for the firm to act on 2,500 claims and capacity in place to process in excess of 5,000 claims per month. The Tribunal also noted the lien arrangements in favour of the Loan Manager (similar arrangements were also in place for the AX Fund). The Tribunal considered that by the nature of the arrangements by which he had to repay £2,660 for every £2,000 borrowed, creating financial pressure having borrowed £300,000 from TR that had to be repaid within nine months and interest within 15 months, the Respondent had placed himself and his firm in thrall to the funders and it was hard to see how this arrangement could have worked and for the firm to remain financially viable. The Tribunal found allegation 1.5 proved to the required standard in respect of the PPM document.

Accordingly the Tribunal found allegation 1.5 proved in all its aspects to the required standard.

122. **Allegation 1.6 - He [the Respondent] has failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007;**

122.1 For the Applicant, Mr Cunningham alleged lack of integrity on the part of the Respondent in respect of referrals from introducers, K, introducers' upfront fees, monitoring introducers, funding arrangements, TR, the PPM document, ATE insurance policies and accounting systems and procedures. Mr Cunningham drew the attention of the Tribunal to Rule 1.02 of the Code which provided that "You must act with integrity." As to the meaning of integrity, he relied on the case of Hoodless & Anor v Financial Services Authority [UKFTT FSM007 (3 October 2003). Where it was set out that:

> "the most important considerations include, "honesty, integrity and reputation"

The judgment referred to integrity within the Securities and Futures Authority Principles in the following terms:

> "a firm shall observe high standards of integrity and fair dealing

The High Court stated:

> "...we were required, as an additional matter, to consider the applicants' integrity, which both sides accepted involved the application of objective ethical standards. In our view "integrity" connotes moral soundness, rectitude and steady adherence to an ethical code."

122.2 Mr Cunningham submitted as follows, in respect of:

- Referrals from introducers, in particular K, Mr Cunningham relied on the CFA arrangement with its obligation to pay to the introducer a percentage of any success fee the firm received and the alleged encouragement that this arrangement gave the firm to pursue claims to litigation when not necessarily in the best interests of the client.

- The relationship with K, this allegation arose out of the close relationship where the Respondent had allowed the situation to develop so that there was a conflict of interest or a significant risk of conflict of interest between the reliance of the firm on K as an introducer and the firm's obligations to act in the best interests of each client referred to it by K.

- Introducers' upfront fees, Mr Cunningham relied on the Respondent's failure to see the best interests of his clients and to check whether they had been served, having taken no action to investigate and being content for the firm to receive referrals. The reference on the K's website suggesting that the cost of the report would be added to the debt owed to the credit provider and the CCA which K at the same time stated was unenforceable and by so doing stating that the cost of the Audit Report would not have to be repaid, was highly improper and not only should the Respondent have been aware of that but should have refused to accept further claims from K. In the Answer, the Respondent asserted that lack of enquiry was not a lack of integrity unless

(perhaps) it was deliberate. Mr Cunningham submitted when this point was raised by the Tribunal that lack of enquiry whether deliberate or negligent could go to integrity; there was a failure to act on the admission (recorded in the FI Report) that the Respondent and the firm knew of upfront fees and there was an amber light in the Guidance but the Respondent carried on regardless in dealing with referrers who charged upfront fees.

- Monitoring introducers, Mr Cunningham submitted that the Respondent's lack of integrity arose out of his indifference to his profession's open Guidance about what should be done regarding monitoring and his failure to do it. This extended to K's Terms of Engagement which set out the circumstances in which K was entitled to claim funds from the client but it appeared that, at no stage, did the Respondent familiarise himself with those Terms let alone advise the client on whether such terms were in their best interests for example the upfront fee payable and also the back end fee payable out of any sums recovered. Indeed in the course of his interview, the Respondent accepted that stage payments were not in the best interests of the client. Not even the most rudimentary checks were carried out including checking the websites of introducers such as K. When the checks were carried out by the IOs they immediately gave rise to concerns that the best interests of the clients were not being met.

- Funding arrangements, Mr Cunningham relied on the Respondent's relationships with the SY/AX Fund, his membership of the AX team and the SY agreement outlining the way the litigation was to be funded and the Respondent's failure to inform his clients about his significant involvement in the other organisations playing an important role in the process. The allegation also included the channelling of the £460 audit fee through SY IOM, of which the Respondent was a shareholder, to CM of which he was a director and shareholder. Mr Cunningham also relied on the arrangements for the lien in favour of the AX Fund which was endorsed in the firm's Terms of Business in spite of the fact that the Respondent did not believe that it was enforceable.

- The funding arrangements with TR and the absence of any requirements for the Respondent to advise his clients also supported this allegation.

- The PPM document with its return on investment after 15 months provided motivation for the Respondent to issue proceedings within 35 days and reflected the best interests of the investors as opposed to those of the clients, as did the Audit Report being provided by CM and the exercise of a lien by the funder. Mr Cunningham also relied on the fact that as at 17 June 2010, the Respondent stated that TR funding had reached the extent of £300,000 and none had been repaid. The Respondent stated that the ultimate intention was for the firm to draw £5 million from the Fund. When asked about future financial viability of the scheme and thereby, it was contended of the firm, the Respondent stated that the success of the scheme would be subject to court findings. However taking account of the overall uncertainty, the level of funding and the dependence of the firm on that funding, it was alleged that the Respondent's strategy involved unacceptably high risks to the viability of the

firm and thereby to its clients and this illustrated the Respondent's lack of integrity.

- The ATE insurance policies, it was submitted that the Applicant brought to the attention of the Respondent the fact that U was not regulated by the then FSA and therefore the validity of the ATE policies taken out with U, of which it was believed based on U's letter of complaint to the Applicant dated 17 December 2010, there were 239 by the time this issue was raised with the Respondent, could have been challenged. This, in turn, would have adversely affected the best interests of clients. It was alleged that had it not been for the Applicant raising this issue, there was no evidence to suggest that the Respondent would have discovered by his own due diligence that the policies with U would or could have been invalid. It was right to say that when the problem was pointed out to the Respondent he reversed out of the arrangement with U and instead used F as insurers but Mr Cunningham submitted that generally the problems with the ATE policies constituted a very serious point and that the letter from U indicated the scale of the cases involved. Mr Cunningham submitted that the Applicant's approach to the ATE arrangement with U showed lack of integrity.

- Accounting systems and procedures, taking account of the very substantial numbers of cases being introduced to the firm and the substantial amounts of funding being received from various organisations, the shortcomings in relation to compliance with the requirements of the SARs were of particular concern. Mr Cunningham submitted that the Respondent was not particularly aware of his professional obligations in this respect and was not particularly conscientious in adhering to them.

122.3 In his Answer, the Respondent denied all aspects of the allegation of lack of integrity and asserted that there was no evidence to support it, additionally:

- In respect of introducers upfront fees, it was asserted that lack of enquiry was not lack of integrity unless perhaps it was deliberate and that allegation was not made;

- In respect of monitoring introducers, it was asserted that the allegation was presumably grounded upon the unstated premise that the Respondent had in some way lied to, or misled the IOs and that it was otherwise difficult to see what the alleged lack of integrity was and the IOs did not make the allegation.

- The facts relating to accounting systems and procedures would not justify the allegation.

<u>Tribunal's findings in respect of allegation 1.6</u>

122.4 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal accepted the definition of integrity put forward by Mr Cunningham from the case of Hoodless; it was one commonly used in the

Tribunal. The Tribunal found as follows in respect of the allegation of lack of integrity:

122.5 The Tribunal considered that the whole way in which the Respondent conducted referrals was unethical and displayed no steady adherence to a moral code or to Rule 9.02(c). In respect of this and several of the other allegations, the overriding concern of the Respondent was to run the firm, in the words of the Respondent himself to Ms Smith as an "Automated Teller Machine" hence the name ATM.

122.6 In respect of the Respondent's working arrangements with K, including the mingling of staff and shared offices, there was a complete absence of the high standards of integrity expected of a solicitor. The Tribunal found that the clients were the last consideration of the Respondent in his relationship with K. He carelessly disregarded them and thereby showed a lack of integrity.

122.7 In respect of introducers' upfront fees, the Guidance made it clear that:

> "If an arrangement involves the claimant client incurring fees before the solicitor is instructed, these may be irrecoverable. For this reason the [the Applicant's] view is that such arrangements will not usually be in the best interests of the client and should be avoided."

The Tribunal had particularly noted the statements made by the Respondent and reported in the FI Report. It found that he had displayed a lack of interest and concern in the arrangements with the client for payment of upfront fees and a failure to get involved in identifying which of his referrers charged fees. At his interview in April 2010, the Respondent said "some do/most [introducers] do for whatever services they provide to the clients. All different services for fees…" and "I don't get particularly involved between referrer and the client what arrangements they have." In a meeting on 17 June 2010, the IOs drew the attention of the Respondent and Mrs G to the Applicant's Guidance and Ms Smith asked if the firm had taken action to clarify the actual amount of upfront fees charged clients by introducers. The Respondent stated: "no, as I've said before we were just aware that most of them were…" With regard to the Guidance the Respondent said: "The way I interpreted the guidelines were that they were not telling you not to act for clients who were charged but it may not be in the clients' best interests if they had other means of pursuing this sort of claim..." he also expressed the view that the Guidance was a publicity exercise. He had not looked at K's Terms of Engagement. During the closing meeting the IOs referred the Respondent to fees charged by K. He said "I was aware that they charged clients an upfront fee" although he did not know the amount the charges involved; this was in spite of the K website describing the claims process including the payment requirements. The Tribunal considered that the Respondent's complete lack of any sort of concern about the obligations placed on the clients in term of upfront fees constituted a lack of integrity.

122.8 In respect of monitoring introducers, the Tribunal considered that the Respondent had completely disregarded the requirements of the Code. Mrs G acknowledged that the firm had no arrangements for monitoring. The Respondent said that they did but it was clear that there was no active monitoring; his approach was completely reactive as opposed to proactive; he only acted about the legal indemnity where K was,

according to him, using his letterhead without authorisation because a client drew it to his attention. The way the Respondent managed the firm and the process showed no interest in the clients and how they had been acquired by the introducers and what fees they were being subjected to by the introducers. The Respondent had some awareness but he was uncaring despite complaints and indications of adverse publicity. The Tribunal considers that this constituted an unethical indifference to the position of clients and displayed a lack of integrity.

122.9 In respect of the funding arrangements, the Tribunal found that the Respondent was driven by making as much money as he could and that he was involved in a web of relationships with entities in the AX/SY axis of companies. The whole funding setup was designed to produce the maximum profit for those involved heedless of the interests of the clients and no material information was disclosed about the relationships and the Respondent's interest in the particular entities. The Tribunal found lack of integrity in the Respondent's conduct in respect of the funding arrangements.

122.10 In respect of TR, the Respondent knew that the Applicant had concerns about the arrangements regarding the AX Fund but he went ahead and entered an arrangement with TR which set out in the Tripartite Agreement what it expected the firm to do including in respect of the CFA. The Tribunal agreed with Mr Cunningham's description of the firm acting as the last link in a mechanical harvesting of claims. The dispute about whether the firm was only to engage with TR was irrelevant to the Tribunal's findings. As previously stated the Tribunal did not consider that the Respondent's clarification in his e-mail of 20 June 2010 in respect of the CFA arrangement addressed the point at all. The Tribunal was particularly concerned that the Respondent displayed no interest in the legal aspects of the package with which he was provided and its impact on the clients and allowed TR to do the work that he was expected to do; he was the last link instead of being the first. The Tribunal heard evidence that he was most anxious to receive the case "packaged" in as streamlined a fashion a possible and showed no interest in the clients. As a solicitor the Respondent was governed by the Code in respect of client matters regardless of any contract he might enter into. The Tribunal considered that the whole function of the firm in the TR arrangement displayed a lack of integrity.

122.11 In respect of the PPM, the Tribunal considered that the Respondent showed lack of integrity in entering into an agreement that required repayment of a loan in 15 months and then acting for clients in a conflict situation. The profit-making objective of the PPM and the related timescale for repayment were clearly the overriding considerations rather than the interests of the client. The firm arranged discounted loans to benefit the Respondent. The Tribunal also considered that in agreeing to the lien both in respect of TR (and the AX fund) the Respondent had perpetrated real mischief against the clients.

122.12 In respect of referrals from introducers, K, introducers' upfront things, monitoring introducers, funding arrangements, TR and the PPM document, the Tribunal found allegation 1.6 proved to the required standard.

122.13 In respect of the ATE insurance policies with U, the Tribunal found that the Respondent had not shown due diligence but as soon as the situation was drawn to his

attention, he reversed out of the arrangement and provided proper cover for the cases with exposure and his actions did not extend to displaying a lack of integrity. Accordingly, the Tribunal did not find allegation 1.6 proved to the required standard in respect of the ATE policies with U.

122.14 In respect of accounting systems and procedures, the Tribunal found that the Respondent was holding huge sums of money from funders. The Tribunal noted that in the closing meeting on 17 June 2010, Ms Smith asked the Respondent if he considered that the firm had breached the SARs by not having adequate systems in place in January 2010 and he replied that he had not been aware that that was an issue before, notwithstanding his comments in the meeting in January and Mrs G commented that some clients had paid fees upfront to the firm and these had now been credited to the individual client ledgers. While the Respondent's conduct was to be deplored in his casual approach to the requirements for solicitors' accounts, the Tribunal did not consider on the evidence, that the Respondent had displayed a lack of integrity. Accordingly, the Tribunal did not find allegation 1.6 proved to the required standard in respect of accounting systems and procedures.

123. **Allegation 1.7 - He [the Respondent] has acted in a manner which has led to his independence and that of ATM Solicitors Limited being compromised contrary to Rule 1.03 of the Solicitors Code of Conduct 2007;**

123.1 For the Applicant, Mr Cunningham submitted that this allegation along with allegation 1.8 and 1.9 arose as a consequence of the misconduct alleged in allegations 1.1 1.2 1.4 1.5 and 1.11 and the Respondent's indifference to and failure to comply with the Code. In support of allegation 1.7, the Applicant relied on:

- Referrals from introducers because the fees of the firm were based on time spent with a CFA rather than paying fixed referral fees, so that payments to the introducers would represent a percentage of any success fee received and the Applicant asserted that this might encourage the firm to pursue claims to litigation when not necessarily in the best interests of the client;

- K, as a result of the close relationship (shared premises etc) between K and the Respondent's firm, the Respondent had allowed a situation to develop where there was a reliance of the firm on K as an introducer and the firm accepted as a fait accompli instructions and previous work carried out in the cases referred by K;

- Introducers' upfront fees, because of the lack of action taken by the Respondent to investigate issues around upfront fees after they had been raised with him in April 2010 by the Applicant, the fact that these were allegedly paid in respect of an audit report referred to on K's website which the Applicant presumed was undertaken by CM [which the Respondent challenged in the Answer], the Respondent's company and the Respondent's failure to familiarise himself with the K Terms of Engagement, and to advise clients whether the Terms were in their best interests;

- Monitoring introducers because of the alleged failure to review or monitor introducers even though there were client complaints to the firm about

introducers such as K. As to the assertion in the Answer that the complaints from clients about K involved K's performance, rather than marketing or conduct which the Tribunal raised with Mr Cunningham, he submitted that the Answer was wrong; the FI Report recorded that complaints included "misleading information as to the success of claims" which was a marketing problem. The FI Report also noted that a number of adverse internet entries involving K related to fees charged and that it was possible to market by omission.

- Funding arrangements, because of the connection which the Respondent had with the SY and AX Fund entities including his being described as a member of the AX Team, his interest in payments made out of the loan amount of £2,100 including the audit fee which passed through an SY company back to CM, and the process by which a lien was exercised over clients' files. Mr Cunningham submitted that when the Respondent told the IOs what the initials ATM stood for, Automated Teller Machine, the Respondent was telling them how he regarded the firm and that ATM was a dedicated law firm created to handle the business interests of those who invested in the AX Fund. It was recorded in the FI Report that during the January meeting, the Respondent said that "SY... exclusive rights to that fund into the UK" and brokered the arrangements for funding, whilst the AX Fund provided the finance. The Respondent indicated that one of the concerns of the directors was that they wanted control over those dealing with the cases.

  > "They were steering me to open a law firm where the controls would be implemented."

  The Tribunal raised the Respondent's assertion that the entities were all independent of each other and Mr Cunningham referred the Tribunal to the evidence including his membership of the AX Team and his directorship and shareholdings as well as E being part of the R Group. He submitted that the Respondent denied there was third party control and influence but the evidence stood to the contrary.

- TR, because of the nature of the agreement with TR with service obligations the firm entered into and the firm accepted on the part of other signatories which meant that the audit report and CFA were completed before the firm was instructed in the case. In response to the Tribunal raising the comparison in the Answer with legal aid funding and the point about there being in built conflict in every CFA, Mr Cunningham submitted that it was hard to see; the Legal Aid Fund did not require repayment at 9% in 15 months. The Legal Aid fund was a public service. The Respondent's funding arrangements especially with TR were nakedly exploitative of claims, rather than supporting them in the public interest. In respect of the similar point the Answer made regarding ABSs, Mr Cunningham submitted that one had to look at the reality of the funding process and the control the funders took over the claims; the liens and the returns were indicative of harvesting claims while indifferent to the interests and wishes of any given client.

- The PPM document, with the anticipated levels of return, predicated on a return on investment after 15 months driving the Respondent to issue proceedings within 35 days, and again lien provisions in favour of the funders as opposed to the firm. In the final paragraph of the document there was an obligation on the firm to repay to the TR fund £2,660 for each £2,000 lent within 15 months of drawing down the loan. It was submitted that this illustrated a financial dependence on the funder and fed into a strategy on the part of the Respondent involving unacceptably high risks to the viability of the firm and thereby its clients.

123.2 In his Answer, it was submitted for the Respondent that there was no compromising of independence; as set out above the Respondent disputed the allegations about the inappropriate proximity of the firm's relationship with K and that in respect of the alleged breach of Rule 9.01, the Answer submitted that the Applicant's evidence was that the Respondent wrote to all clients introduced by K to ensure that they were aware of the position regarding the indemnity guarantee policy.

123.3 In respect of introducers' upfront fees, it was asserted in the Answer that there was no evidence as to how the Respondent's independence was compromised; none of the eight examples given in the Guidance to the Code was even identified by the Applicant and on analysis, none was applicable. This was an allegation brought on the basis of the Applicant's guess that CM was involved which the Applicant had not tried to prove. The Answer also asserted that the back end fee was in respect of PPI and the Respondent did not act for the clients on this aspect of the claims. Many of the K referrals contained two heads of claim, breaches of the Consumer Credit Regulations, in respect of which the firm would argue that the CCAs were unenforceable and the mis-selling of PPI which K would deal with in-house. The Applicant did not identify any part of the guidance to Rule 1.03 as being the basis for the allegation of lack of independence. It was asserted that the allegation must involve asserting that the Respondent had not told the IOs the truth and the allegation was denied. There was no evidence that the firm's or the Respondent's independence was compromised by the relationship with K.

123.4 In respect of the AX Fund, the Answer asserted that to jump from the proposition that funders might have the same interest in recovering damages under the investment to the proposition that the viability of the firm was dependent on the AX Fund was an error. There was no evidence to support that and once funding was accepted, a loan was created and a loan must be paid back. However the firm did not have to accept cases and the Respondent did not have to recommend cases for funding. Again the parallel with an ABS or the relationship between a firm with an overdraft and its bankers was relied on.

123.5 The Respondent's assertions in respect of the TR Fund relationship are set out under allegation 1.5 above. In respect of the PPM document, the Answer asserted that the fact that the practice had taken out a loan did not demonstrate financial dependence on the organisation providing the money. There was no allegation that the firm required financial support, rather the money was borrowed so that clients could be represented on a CFA. Moreover the amount of money borrowed was not linked to the potential value of the case making it easier for the firm to earn the money necessary to repay the loan. Compromise of independence was denied in all the aspects in which it was

alleged. As to the allegations about the financial viability of the firm, the Answer asserted that there was an un-evidenced contention that the Respondent erred in his business projections which the Applicant had not even asked to see. There was no evidence for the Applicant's contention. The allegation appeared to arise from the question the IO asked the Respondent on 17 June 2010 and the fact that the Applicant apparently disliked the answer.

Findings of the Tribunal in respect of allegation 1.7

123.6 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal found as follows:

- In respect of both referrals from introducers and the relationship with K including by the sharing of offices and intermingling of staff, and the difficulty in discerning from files which entity was undertaking any aspect of the case and the difficulties caused to clients in differentiating the firm from K, the Respondent acted in a manner which led to his independence and that of the firm being compromised.

- In respect of introducers' upfront fees and monitoring introducers, the Respondent had placed himself in the introducers' hands arising out of his relationship with them. The fact that the Respondent reacted when told of K's activities in respect of the legal indemnity when a client drew it to his attention only served to highlight his failure in his positive duty to monitor. The Tribunal noted that the Respondent did not undertake PPI work but there were upfront fees in respect of the CCA cases and this was clearly advertised on K's website for all including the Respondent to see if he cared to check. He ignored his duty to enquire into the impact of the referral arrangements on his clients and thereby compromised his independence and that of the firm.

- In respect of the funding arrangements with SY/the AX Fund according to the Respondent's own explanation of the origins of the firm to the IOs, these funders wanted a firm that they could control and the Respondent set it up and operated it and thereby compromised his independence and continued to do so by his involvement in the funding arrangements.

- In respect of TR, by accepting cases as part of a mechanical process particularly accepting that the CFA has already been completed without the involvement of the firm in any meaningful way, something the Respondent should have undertaken himself, the Tribunal found that the Respondent had compromised his independence and that of the firm.

- In respect of the PPM document, the Tribunal found that it was quite clear without seeing business projections that the terms of the document with its unrealistic demands for repayment of the loans regardless of the realities of the timescales of litigation, created a financial dependency on the part of the Respondent and the firm with the funders TR and that his independence and that of the firm was thereby compromised.

The Tribunal found that the Respondent has ignored his duties as a solicitor to his clients in favour of accepting referrals on the terms the introducers laid down. Accordingly the Tribunal found all aspects of allegation 1.7 proved to the required standard.

124. Allegation 1.8 - He [the Respondent] has failed to act in the best interest of clients contrary to Rule 1.04 of the Solicitors Code of Conduct 2007;

(There was considerable overlap in the submissions, the Answer and the findings particularly in respect of this allegation and allegations 1.1, 1.2, 1.4, 1.5, 1.6 and 1.11.)

124.1 For the Applicant, Mr Cunningham relied on CM, referrals from introducers, K, introducers' upfront fees, monitoring introducers, funding arrangements, TR, the PPM document, ATE insurance policies and accounting systems and procedures. The following submissions were made for the Applicant:

- In respect of CM, it was a concern that obtaining an Audit Report which would deal with issues subsequently to be considered by the solicitor was not in the client's best interests. Paragraph 5 of the Applicant's Guidance warned that:

  > "The fee for "checking" the credit agreement is a duplication of the work which will eventually be required by a solicitor and will not, it seems, be recoverable as part of the claim. In some cases the "checking" fee is paid to the introducer which then seeks its own legal advice and advises the claimant client direct."

- In respect of referrals from introducers, the Applicant again relied on the percentage success fee arrangement.

- In respect of K, the relationship with the firm impacted on its obligation to act in the best interests of each client referred to the firm by K.

- In respect of introducers' upfront fees, the Respondent had not investigated this issue and paid little or no regard to whether the arrangement reached with the client was in that individual client's best interests. At his interview in April 2010, the Respondent indicated that he was aware that upfront fees were being charged but was unable to provide any details on the basis that "I don't get particularly involved between referrer and the client what arrangements they have" which it was submitted indicated an abrogation on his part to ensure that the best interests of his clients were protected and following which conversation he took no further action to check. Furthermore the Respondent did not advise clients on whether K's Terms of Engagement were in their best interests and in the course of interview when Ms Smith asked the Respondent if he considered that the upfront/back end fee arrangement with introducers were in the best interests of the clients, the Respondent replied:

  > "Depends what the fees are… I didn't know the stage payments above… don't believe they're in the best interests of the client… charging for introduction of claims probably comes down to market

> conditions and what services they are providing… the majority of cases we've had come through referrers with networks of IFAs… part of review and analysis (of clients' affairs) I think… it's reasonable for a fee to be charged… I wasn't aware of anyone not charging an upfront fee in this market other than [KN]."

Mr Copeland referred the Respondent to the K Terms of Engagement in the meeting on 17 June 2010. The document related to various charges indicated as being payable by clients to K at different stages of the claims process as set out in respect of allegation 1.8 above. Mr Cunningham referred to the exchanges between Mr Copeland and Ms Smith and the Respondent. When asked by Ms Smith if the firm discussed these charges with clients, the Respondent said "no… thought clients wouldn't be paying anything as we wouldn't have received anything." He acknowledged that he was not aware of such provisions within the K Terms of Engagement and accepted that there would be no basis for K making such charges as they would not have been carrying out relevant services for the clients. Mr Cunningham submitted that the Respondent had therefore in interview admitted that he did not believe that the stage payments were in the client's best interests.

- In respect of monitoring introducers, Mr Cunningham again relied on the alleged absence of monitoring by the firm of introducers including their approach to marketing or correspondence with clients while a number of clients had complained to the firm about introducers such as K.

- In respect of funding arrangements, the Applicant relied, as not being in the best interests of clients, on the relationship and/or interest that the Respondent had with and/or in various SY entities and the AX Fund, the control exercised by the AX Fund over the firm including the lien arrangements, and the payment for the Audit Report made to SY IOM.

- In respect of TR and also the PPM document, the Applicant raised concerns about the financial viability of the firm and relied on the service obligations which the firm had entered into and accepted from other parties as set out above and the proposition that the driver in the arrangements was purely financial in terms of generating enough return to fulfil the firm's payment obligations as evidenced by the Respondent's statement about repayment being achievable "if we don't get bogged down with stays etc"; it appeared that the litigation was regarded as a nuisance. Mr Cunningham reminded the Tribunal that in the closing meeting on 17 June 2010, Mr Copeland referred the Respondent to the large amount of money owed by the firm as loans were being drawn down in respect of these funding arrangements, particularly given that the cases were not reaching a conclusion so that the firm could bring in costs. He asked if the Respondent was satisfied that the position generally was financially viable. The Respondent replied:

  > "If we can get an outcome, we win or lose, we can pay… you get to the position where [the case goes] wrong and claim on policy or win and pay from proceeds of that."

When Mr Copeland pointed out that there was lobbying from the lenders, adverse publicity over this area of work and that demise of a number of claims companies, the Respondent replied that it was:

> "Not an easy area but I believe there is a market for it… Subject to court findings it'll turn out very well… the ultimate strategy is other things…"

Mr Cunningham submitted that the firm needed a result in order for the loan repayments to flow out and to achieve an outcome in a case in a maximum of nine months from the issue of the loan Note was a tall order, which resulted in the firm not asking whether this particular client was best served by the claim which the firm was about to make. The potential defendants, banks etc were very hostile to the outbreak of this type of the litigation and Mr Cunningham described it as opportunistic and speculative. It rapidly became apparent that there was no mileage in this type of claim and the High Court found that while there were technical faults in some agreements, these could be remedied. The Respondent was acknowledging that he was in uncharted waters regarding the viability of the claims. This was the business context of the TR funding. It was alleged that the motivation to issue proceedings within 35 days was to reflect the best interests of the investors as opposed to the best interests of clients and that these funding arrangements presented an unacceptably high risk to the firm and clients.

- In respect of the ATE insurance arrangements with U in the Isle of Man, there was a risk that the insurance cover for the clients would not be forthcoming as the insurer was outside the jurisdiction of the Financial Services Authority.

- In respect of the accounting systems and procedures, it was asserted that taking account of the very substantial numbers of cases being introduced to the firm and the substantial amounts of funding being received from various organisations and shortcomings in relation to compliance with the requirements of the SAR were of particular concern and not in the best interests of clients.

124.2 In the Answer it was submitted for the Respondent that this allegation was merely a restatement of allegation 1.1 in respect of the CM Audit Reports. In respect of referrals and the payment arrangements as stated elsewhere in this judgment the Respondent asserted that fixed referral fees would have led to meritorious cases being unfunded. The Respondent's assertions in respect of the relationship between the firm and K have already been set out. In respect of introducers upfront fees the Answer asserted:

> "The Guidance cannot be anything other than a publicity exercise: it predicates a position in which clients enter into agreements before they have solicitors and then says such arrangements should be avoided. That is almost certainly correct but the "Guidance" does not say how that should be done. The criticism of the Respondent is that because he did not get involved in these arrangements he had abrogated his responsibility to protect the best interests of his clients. He is not assisted by the Guidance and:

a) At the relevant times, the individuals were not his clients.

b) The complaint cannot be substantiated by the Respondent's failure to act on the issue between April 2010 and June 2010. Not only was the Respondent responding to the investigation and the numerous requests for information: there was no prejudice to any client by the failure to deal with the issue within the period.

c) At paragraph 33, the [Rule 5] Statement seeks to assert that this failure proves that the firm was content to get referrals but did not turn its attention to the clients' best interests. Again, the Applicant significantly overstates his case. The period relied on was after the Respondent had terminated ATM's relationship with [K]; the arrangement is not alleged to be not in the clients' best interests (the Applicant restricts itself to the Guidance which says that arrangements will usually not be in the client's best interests); there is no evidence from many clients (the contrast with the Beresford case relied on in the Guidelines is marked); the Respondent specifically said that he did not know whether the arrangements were in the clients' best interests at the time.

The reference in the Guidance to Beresford does not assist: in that case the SDT held that the agreement between client and introducer was wrong in its face and the solicitors' obligation was to ensure the vulnerable Miners understood their agreement and that there was uncertainty about it. The agreement recorded the payment so there was no doubt that the solicitors knew about it. The position here is not the same, and the Applicant does not assert it is."

124.3 In respect of monitoring introducers, the Answer asserted that the only basis for a breach of Rule 1.04 that could pertain was a breach of the obligations regarding conflicts of interest and that these were un-particularised and unsupported.

124.4 In respect of the funding arrangements with SY and the AX Fund, the Answer asserted that there was no evidence that the Respondent failed to act in the best interests of clients. The evidence was that clients who lacked the financial resources to bring claims were enabled to do so (often successfully) and this also applied to the allegations about the lien and about the relationship with the TR Fund. In respect of the PPM document, and the Respondent issuing proceedings 35 days after the letter before action, the Respondent's submissions have already been set out. The Answer rejected the assertion that the funding arrangements and repayment obligations in the PPM document caused the Respondent not to act in client's best interests.

124.5 In respect of the ATE policies, the Respondent asserted that the complaints forwarded by U about the firm to the Applicant had generated no action against him and he could therefore infer that the Applicant was satisfied that the complaints raised no issues requiring explanation in which case the matter had no place in the Rule 5 Statement. The highest that the Applicant could put its case was that there could be a challenge to the validity of the policies. On that basis the allegation was denied.

124.6 In respect of the accounting system and procedures, the Answer asserted that at the time of the initial inspection, the firm did not hold clients' money and payment of fees upfront by clients did not amount to doing so. The FI Report made it clear that Mrs G said money paid upfront had been credited to individual client ledgers

Findings of the Tribunal in respect of allegation 1.8

124.7 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal found as follows:

- The fact that clients did not know of the Respondent's role in CM and that money for the CM Audit Reports was potentially going into his pocket constituted a failure to act in the client's best interests.

- In respect of referrals from introducers, CSG provided the CFA ready prepared to the firm and the Respondent let them do it without giving any advice to the clients; this was clearly not in the best interests of the clients.

- The sharing of offices with K, the mingling of staff and client files such that it was not possible to discern even when looking at client files who was doing the work on a case, the fact that clients phoning in might be answered by the firm's staff or K's and would not necessarily know which, or who was dealing with their matter was clearly not in the client's best interests.

- The Respondent had taken little or no interest in the upfront fees charged to his clients by the introducers and had made an admission that they were not in the client's best interests.

- The Respondent and the firm had failed to monitor and review the advertising of the introducers; they should have worked with K to approve its website, and in respect of the indemnity guarantee policy, the firm only found out that their letterhead was being used by K when they were told that by a client. They had taken no account at all of the client's best interests.

- In respect of the funding arrangements, the client's interests had been completely sublimated to those of the Respondent's and the firm's profit motive. The whole funding structure involving the AX Fund and the SY entities in which the Respondent had an interest, worked against the interests of the clients.

- In the case of the TR Fund, the Respondent and the firm were accepting a case package so that the firm was the last link in the case; the client had become an input in the business process rather than its main focus; this was not in the best interests of the clients.

- The PPM document illustrated the financial dependence of the Respondent and the firm on its funders; the setup of the TR funding arrangement and the time frames for repayment clearly put the interests of funders before those of the clients and were not in the best interests of the clients.

- In respect of the ATE policies with the entity U which was unregulated by the FSA, the Respondent had not checked that the insurer whom he was dealing with was approved and thus he placed his clients at risk which was not in their best interests.

- Regardless of the stage at which the firm came to hold client money and the point at which proper client account procedures were in place, at least between 12 January 2010, when the IOs first visited and April 2010 when Ms Smith determined that the problems had been solved, the firm had no proper books of account, no cash book, no individual client ledgers and was not carrying out bank reconciliations, the first two of which were required by the SARs. The Tribunal considered that it was not in clients' best interests for a solicitor to have poor or no proper accounting practices.

124.8 The Tribunal found all aspects of allegation 1.8 proved to the required standard.

125. **Allegation 1.9 - He [the Respondent] has behaved in a way which was likely to diminish the trust the public places in him and/or the legal profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007;**

125.1 For the Applicant, Mr Cunningham relied on referrals from introducers, K, introducers' upfront fees, monitoring introducers, funding arrangements, TR, the PPM document, ATE insurance policies and accounting systems and procedures and submitted that the Respondent's conduct in respect of them as set out in his submissions and in the evidence was likely to diminish the trust the public placed in him and/or the legal profession. In respect of the assertion in the Answer that it was impossible to discern in respect of monitoring introducers why an issue of public trust arose, a point raised by the Tribunal, Mr Cunningham submitted that the FI Report recorded that in the meeting on 17 June 2010, the Respondent said "We did look into general telephone complaints from clients as soon as we were advised of any ...with K...by clients we did look into that..." It was therefore obvious that the firm was receiving complaints. The principal source of lack of public trust was the firm's own clients.

125.2 The Respondent denied allegation 1.9 in all its aspects.

Findings of the Tribunal in respect of allegation 1.9

125.3 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal found as follows:

125.4 The Tribunal considered that the way in which the Respondent dealt with referrals from introducers, blindly accepting claims and being motivated solely by profit and thereby not having the client's best interests at heart would diminish public trust. The circumstances of the incestuous relationship with K, the Respondent's unsatisfactory approach to introducers' upfront fees where he took no interest in what was paid and where the firm was behind the Audit Report, and the absence of monitoring introducers, ignoring the Guidance issued by his regulator would also have this effect upon public trust.

125.5 In respect of the funding arrangements, the Respondent's involvement with the SY/AX fund, the structure of the funding arrangements including the lien and the dominance of the profit motive would also diminish public trust. In respect of TR funding arrangements, the public and clients would expect that clients' interests would be placed at the forefront of the process with their solicitor in sole control of the case rather than their solicitor being the last link. The Tribunal did not consider that it was necessary to determine what the true motivation of the Respondent was in issuing proceedings 35 days after the letter before action in the TR funded cases as this was just one element of the way the cases were run. In respect of the PPM document, the clearly stated aim of which was profit and the use of the lien placing the interest of the funder well above that of the client, would also diminish public trust.

125.6 In respect of the ATE insurance policies, the Tribunal considered that placing the clients at risk, in respect of the 239 policies issued with U an Isle of Man insurer, would diminish public trust. The Tribunal had also noted the contents of some of the complaints which U had submitted to the Applicant; these were not the subject of any individual allegation but they gave an indication of the way the clients were being dealt with; one client (Mr C-S) had annotated a section of the insurance proposal form to the effect that it had never been sent to the client and was not signed by him and had written on a copy that the proposal form contained no schedule of premiums due or on what date and that therefore they had assumed the solicitor took the policy out to cover itself after accepting the case on a no win no fee basis; this was the voice of the public speaking and the firm's approach to these insurance policies diminished public trust.

125.7 In respect of the accounting systems and procedures, the public would expect solicitors to have proper books of account and to follow the express requirements of their professional body; not to do so would diminish public trust.

125.8 Accordingly the Tribunal found all aspects of allegation 1.9 proved to the required standard.

126. **Allegation 1.10 - He [the Respondent] has acted recklessly**

126.1 For the Applicant, Mr Cunningham submitted that acting recklessly was only alleged in respect of the PPM document, the ATE insurance policies and accounting systems and procedures. The Applicant relied on the submissions in the Rule 5 Statement set out earlier in this judgment. Mr Cunningham also drew attention to the Tribunal's decision in case no 10917-2012 Fuglers LLP and Others, where the Tribunal stated in its findings

> "The parties had all agreed on the correct definition of "recklessness" which was contained in the case of R v G and another [2004] 1 AC where it had been held:
>
> > "...it had to be shown that the defendant's state of mind was culpable in that he acted recklessly in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result if he was aware

of a risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk..."

126.2 In the Answer, it was asserted that allegation 1.10 could not be addressed in respect of the PPM document and ATE insurance policies as the Applicant had provided no evidence and identified no yardstick against which the recklessness was to be measured. In respect of accounting systems and procedures it was asserted that the facts would not justify the allegation.

Findings of the Tribunal in respect of allegation 1.10

126.3 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal found as follows:

- The Respondent had undertaken obligations in signing up to the PPM document which required him to generate particular returns for the investors within 15 months of the issue of the loan Note. He borrowed £2,000 for each case and was required to pay back £2,660 with time running against him from the date of the loan Note. As a solicitor, he knew that if a case went to litigation it could take much longer than the period envisaged for repayment in the PPM document and acknowledged that there could be problems when he said that meeting the deadlines for repayment would be achievable "if we don't get bogged down with stays etc. "The Tribunal did not consider that the fact that the IOs did not ask for financial projections about the firm was an issue. The facts were quite clear and stark; the Respondent had committed himself and the firm to financial obligations which had to put the viability of the firm in doubt. The Respondent had ignored this obvious risk and gone ahead. The Tribunal agreed with the submissions for the Applicant that the Respondent's conduct involved unacceptably high risks to the viability of the firm and thereby its clients and was reckless.

- It was not disputed that the Respondent and his firm had signed clients up to 239 policies with U, an Isle of Man insurer which was not regulated by the FSA, thereby creating a risk that the clients might not have the benefit of after the event insurance cover. The Tribunal considers that these policies were unenforceable and that there was no guarantee that any of them had effect in English law. The Respondent had provided no explanation at all for his actions and the Tribunal found that he had not checked these essential facts about U and thereby heedlessly laid his clients open to inappropriate and unnecessary risk. The Tribunal found that in so doing he had been reckless.

- The FI Report recorded that the firm was established in July 2009 and the Applicant's investigation commenced on 12 January 2010. It was not disputed that the firm was in receipt of large amounts of money from funders but it did not have proper books of account. The Tribunal found that this presented an obvious risk to the firm and to clients, whatever the situation regarding client funds might have been and in allowing the situation to exist, the Tribunal found that the Respondent had been reckless.

126.4 Accordingly the Tribunal found all aspects of allegation 1.10 proved to the required standard.

127. **Allegation 1.11 - He [the Respondent] has failed to maintain proper books of account and financial records contrary to Rule 32 of the Solicitors Accounts Rules 1998.**

127.1 For the Applicant, Mr Cunningham relied on the facts set out in the Rule 5 Statement and the FI Report which are set out in the background to this judgment and to which reference has been made in respect of other allegations above and the relevant rules. Rule 1(e) of the SARs required:

> "A *solicitor* must comply with the requirements of Rule 1 of the Solicitors Code of Conduct 2007, and in particular must:
> ...
> (e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules."

Rule 32 of the SARs set out:

> "Accounting records which must be kept
>
> (1) A solicitor must at all times keep accounting records properly written up to show the solicitor's dealings with:
>
> (a) *client money* received, held or paid by the *solicitor*, including *client money* held outside a client *account* under rule 16 (1)(a) or rule 17(ca); and
> (b) [deleted]
> (c) Any *office* money relating to any *client* or *trust* matter."

and

> "(4) All dealings with *office* money relating to any *client* matter, or to any *trust* matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account."

Mr Cunningham submitted that in January 2010, it was noted that the firm's books were being maintained by the accounts staff who dealt with the accounting functions for the R Group, that there were no adequate bookkeeping systems in place, that the firm was maintaining a case management system using software which provided details of time costing and disbursements but was not client specific and that no cash book or individual client ledgers were being maintained. In addition the books were not being reconciled as required. Mrs G recognised that the record keeping was not up to scratch when Ms Smith held a meeting with her on 13 January 2010 to discuss the accounts procedures. Mr Cunningham also referred to the meeting on 14 January 2010 between the IOs, the Respondent and Mrs G when the IOs pointed out that the firm was not yet in the correct position regarding the accounts but that changed and matters had been resolved by 14 April 2010 which was to the firm's credit. However

the Respondent did not appear to appreciate the difficulties in the accounting systems. In the closing meeting on 17 June 2010, Ms Smith asked the Respondent if he considered that the firm had breached the SARs by not having adequate systems in place in January 2010. The Respondent replied "I hadn't been aware that was an issue before". Mrs G commented that some clients had paid fees upfront to the firm and these had now been credited to the individual client ledgers. Mr Cunningham submitted that the Respondent was not particularly aware of his professional obligations and was not particularly conscientious in adhering to them.

127.2 In the Answer, it was asserted for the Respondent that he denied there were breaches of the SARs. At the time of the initial inspection, the firm did not hold client money. Payment of fees upfront by clients did not amount to holding client money, [these were the fees referred to in the Rule 5 Statement as fees paid "upfront"]. The Rule 5 Statement emphasised the seriousness of the allegation but did not specify what client money was being referred to, whether the allegation involved office money relating to a client matter or whether the allegation included assertions about office money.

Findings of the Tribunal in respect of allegation 1.11

127.3 The Tribunal considered the submissions for the Applicant, the evidence including oral evidence and attached appropriate weight to the Respondent's Answer in his absence. The Tribunal found allegation 1.11 proved to the required standard (See also the Tribunal's findings in respect of allegation 1.10 above).

Previous Disciplinary Matters

128. The Respondent had been before the Tribunal on two previous occasions. In case number 9567- 2006, five allegations had been brought against the Respondent, three of which were found proved; that he had been guilty of conduct unbefitting a solicitor in that he: failed to act in the best interest of his clients contrary to Rule 1c of the Solicitors Practice Rules 1990; acted in breach of Rule 3 of the Solicitors Practice Rules 1990 and the Solicitors Introduction and Referral Code 1990; and that he acted for clients in a situation where their interests conflicted with his own. A fine of £12,000 was imposed with costs fixed in the sum of £12,000. In case number 10048-2008, an allegation was brought against the Respondent that as a result of his failure to pay counsel's fees when the same became due the Respondent's name was placed on the list to which the Bar's Withdrawal of Credit Scheme applied, so compromising or impairing his own good repute and that of the solicitors' profession or being likely to do so contrary to Rule 1(d) of the of the Solicitors Practice Rules 1990. A fine of £1,000 was imposed with costs fixed in the sum of £2,892.19.

Mitigation

129. The Respondent did not attend the hearing and offered no mitigation.

Sanction

130. The Tribunal had regard to its Guidance Note on Sanctions and the letter from Warren's dated 13 May 2014 (see below). The Tribunal considered that the Respondent had been the subject of very serious charges, almost every aspect of

which had been found proved against him. He had been found to have been lacking in integrity and in respect of three matters to have acted recklessly. The Tribunal had regard to the case of Bolton v The Law Society [1994] 1 WLR 512, where it was said:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal....
>
> A penalty may be visited on a solicitor...in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way...
>
> The most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth..."

In terms of culpability, the Respondent was an experienced solicitor who had been in practice since 1999. The Tribunal found that the Respondent had been motivated by financial gain and the misconduct arose from the way the Respondent operated the firm. His disregard for the interests of his clients, preferring his own financial interests, was damaging to the reputation of the profession. The clients might or might not have suffered financial loss but their complaints, sent by the insurer U to the Applicant, showed clearly that some were left confused and angry as a result of going through the Respondent's claims' system. The Respondent had allowed himself to be controlled and influenced by others and let his independence be compromised. The impact of his conduct was the greater because his departure from the "complete integrity, probity and trustworthiness expected of a solicitor" was substantial. His clients were deprived of material information and pushed through as inputs in a process without regard to their individual interests. The seriousness of the misconduct was aggravated by the fact that the Respondent's actions were quite deliberate and continued for a period of time. The Respondent had been before the Tribunal twice before and on the first of those occasions, the subject of the allegations found proved were similar to those in this matter, failing to act in the best interests of clients, issues with referral arrangements and acting for clients where their interests conflicted with his own. The Tribunal noted that in that earlier case the Tribunal's judgment included:

> "...the Respondent was not sufficiently independent to act in the best interest of his clients. He gained financially from fees paid to companies of which he was a director. Clients should have been given advice as to whether or not they were contractually bound to pay the fees. Had the Respondent not taken on these "fait accompli" cases clients would not have been left in difficulties when the funding had been withdrawn...
>
> Clients had to be confident that their interests were paramount and were not in conflict with their solicitors' own interests."

Having been before the Tribunal on that occasion, the Respondent knew that his more recent conduct was a material breach of his obligation to protect the public and the reputation of the profession. No mitigation had been put in; the Respondent had not admitted any of the allegations and showed no insight into what he had done. Indeed

he claimed to have learned lessons from his previous appearance. Having regard to the seriousness of the misconduct and the risk to the public and the reputation of the profession, the Tribunal considered that the Respondent should be removed from practice immediately. The Tribunal considered whether a suspension would be sufficient, any lesser sanction being deemed inadequate. However, although there was no dishonesty, the Respondent's misconduct was at the highest level of seriousness; he had displayed lack of integrity and recklessness. The conditions for an indefinite suspension were not met because no truly compelling and exceptional personal mitigation had been shown and the Tribunal considered that in the light of the Respondent's repeated conduct there was not a realistic prospect that he would respond to retraining. He should be struck off. Warren's letter to the Tribunal of 13 May stated that the Respondent wished to be placed on record that if the hearing proceeded on 13 May in his absence, with a finding and/or sanctions made against him, he appealed against that and requested no sanctions should take effect until his appeals had been determined. The letter stated that the latter point was particularly important as the Respondent would "have no possible way of deriving any income if sanctions imposed prevent, curtail, or through financial penalty, repress his ability to practice as a solicitor." In respect of the Respondent's request that any sanction be stayed, the Tribunal had regard to the excerpt from the Solicitors Handbook 2013 submitted by Mr Cunningham about appeals from the Tribunal and stays pending appeal where it was stated that the Tribunal did not readily grant a stay pending appeal in cases where a striking off was made. In the circumstances of this case, the Tribunal was not disposed to grant a stay of the sanction as the public needed to be protected.

Costs

131. For the Applicant, Mr Cunningham applied for costs in the amount of £148,059.69. He submitted that costs should follow the event and the Applicant be compensated for warranted proceedings. He referred the Tribunal to the letter from Warren's dated 13 May 2014 in which it was stated:

> "... notice is hereby given to the Solicitors Regulation Authority (who is copied in on this letter) and the Solicitors Disciplinary Tribunal that [the Respondent] intends to contend either that no order for costs should be made against him, in the exercise of the tribunal's powers under section 47(2) of the Solicitors Act 1974 or, in the alternative, that any order for costs should be limited by reason of his lack of means."

The letter also referred to the Respondent having financial difficulties. Mr Cunningham submitted that should not be persuasive to the Tribunal in this particular case. He asked the Tribunal to make an order for costs in favour of the Applicant and leave it to the Applicant as a professional body to decide if it was worth spending more money down the line when the worldwide freezing order against the Respondent had been discharged. Mr Cunningham also referred to information provided by the Respondent about his means and submitted that a statement of means of sorts had only been produced the previous day and updated on this day. The Personal Financial Statement was not verified and had some obvious holes and what the Respondent said in the statement contrasted unfavourably with what was said elsewhere about his property assets.

132. Before considering the contents of the Personal Financial Statement further, the Tribunal dealt with the request from Warren's in their 13 May letter which attached the Respondent's schedule of income and expenditure and assets and liabilities, and where they stated:

> "We kindly request the Tribunal to consider this document prior to determination of any findings or imposition of sanction(s), if applicable. In relation to this document, [the Respondent] has expressly requested that the content of the schedule be kept completely confidential between himself, the [Applicant] and the Tribunal and for use only in connection with this case."

The Tribunal had regard to Rule 12 of the Solicitors (Disciplinary Proceedings) Regulations 2007 which provided:

> "(4) Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of –
>
> (a) exceptional hardship; or
> (b) exceptional prejudice,
>
> to a party, a witness or any person affected by the application.
>
> (5) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private, and make such order as shall appear to it to be just and proper.
>
> (6) The Tribunal may, before or during the hearing, direct that the hearing or part of it be held in private if –
>
> (a) The Tribunal is satisfied that it would have granted an application under paragraph (4) had one been made; or
> (b) in the Tribunal's view a hearing in public would prejudice the interests of justice."

The Tribunal did not consider that the financial information provided by the Respondent, if revealed would cause exceptional hardship or exceptional prejudice and that it was in the interests of justice in this case for the matter of costs to be dealt with in public.

133. Mr Cunningham submitted that the Personal Financial Statement which the Respondent had submitted made reference to a co-owned property in France which he presumed from its name was income generating (but appeared to be subject to a mortgage), in addition to his matrimonial home which was in his wife's sole name and another property in his town of residence which might be his wife's business. He referred the Tribunal to the equity in the various properties. Mr Cunningham asked the Tribunal to have regard to what was set out in the report of Dr Lingam which included:

> "[The Respondent] lives in… where he also owns another property and two other properties in Canada and France. [The Respondent's] wife owns and runs a ... restaurant in… and the family is currently provided for by his wife's finances."

Mr Cunningham could not investigate the information in the short time since it had been provided. There was also a reference to the value of a car and credit commitments were disclosed along with monthly outgoings substantially in excess of income. There was no reference to the £750 per month which the Respondent was allowed to spend under the worldwide freezing order and Mr Cunningham also referred the Tribunal to details of the Respondent's wife's income given on the Statement. Mr Cunningham submitted that this document submitted late did not seem to tell the full story about the Respondent's finances and the Applicant would like to interrogate further. Mr Cunningham submitted that it was open to him to ask for a summary assessment of costs by the Tribunal or for the matter to be referred for detailed assessment which Warren's asked for in their 13 May letter. If the Tribunal was minded to order a detailed assessment, Mr Cunningham advised that it was his intention to seek an interim payment of around 50% of the costs claimed on the basis that that was the minimum that the detailed assessment would award.

134. For the Respondent, in their letter Warren's "challenged and disputed in the strongest possible manner" the costs schedule and asked that they be subject to a detailed assessment. They continued that "the level of costs sought for a case of this nature are simply extraordinary in almost every aspect, including but not limited to Counsel's sizeable brief for a hearing with no opponent!" They continued:

> "In light of [the Respondent's] present parlous financial state and absence of any income, coupled with the additional fetter of a worldwide freezing order that he is subject to, we first state that no award of costs should be made…. However, in the event that the Tribunal makes an order for costs against him, [the Respondent] seeks an additional order that such costs are not to be enforced without leave the Tribunal having been first obtained..."

Warren's went on to remind the Tribunal of case law relating to the issue of costs and the question of the Tribunal's obligation to enquire as to the Respondent's means before imposing a costs award (The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin)), and that the Tribunal was entitled to take into account the Respondent's means when considering an order for costs and submitted that there was more of an underlying obligation to do so referring to the case of Merrick v Law Society [2007] EWHC 2997 (Admin). They also made the point that costs should not be regarded as part of sanction.

135. The Tribunal took into account the submissions for the Applicant and for the Respondent. The allegations against the Respondent had been properly brought and found proved in almost every particular and it was appropriate that the Applicant should have an order for costs. The Respondent had asked for a detailed assessment and having regard to the amount involved and the representations made, the Tribunal considered that this was appropriate. The Tribunal was aware that the Respondent was subject to a worldwide freezing order and had made one unsuccessful application for it to be varied and it was open to him to do so again in respect of the costs of this

matter. The Tribunal noted from the Memorandum of the CMH on 2 May 2014 that the Respondent's representative had stated he understood the Respondent's frozen assets to be around £6.5 million. The Tribunal was satisfied from the information provided by the Respondent that he had substantial assets. The Tribunal considered it appropriate to make an order for costs including that the Respondent should make interim payment of £60,000 to the Applicant. It saw no reason to suspend the order or make it not enforceable without leave of the Tribunal.

Statement of Full Order

136. The Tribunal Ordered that the Respondent Timothy Paul Schools, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry, such costs to be subject to a detailed assessment unless agreed between the parties and the Tribunal further Ordered that the Respondent do make an interim payment of £60,000.00 to the Applicant towards the said costs.

Dated this 27th day of June 2014
On behalf of the Tribunal

J. N. Barnecutt
Chairman