SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11080-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[*Respondent 1 – Name Redacted*] First Respondent

[*Respondent 2 – Name Redacted*] Second Respondent

MICHAEL PACK Third Respondent

Before:

Miss J. Devonish (in the chair)
Mr A. Ghosh
Lady Bonham Carter

Date of Hearing: 16th July 2013

Appearances

Mr Mark Cunningham QC, instructed by Mr Peter Steel, solicitor of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn Viaduct, London EC4M 7RF for the Applicant

Mr Gregory Treverton-Jones QC, instructed by Mr Nigel West, solicitor of RadcliffesLeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ for the First and Second Respondents

The Third Respondent did not attend and was not represented

JUDGMENT

Allegations

1. The allegations against the First and Second Respondents were that they:

1.1 Acted in breach of the Solicitors' Accounts Rules 1998 ("SAR"), in particular they:

1.1.1 failed to maintain properly written up accounting records in breach of Rule 32 of the SAR;

1.1.2 allowed withdrawals to be made from client account not permitted by and in breach of Rule 22 of the SAR; and

1.1.3 failed promptly to remedy breaches of the SAR in breach of Rule 7 of the SAR

1.2 Acted in breach of Rule 5.01 of the Solicitors' Code of Conduct 2007 ("SCC") in that they failed to provide appropriate supervision to unadmitted members of staff (in particular their Finance Director), failed to safeguard assets entrusted to their firm and failed to ensure compliance with key regulatory requirements.

2. The allegation against the Third Respondent was that:

2.1 he had occasioned, or been party to, with or without the connivance of the solicitor namely Geoffrey Parker Bourne Solicitors ("the Firm"), an act or default in relation to legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in any of the ways set out in Section 43 (1) of the Solicitors Act 1974 as amended. In particular, whilst employed as the Finance Director of the Firm he made or permitted transfers without proper authority and/or failed to ensure compliance with the SAR.

Documents

3. The Tribunal reviewed all of the documents submitted on behalf of the Applicant and the First, Second and Third Respondents, which included:

Applicant

- Application dated 24 October 2012;
- Rule 5 Statement and exhibit bundle dated 24 October 2012;
- Chronology;
- Schedule of Costs and bill of costs dated 12 July 2013

First Respondent

- Witness Statement and exhibit "AO1" dated 2 May 2013;
- Witness Statement of Means dated 15 July 2013;
- Tracing and Repayment Protocol;

- Correspondence on the Protocol;
- Extracts from the Solicitor's Handbook 2009 edition;
- Testimonials

Second Respondent

- Witness Statement dated 2 May 2013;
- Witness Statement of Means dated 15 July 2013;
- Testimonials

Third Respondent

- Letter to the Applicant's legal representatives dated 13 November 2012;
- Email correspondence – various dates;
- Email from the Tribunal to the Third Respondent dated 15 July 2013;
- Email reply from the Third Respondent to the Tribunal and supporting documentation dated 16 July 2013.

Factual Background

4. At all material times the First and Second Respondents were partners in the firm of Geoffrey Parker Bourne ("the firm"). Both entered into a partnership voluntary arrangement with creditors in October 2009 and the business was transferred from the partnership to a limited company, Geoffrey Parker Bourne Limited with effect from 1 October 2009.

5. The First Respondent was admitted to the Roll of Solicitors on 15 December 1977. He held a current practising certificate free from conditions.

6. The Second Respondent was admitted to the Roll of Solicitors on 1 October 1988. He held a current practising certificate free from conditions.

7. The Third Respondent was not a solicitor and his name had never appeared on the Roll of Solicitors.

8. The Applicant had begun an investigation of the books of account and other documents of the firm on 18 May 2009 with an inspection at the firm's then premises in Stratford-upon-Avon.

9. The investigation resulted in a Forensic Investigation Report ("the FI Report") dated 23 September 2011. At the time of the visit the First Respondent was the sole equity partner of the firm and the Second Respondent was a salaried partner. The Third Respondent had been Finance Director of the firm until the end of 2008 when he had been asked to leave the firm.

10. The firm had subsequently run into financial difficulties and the First and Second Respondents entered into a partnership voluntary arrangement which was approved in October 2009. The firm continued as Geoffrey Parker Bourne Limited. On 2 August 2011 Geoffrey Parker Bourne Limited became GPB Solicitors LLP and that firm remained in business in Stratford-upon-Avon.

11. The FI Report identified a number of serious breaches of the SAR 1998, namely:

11.1 A cash shortage on client account of at least £1,002,278.51 as at 31 December 2008;

11.2 Withdrawals from client account not permitted under the SAR;

11.3 Failure to keep properly written up books of account; and

11.4 Failure to rectify breaches of the SAR promptly upon discovery.

12. The FI Report identified a minimum cash shortage of £1,002,278.51 as at 31 December 2008 which had arisen as a result of transfers from client to office account totalling £728,555.78 between 20 May and 25 November 2008 and four payments to a client totalling £273,720.73 between 15 October and 9 December 2008.

13. For many years the firm had acted for a debt collection company, Interim Justitia ("IJ"). The firm received a percentage of the actual payments it had recovered by way of payment under a service agreement with IJ. In about 2004 IJ became aware that it held a significant amount of money representing overpayments by debtors where debtors had overpaid the sums being claimed from them either by sending the firm one or more payments too many by way of cheque, cash, direct debit or standing order between 1992 and 2004.

14. As a consequence on 17 February 2004 IJ wrote to the firm and indicated that it was remitting the sum of £999,619.12 to the firm representing monies overpaid by debtors and that the firm had agreed to be responsible for repaying sums to debtors. The funds were received by the firm on 18 February 2004. According to the First and Second Respondents the average overpayment was in the region of £13.28.

15. The firm attempted to locate debtors and return monies but was only able to return a small proportion of the money (£67,138.09). The remainder of the money was held on client account until May 2008. A further sum of £92,544.55 was transferred from general client account to the "suspense account" in April 2005. As at 19 May 2008 the relevant client bank account should have held £1,025,025.58 of debtor overpayments (£999,619.12 + £92,544.55 - £67,138.09 = £1,025,025.58) but those monies were paid away resulting in the cash shortage.

16. There were six client to office transfers totalling £728,557.78 between May and November 2008. These were apparently made in respect of bills and other charges but at least one bill was not recognised by IJ which led to it making a complaint to the Applicant when it came to their attention in or about October 2009. Only one of the client to office transfers appeared to have been properly authorised.

17. Payments made to IJ totalling £273,720.73 should have been made from monies recovered on behalf of IJ by the firm and as at the date of the inspection there should have been the sum of £273,720.73 in the firm's general client account for IJ but the payments had wrongly been made from the funds held "in suspense" which IJ had asserted belonged to debtors and did not belong to either IJ or the firm.

18. The First and Second Respondents had indicated to the Forensic Investigation Officer ("FIO") that they had been totally unaware that funds held "in suspense" in respect of the debtor overpayments were being utilised by the firm or IJ and that they had relied upon the Third Respondent with regard to the handling of client funds and compliance with the SAR 1998.

19. The FIO found an email from the Third Respondent to Ms AW dated 29 September 2008 authorising her to issue one of the invoices dated 29 September 2008 which was apparently paid at least in part from the "suspense" client account containing debtor overpayments.

20. The FI Report also identified a further payment of £200,000 from client account to IJ on 24 December 2008 which had not been allocated to any individual account in the client's ledger and was also referred to in the qualified Accountant's Report for the year ended 30 September 2010. The monies were apparently paid in an attempt to reconcile the accounts of the firm and IJ.

21. The FI Report identified that the books of account for the firm and its successor GPB Limited were unreliable as at 30 April 2009 and as at 31 July 2011 as a result of numerous problems of reconciliation and the minimum cash shortage of £1,002,278.51.

22. The First and Second Respondents' response was that they accepted the books of account for the firm were deficient but that as a result of the partnership voluntary arrangement entered into by the First and Second Respondents, the situation could not be rectified. The First and Second Respondents also relied upon the Third Respondent on the question of compliance with the SAR 1998.

23. At that point there was a cash shortage and the First and Second Respondents had indicated that they were not in a position to replace it. That had since been done but it was the Applicant's case that the deficiencies in reconciliation of the accounts at the firm were not rectified promptly upon discovery.

24. The Applicant sent the FI Report to the First and Second Respondents under cover of letters dated 16 February 2012 and to the Third Respondent under cover of a letter dated 20 February 2012.

25. The Third Respondent replied by letter dated 1 March 2012. The First and Second Respondents responded by letter dated 23 March 2012.

26. The First and Second Respondents admitted the breaches of the SAR 1998. The First Respondent had subsequently admitted allegation 1.2 but that remained denied by the Second Respondent.

27. The Third Respondent admitted allegation 2.1.

Witnesses

28. The Second Respondent's evidence preceded Mr Treverton-Jones' submissions.

Findings of Fact and Law

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

30. **The allegations against the First and Second Respondents were that they:**

Allegation 1.1 Acted in breach of the Solicitors' Accounts Rules 1998 ("SAR"), in particular they:

1.1.1 failed to maintain properly written up accounting records in breach of Rule 32 of the SAR;

1.1.2 allowed withdrawals to be made from client account not permitted by and in breach of Rule 22 of the SAR; and

1.1.3 failed promptly to remedy breaches of the SAR in breach of Rule 7 SAR

Allegation 1.2 Acted in breach of Rule 5.01 of the Solicitors' Code of Conduct 2007 ("SCC") in that they failed to provide appropriate supervision to unadmitted members of staff (in particular their Finance Director), failed to safeguard assets entrusted to their firm and failed to ensure compliance with key regulatory requirements.

The allegation against the Third Respondent was that:

Allegation 2.1 He had occasioned, or been party to, with or without the connivance of the solicitor namely Geoffrey Parker Bourne Solicitors ("the Firm"), an act or default in relation to legal practice which involved conduct on his part of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in any of the ways set out in Section 43 (1) of the Solicitors Act 1974 as amended. In particular, whilst employed as the Finance Director of the Firm he made or permitted transfers without proper authority and/or failed to ensure compliance with the SAR.

<u>Submissions on behalf of the Applicant</u>

30.1 Mr Cunningham told the Tribunal that there had been certain very recent developments with regard to allegation 1.2 against the First Respondent which he had initially denied but now admitted. He said that the allegation remained denied by the Second Respondent but in any event, the scope of issues before the Tribunal was much reduced.

30.2 Mr Cunningham said that the First Respondent was now aged 63 and had been the sole equity partner of the firm at the material time in 2008. He said that the Second Respondent was aged 49 and had been a salaried partner at the firm at the material time. The Third Respondent was the firm's Finance Director and was an unadmitted person in relation to whom the Applicant sought a Section 43 Order. The Third Respondent had indicated in correspondence dated 20 June 2013 that he did not intend to attend the hearing, of which Mr Cunningham noted the Tribunal was aware and that it was content to proceed in his absence.

30.3 Mr Cunningham told the Tribunal that the genesis of the problems at the firm in 2008 and 2009 had been an unusual event which had occurred in 2004. He referred the Tribunal to the letter dated 17 February 2004 from IJ to the First Respondent, which stated:

> "…
>
> A payment has today been made direct to you in the sum of £999,619.12 being identified has (sic) having been overpaid by debtors where GPB has taken action.
>
> …
>
> It is agreed that GPB will now be responsible for returning properly repayable sums to the debtors and IJ confirms that it will, subject to prior agreement and in accordance with Law Society regulations, pay interest which may be accrued and due to debtors up to the date of this letter…
>
> Please sign one copy of this letter to confirm your agreement".

30.4 Mr Cunningham said that the letter had been signed by the Managing Director of IJ and the First Respondent. He told the Tribunal that in light of the letter there was no possible entitlement to the money of either the firm or IJ and it appeared that it was being held by the firm on a quasi-trust for the debtors and that fiduciary duties were imposed upon the firm namely to repay those debtors who had made overpayments.

30.5 Mr Cunningham referred to the FI Report which stated that "…As at 19 May 2008, the total of these debtor overpayments held in client bank account was £1,025,025.58 (£999,619.12 + £92,544.55 - £67,138.09)". He said that the question was what had happened to those monies other than the sum of £67,138.09 which had been repaid to debtors. Of the remainder, Mr Cunningham told the Tribunal that £728,557.78 had been transferred from the firm's client account to its office account by six tranches between May and November 2008. Repayments to IJ had also been made in the sum of £273,720.73 which Mr Cunningham said had been inappropriate as IJ had given up any entitlement to those monies.

30.6 Mr Cunningham referred to the FI Report, which further stated:

> "…
>
> 36. …a further cash shortage existed as at 31 December 2008 and remained outstanding at the date of this report, due to a payment of £200,000.00 from client account to Interim Justitia (IJ) on 24 December 2008…
>
> …
>
> 38. …it is uncertain whether any funds are/were properly available to be utilised to make the payment of £200,000.00 either in part or in full."

30.7 Mr Cunningham told the Tribunal that with regard to the misapplication of the £1.2 million firstly, it was not the case that there were a number of aggrieved clients and secondly, a successful attempt had been made to replace the monies by the firm's insurers as at 14 July 2013. The monies had been paid into the insurer's solicitors' client account. Mr Cunningham said that this had been replaced at a very late stage but acknowledged that it was a mitigating factor.

Allegation 1.1.1

30.8 Mr Cunningham said that there were three elements to the alleged breach of Rule 32 of the SAR 1998, namely the failure to prepare the reconciliations as required by Rule 32 (7), the failure to produce original client bank statements and bills to clients including unpaid disbursements which were not identified as unpaid on the bills.

30.9 With regard to the failure to prepare the reconciliations, Mr Cunningham told the Tribunal that this had been a major problem for the firm in 2008. He referred to the Accountant's Report dated 29 June 2009 which detailed a number of rule breaches, including:

> "…
>
> 4) Breaches of Rule 32(7) and Rule 32n(x)
>
> As discussed above there are a number of persisting client debit balances. None of the reconciliations following the occurrence of these debit balances identified a difference and consequently there was no accompanying explanation.
>
> We are not satisfied that the comparison between reconciled bank balances and amounts due to clients was properly undertaken.
>
> …
>
> 6) Breaches of Rule 7
>
> A significant number of reconciling transactions on the client reconciliation were not rectified promptly upon discovery, consequently there have been breaches of Rule 7.

…

A significant number of reconciling items remain uncorrected.

…

11) Breach of Rule 32(n)(x)

We have identified that the reconciliations required by Rule 32(7) have not been prepared as they fell due and were not prepared before the next reconciliation was due".

30.10 Mr Cunningham referred the Tribunal to an extract from the Solicitor's Handbook 2009 with regard to Rule 32 (7) of the SAR 1998, which stated:

"Rule 32 – Accounting records for client accounts…

…

Reconciliations

(7) The solicitor must…at least once every five weeks…:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all presented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which the solicitor holds client money under rule 16(1)(a) or rule 17(ca), and any client money held by the solicitor in cash: and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons".

30.11 Mr Cunningham said that these were the steps required when undertaking the reconciliations and to ensure that all figures tallied. He also referred the Tribunal to Rule 32 note n (ix), which stated:

"…

(ix) Reconciliations should be carried out as they fall due, and in any event no later than the due date for the next reconciliation…"

30.12 Mr Cunningham told the Tribunal that failure to undertake reconciliations meant that it was not possible to know the position with regard to given clients' finances or that clients' money which had been ring fenced still remained in client account(s).

30.13 In relation to the failure to produce original client bank statements, Mr Cunningham referred to the Accountant's Report, which stated:

> "…
>
> 8) Breaches of Rule 32(9)(b)(i)
>
> On a small number of occasions original client bank statements could not be produced. In some of these instances copies of the statements were not available".

30.14 Mr Cunningham referred to the Rule itself, which stated:

> "Retention of records
>
> (9) The solicitor must retain for at least six years from the date of the last entry:
>
> …
>
> (b) all statements and passbooks, as printed and issued by the bank, building society or other financial institution, and/or all duplicate statements and copies of past book entries permitted in lieu of the originals by rule 10 (3) or (4), for:
>
> (i) any general client account or separate designated client account;
> (ii) any joint account held under rule 10;
> (iii) any account which is not a client account but in which the solicitor holds client money under rule 16 (1) (a) or rule 17 (ca)…"

30.15 Mr Cunningham told the Tribunal that with regard to the failure to produce bills to clients including unpaid disbursements which had not been identified as unpaid on the bills, the Accountant's Report stated:

> "…
>
> 13) Breach of Rule 32(8)
>
> We identified a number of occasions where bills to clients included unpaid disbursements but these were not identified as unpaid on the bill".

30.16 Mr Cunningham said that the positions adopted by the First and Second Respondents respectively were in the case of the First Respondent, as stated in his witness statement "…I admit allegations 1 (a) (i), (ii) and (iii) [1.1.1, 1.1.2 and 1.1.3] set out in the Rule 5 statement on the basis that I am strictly liable as a partner for all breaches of the Solicitors (sic) Accounts Rules 1998…". In the case of the Second Respondent, he had similarly stated in his witness statement "… I admit the allegations set out in paragraph 1 (a) (i), (ii) and (iii) [1.1.1, 1.1.2 and 1.1.3] on the basis that I was a principal of the practice during the relevant period…"

30.17 Mr Cunningham said that the Second Respondent had not used "strictly liable" but that these were matters of strict liability as referred to under Rule 6 of the SAR 1998, which stated:

> "Rule 6 – Principals' responsibility for compliance
>
> All the principals in a practice must ensure compliance with the rules by the principals themselves and by everyone employed in the practice. This duty also extends to the directors of a recognised body which is a company, or to the members of a recognised body which is an LLP".

30.18 Mr Cunningham said that it was evident in accordance with Rule 6 that compliance with the SAR 1998 was the responsibility of all principals within the firm and that therefore included the First and Second Respondents.

Allegation 1.1.2

30.19 Mr Cunningham told the Tribunal that withdrawals had been made from the firm's client account in breach of Rule 22 of the SAR 1998, which stated:

> "Rule 22 – Withdrawals from a client account
>
> (1) Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);"

30.20 Mr Cunningham said that the definition of client money at Rule 13 (a) stated it to be "money held or received for client or as trustee, and all other money which is not office money". He said that it was "other money" with which the case was concerned within the definition and that client money had been involved in the payments out which had been made by virtue of the February 2004 letter which stated clearly that the monies were to be held for the debtors who had overpaid; those monies should not have been withdrawn for payments to anyone else, either into the firm's office account or to IJ.

30.21 Mr Cunningham referred the Tribunal to the FI Report, which stated:

> "…
>
> 26. Only one of the six client to office transfers referred to in paragraph 15 above appears to have been properly authorised. This is the one dated 25 November 2008 in the sum of £64,337.89 in respect of which the written instruction to the bank appears to have been signed by [the First Respondent - redacted]. The partners' Accountant's Report to the SRA for the year ended 31 December 2008 includes, at paragraph 3 of appendix 2, a list of 48 transfers from client to office account "for which no proper authority could be produced" and the remaining five transfers… are included in that list."

30.22 Mr Cunningham said that the concept of "proper authority" was dealt with by Rule 23 of the SAR 1998, which stated:

> "Rule 23 – Method of and authority for withdrawals from client account
>
> (1) A withdrawal from client account may be made only after a specific authority in respect of that withdrawal has been signed by at least one of the following:
>
> (a) a solicitor who holds a current practising certificate…"

30.23 Mr Cunningham said that the only proper authority which had been seen was the one authority signed by the First Respondent and he referred the Tribunal to the said document dated 25 November 2008 and signed by the First Respondent and which stated "As discussed, please can we make a withdrawal for £64,337.89 from our Undesignated Deposit Account on Introducer Number 0748 3491". Mr Cunningham said that this was not a bill but merely an authority for the transfer to be undertaken. He referred the Tribunal to the joint response sent by the firm to the Applicant dated 23 March 2012 which stated in this regard:

> "…
>
> vi. 25/11/2008 £64,337.89 – This Transfer did have a signed written authority form… Which appears to have been signed by [the First Respondent – redacted] on 25 November 2008, but neither we nor McIntyre Hudson can find a corresponding bill".

30.24 Mr Cunningham said that the First Respondent had addressed this in his witness statement and stated:

> "…
>
> 46. Mike [the Third Respondent] had a proven track record and I trusted his word in every respect. The defalcations which give rise to these proceedings were done by way of manufactured bills and transferred without my knowledge or authority save for one invoice for £64,337.89 dated 25 November 2008 addressed to IJ in respect of which my signature appears on the transfer docket. I had no reason to suspect that the invoice was not properly payable; there was nothing to distinguish it from the usual invoices we submitted to IJ and, as I have explained, these events occurred at a time when Mike was failing to provide me with proper account information…"

30.25 Mr Cunningham referred the Tribunal to the long list of transfers in the Accountant's Report, which stated:

> "…
>
> 3) Breaches of Rule 23

> We identified the following transfers from client account for which no proper signed authority could be produced…"

30.26 Mr Cunningham said that if this was cross referenced with the six transfers referred to in the FI Report, it identified the five improper transfers (not including the transfer of £64,337.89 on 25 November 2008). The five improper transfer amounts were:

20 May 2008	£311,769.19
25 June 2008	£81,450.17
24 July 2008	£1,000.00
25 July 2008	£150,000.00
28 October 2008	£120,000.00

Allegation 1.1.3

30.27 Mr Cunningham said that this allegation related to the failure of the First and Second Respondents to have remedied the breaches under Rule 7 of the SAR 1998, which stated:

> "Rule 7 – Duty to remedy breaches
>
> (1)Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account".

30.28 Mr Cunningham told the Tribunal that the allegations of breaches of the SAR 1998 had been admitted by the First Respondent on a strict liability basis and, whilst the Second Respondent had not used that terminology, he had also admitted the breaches of the SAR 1998.

30.29 Mr Cunningham said that the original position of the First and Second Respondents with regard to the misapplied monies was set out in their Response document dated 1 December 2011, which stated:

> "…it has not at any stage been possible to replace those funds from the personal resources of the principals (either individually or collectively)."

30.30 Mr Cunningham told the Tribunal however that there had been further very recent developments in that regard such that the monies had been repaid by the insurers and the Applicant accepted that the intention was to remedy the misapplication of the debtors' overpayments.

30.31 In relation to the reconciliations, Mr Cunningham told the Tribunal that in the Accountant's Report it stated at section 6) "A significant number of reconciling items remain uncorrected". He said that had been as at the date of the Accountant's Report being 29 June 2009 but that this had been acknowledged by both Respondents in their Response document, which stated:

"14.1 Books of Account not properly written-up and reconciled

… The outstanding matters relate to the issues prior to October 2009 and are not now capable of any further investigation or resolution save as stated in this response".

30.32 Mr Cunningham said that in 2009 GPB had become GPB Limited and a line had been drawn between the two entities.

Allegation 1.2

30.33 Mr Cunningham said that allegation 1.2 related to the alleged failure of the First and Second Respondents to have provided appropriate supervision to unadmitted members of staff and in particular the Third Respondent, to have failed to safeguard assets entrusted to the firm and to have failed to ensure compliance with key regulatory requirements. Mr Cunningham said that these were allegations made under Rule 5.01 of the Solicitors' Code of Conduct 2007 ("SCC 2007"), which stated:

"Rule 5 – Business management in England and Wales

5.01 Supervision and management responsibilities

(1) If you are a recognised body, the manager of a recognised body or a recognised sole practitioner, you must make arrangements for the effective management of the firm as a whole, and in particular provide for:

(a) compliance by the firm and its managers with the duties of the principal, in law and conduct, to exercise appropriate supervision over all staff, and ensure proper supervision and direction of clients' matters;

…

(c) compliance by the firm and individuals with key regulatory requirements such as certification, registration or recognition by the Solicitors Regulation Authority, compulsory professional indemnity cover, delivery of accountants' reports, and obligations to cooperate with and report information to the Authority;

…

(g) the safekeeping of documents and assets entrusted to the firm…"

30.34 Mr Cunningham told the Tribunal that the definition of "manager" in the SCC 2007 was, inter-alia "(a) a partner in a partnership" and a "recognised body" meant "a partnership, company or LLP for the time being recognised by the Solicitors Regulation Authority…" Mr Cunningham said that Rule 5.01 (1) (a), (c) and (g) therefore applied to both the firm and the First and Second Respondents. He said that it was clear that by use of the word "must" it was obligatory to ensure compliance with the rule.

30.35 Mr Cunningham said that the monies had been entrusted to the firm and there had been an obligation on the partners being the First and Second Respondents to ensure its safekeeping. Whilst the First Respondent had initially denied allegation 1.2, Mr Cunningham acknowledged that he had very recently indicated that this allegation was now admitted by him. The Second Respondent maintained his denial of liability with regard to allegation 1.2. Mr Cunningham referred the Tribunal to the Second Respondent's witness statement in this regard, wherein he stated:

> "… I deny allegation 1 (b) [1.2] for the reasons set out in this statement";
>
> "… I relinquished all management and oversight of the business and simply remained as a salaried partner and head of department. Part of the reason I agreed to remain as a salaried partner was because Lloyds TSB PLC, the firm's bankers required that I remain given the historic debt in the business";
>
> "I had no day-to-day responsibility in relation to the accounts, nor did I have any right to access the accounts…";
>
> "I was always very careful to ensure that my own client account ledgers were properly balanced and reconciled but I had no access to the overall client account information for the firm. I now realise that I should never have agreed to stay on as a salaried partner in circumstances where I was not to be responsible for overseeing compliance with the Accounts Rules…";
>
> "I am informed by my solicitors that alleged breaches of the Code of Conduct are not strict liability and I deny that I breached Rule 5.01 on the basis that I had no responsibility for supervising Mike Pack [the Third Respondent] or the accounts team generally…"

30.36 Mr Cunningham told the Tribunal that the Applicant could not see how it could be said that the Second Respondent was not liable for the supervision defaults. He submitted that there was no distinction between an equity or salaried partner and the Second Respondent had clearly been held out as a partner and did not thereby escape liability.

Allegation 2.1

30.37 Mr Cunningham said that in relation to the Third Respondent, the Applicant sought an order under Section 43 of the Solicitors Act 1974 such that he had been involved in conduct of such a nature that in the opinion of the Applicant it would be undesirable for him to be involved in a legal practice. In particular, that whilst employed as the Finance Director of the firm, the Third Respondent had made or permitted transfers without proper authority and had failed to ensure compliance with the SAR 1998. As stated, Mr Cunningham said that the Third Respondent had admitted the allegation against him and he referred the Tribunal to a letter from the Third Respondent dated 13 November 2012 to the Applicant's legal representatives, which stated:

> "Paragraph 4 – I confirm that the allegations are admitted".

30.38 Mr Cunningham said that to put this in context, the Third Respondent had been replying to a letter from the Applicant's legal representatives which addressed the allegations in the Rule 5 statement and asked whether allegation 2.1 was admitted by the Third Respondent.

30.39 Mr Cunningham referred the Tribunal to Section 43 of the Solicitors Act 1974, which stated:

> "43 Control of [solicitors' employees and consultants]
>
> (1) Where a person who is or was involved in a legal practice but is not a solicitor
>
> …
>
> (b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of the solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.
>
> …
>
> (2) An order made by the Society or the Tribunal under this subsection is an order which states one or more of the following
>
> (a) that as from the specified date
>
> (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor, the person with respect to whom the order is made,
>
> (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice, the person with respect to whom the order is made,
>
> (iii) no recognised body shall employ or remunerate that person, and
>
> (iv) no manager or employee of a recognised body shall employ or remunerate that person in connection with the business of that body,
> except in accordance with a Society permission;
>
> (b) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with the Society permission, permit a person with respect to whom the order is made to be a manager of the body;
>
> (c) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with a Society permission, permit a person with respect in the order was made to have an interest in the body".

30.40 Mr Cunningham told the Tribunal that he sought an order in the full terms of Section 43 (1) and (2).

Submissions on behalf of the First and Second Respondents

30.41 The Second Respondent was sworn in and confirmed the truth of his witness statement dated 2 May 2013.

30.42 The Second Respondent told the Tribunal that in relation to allegation 1.2 and his alleged failure to provide appropriate supervision of the Third Respondent, as far as he was aware, there had been adequate systems in place at the firm at the material time.

30.43 The Second Respondent said that when his interest in the firm had been purchased in 2007, he had been in partnership with the First Respondent for many years and was aware of the First Respondent's desire at all times to comply with the SAR 1998 and his regulatory obligations. If anything, the Second Respondent said that the First Respondent's compliance had been over the top.

30.44 The Second Respondent said that the First Respondent had wanted systems in place to ensure compliance at all times and he had enacted a structure within the firm which involved a number of managers who were individually specifically tasked with compliance responsibilities. He said that the First Respondent had wanted people he could trust. That had included the Third Respondent in the financial side of the business, someone the First Respondent had known for many years but also other people, including Mr KK and Ms AW plus two other cashiers. The Second Respondent said that in the management structure, other people had been involved on a day-to-day basis including Mr PF who had assisted with the overall management of the firm.

30.45 The Second Respondent told the Tribunal that he had had no direct supervisory role with regard to the Third Respondent and only the First Respondent and Mr KK had supervised the Third Respondent. He said that he and the First Respondent had come to that arrangement and he had been confident that the First Respondent had the necessary skills to supervise the Third Respondent. He said that his role had then been solely fee earning.

30.46 The Second Respondent told the Tribunal that it had always been his understanding that it was for a firm to decide who had responsibility for supervision within the firm.

30.47 In cross-examination the Second Respondent confirmed that he had had no supervisory function at all with regard to the accounts.

30.48 In relation to Rule 5.01 of the SCC 2007 the Second Respondent said that he had read the rule. He agreed that as a salaried partner he had certain obligations within the firm and he acknowledged that in terms, there was no distinction between a partner and a salaried partner. He said that arrangements had been made for effective management of the firm as a whole in accordance with Rule 5.01 (1) and that had been the basis upon which the First Respondent had taken responsibility for supervision within the firm. The Second Respondent said that whilst it was the Applicant's case that the rule

applied to every partner in a practice, the fact was that arrangements had been put in place for effective management and for the First Respondent to be the supervisor of the Third Respondent and the accounts team generally.

30.49 The Second Respondent acknowledged that if the requirement was for a partner to make arrangements for the effective management of the firm as a whole, that had applied to him and he did not deny that responsibility but maintained that such arrangements had been put in place.

30.50 Mr Cunningham referred the Second Respondent to the firm's Response document, which stated:

> "…
>
> 11.7 … It was routine for [the First Respondent – redacted], in particular, to be requested to sign cheques, account transfers or authorities, and other financial documents, sometimes dozens at a time, to simply keep up with the sheer volume of client financial transactions…".

30.51 The Second Respondent told the Tribunal that this had not been an ordinary legal practice. He said that there had been thousands of transactions taking place and in terms of whether the First Respondent had trusted the information given to him, he had done so. There had been effective systems in place which included manually dealing with payments by the accounts department by reference to ledgers and account information which was then presented to the First Respondent. The Second Respondent said that there had been no reason to doubt the payments had been made correctly.

30.52 The Second Respondent said that he had seen the First Respondent with a number of transfers, not only cheques but also client ledgers and entries in support of the cheques. Each transfer/cheque had been backed up by documentary information in support and whilst he had seen the First Respondent dealing with such matters possibly only on three or four occasions, he had been aware how the First Respondent dealt with such matters.

30.53 The Second Respondent told the Tribunal that he believed that the firm's systems had been adequate and that the accounting system at the firm was effective. He said that no system was fool proof and he believed that the Third Respondent had managed to manipulate the system which had resulted in the system breaking down. The Second Respondent said that he knew what each individual's role was within the firm and their individual responsibility but accepted that he could not have known whether each individual person was operating the system properly. He acknowledged that as stated in his witness statement, he had had no access to the overall client account information for the firm.

30.54 In response to a question from the Tribunal, the Second Respondent said that he had not believed that he had any right to information due to his position as a salaried partner and that it had not been made available to him. He said that he and the First Respondent had agreed that he would have no involvement in the firm other than in relation to fee earning work and that he had not wanted to continue in a management

role. The Second Respondent told the Tribunal that the bank had wanted him to remain as a partner in the firm due to monies owing by the former practice and for him to take responsibility for the outstanding debt, which he had done and which was secured against property owned by himself and the First Respondent.

30.55 Mr Treverton-Jones told the Tribunal that the only issue was now in relation to the Second Respondent's denial of allegation 1.2. He said that the allegation was that the First and Second Respondents had acted in breach of Rule 5.01 of the SCC 2007 by their failure to provide appropriate supervision of the Third Respondent, their failure to safeguard assets entrusted to the firm and their failure to ensure compliance with key regulatory requirements.

30.56 Mr Treverton-Jones said that supervision of the Third Respondent had been part of the First Respondent's responsibilities and not of the Second Respondent's responsibilities. He submitted that it could not be the case that every partner in every firm had direct supervisory responsibilities for all unadmitted members of staff. He said that that was not what Rule 5.01 involved. He referred the Tribunal to the guidance notes to Rule 5.01, which stated:

> "…
>
> 3.20 …There is no longer a need for each office of a firm to be supervised by someone who is qualified to supervise and for whom that office is his or her normal place of work. However, this does not obviate the need to ensure that all client work is properly supervised and checked by experienced and competent persons within the firm. In essence rule 5 requires one person to be suitably trained and qualified in management skills and the implementation of proper and adequate systems and supervision, proportionate to the individual practice, its size and complexity".

30.57 Mr Treverton-Jones asked the Tribunal to have particular regard to the last line. He also referred the Tribunal to the rule itself and that it required "…arrangements for the effective management of the firm as a whole…" to be made. He said that that was for solicitors within the firm to do. Rule 5.02 defined persons who had to be "qualified to supervise" as including "(b) one of the partners of a partnership". He said that this specifically referred to one of the partners and not all of the partners or every partner in the firm.

30.58 Mr Treverton-Jones referred the Tribunal to Rule 5.03 with regard to the supervision of work for clients and members of the public, which stated:

> "(1) If you are a principal in the firm, you must ensure that your firm has in place a system for supervising clients' matters".

30.59 He said that this referred to the firm having in place a system for supervising clients' matters, not a partner personally. He referred the Tribunal to the guidance notes to Rule 5.01, which stated:

"…

2. The term "arrangements" is used broadly in 5.01 to encompass all systems, procedures, processes and methods of organisation put in place to achieve the required outcome. There is no requirement that these take a particular form; the method of delivery is a matter for the firm…

3. Factors to be taken into account in determining the appropriateness of a set of arrangements will include the size and complexity of the firm; the number, experience and qualifications of staff; and the nature of the work undertaken…

…

6. The day-to-day management of the firm can be delegated to an employee who is suitably experienced and competent, and a fit and proper person to perform the role…

…

10. Responsibility for the overall supervision framework rests with the principals, members of a recognised body which is an LLP, and directors of a recognised body which is a company…

11. Operationally, supervision can be delegated within an established framework of reporting and accountability...

…

20. [Rule 5.01 (1) (e)] This provision is designed to ensure that compliance with 2.02, 2.03 and 2.05 is addressed at the level of the firm's systems and procedures. If you have appropriate arrangements for compliance but a member of staff fails to follow established procedures in a one-off case, you will nevertheless have satisfied 5.01(1)(e)".

30.60 Mr Treverton-Jones said that whilst this referred to Rule 2 and client care, the guidance was clear namely that provided the firm had proper arrangements in place, if a member of staff failed to follow the firm's procedures in a one-off situation, the rule would still be satisfied. He said that the First Respondent accepted that he had fallen down with regard to supervision and whilst it was regrettable he had only very recently made that admission, he had now acknowledged that it had been his responsibility to supervise the Third Respondent. The Second Respondent was not to blame. He was not responsible for the defects or breach of the rule by his partner and Mr Treverton-Jones submitted that allegation 1.2 was not made out with regard to the Second Respondent.

30.61 Mr Treverton-Jones said that the guidance notes continued with regard to Rule 5.01 (1) (c):

"15. The purpose of 5.01 (1) (c) is to foster collective responsibility for the governance of the firm by requiring you to establish arrangements which

provide for compliance with key regulatory obligations. These include arrangements to ensure that:

(a) every solicitor in the firm holds a practising certificate, and that the practising certificate is renewed promptly when required;

…

(e) the firm complies with the Solicitors' Indemnity Insurance Rules;

(f) and accountants report is delivered in accordance with the Solicitors' Accounts Rules 1998…"

30.62 He submitted that this took the matter no further with regard to the allegation made by the Applicant since there was no indication that these regulatory requirements had not been met by the Respondents and in any event, they were the responsibility of the First Respondent as was Rule 5.01 (1) (g), the safe-keeping of assets by the firm.

30.63 Mr Cunningham said in reply that the Tribunal had to consider the wording of Rule 5.01 (1) which he said the Second Respondent had accepted in his evidence applied to him. He submitted that the correct analogy was the concept of collective responsibility and that all partners were collectively responsible under Rule 5.01 by virtue of use of the word "must" and that responsibility could not be abdicated. He said that whilst the Second Respondent's defence was that there were adequate systems in place, those systems had been inadequate. Mr Cunningham said that the guidance note at paragraph 3 continued "…Arrangements are unlikely to be considered appropriate unless they include a mechanism for periodic review of their effectiveness". He said that there had been no such review by the Second Respondent.

Submissions of the Third Respondent

30.64 As the Third Respondent did not attend and was not represented, the Tribunal had regard to his written representations which included his letter dated 13 November 2012 and email correspondence dated 22 May 2013, 30 May 2013 and 20 June 2013 between the Third Respondent and Mr Peter Steele of the Applicant's legal representatives. The Tribunal also had regard to email correspondence received from the Third Respondent on the morning of the substantive hearing which included a schedule of Income and Expenditure and some supporting financial documentation.

The Tribunal's Findings

30.65 The Tribunal found allegations 1.1, 1.1.1, 1.1.2 and 1.1.3 proved on the facts and on the documents in respect of the First and Second Respondents. It noted that both Respondents had admitted those allegations at an early stage.

30.66 The Tribunal found allegation 2.1 proved on the facts and on the documents in respect of the Third Respondent. It noted that the Third Respondent had admitted the allegation.

30.67 With regard to allegation 1.2, the Tribunal found that allegation proved on the facts and on the documents in respect of the First Respondent and it noted that the First Respondent had admitted that allegation albeit very recently.

30.68 It remained for the Tribunal to consider allegation 1.2 in respect of the Second Respondent who denied that allegation. The Tribunal accepted that the Second Respondent had become a salaried partner with a solely fee earning role as a result both of agreement with the First Respondent and because the bank had required that the Second Respondent remain at the firm as a form of security for the firm's historical debt.

30.69 The Tribunal was satisfied that there had been systems and procedures in place at the firm for compliance, both with regard to regulatory requirements and accounts and whilst there had been a breakdown in those systems/procedures, responsibility for that lay with the Third Respondent in relation to whom the First Respondent had been entirely responsible for his supervision. That had been admitted by the First Respondent and the Second Respondent had left that entirely to the First Respondent by agreement.

30.70 The Tribunal noted that Rule 5.01 (1) stated that "If you are a principal in a firm, a director of a recognised body which is a company, or a member of a recognised body which is an LLP, you must make arrangements for the effective management of the firm as a whole and in particular provide for" the matters listed in sub-paragraphs (a) to (l) of the Rule. The Applicant had not pleaded in their Rule 5 Statement that the First and Second Respondents had failed to make arrangements for the effective management of the firm as a whole but had alleged that the First and Second Respondents had "failed to provide appropriate supervision to unadmitted members of staff (in particular their Finance Director), failed to safeguard assets entrusted to their firm and failed to ensure compliance with key regulatory requirements", referring to sub-paragraphs (a), (c) and (g) of Rule 5.01(1) as if these sub-paragraphs had been free standing. The Applicant did not appear to have had sufficient regard to the opening words of the Rule which clearly stated that the Rule required "appropriate arrangements for the effective management of the firm" to be made with regard to these sub-paragraphs. The Tribunal was satisfied that appropriate arrangements had been made by the First Respondent for the effective management of the firm as a whole and that responsibility had been delegated by the Second Respondent to the First Respondent who was responsible for supervision of the Third Respondent. The First Respondent had accepted that that had been his responsibility within the firm on a day-to-day basis and he had fallen down in that regard.

30.71 The Tribunal also had regard to Rules 5.02 and 5.03. The former stated that for a person to be "qualified to supervise" the person had to be "one of the partners of the partnership" which the First Respondent was. Further, under Rule 5.03 this required that if a principal in the firm "you must ensure that your firm has in place a system for supervising clients' matters". The Tribunal was satisfied that that had been done by the First Respondent albeit the system had been abused and defrauded by the Third Respondent. The Tribunal recognised that this had been a large firm with three main areas of business, which at one time had been located in three separate sites. The increase in workload, turnover and staffing had been rapid. It had been the aim of the firm to achieve the highest level of compliance and zero tolerance of failure to

achieve this. High calibre experienced staff had been employed, and two reputable firms of accountants engaged, one of which was brought in as an independent assessor for the practice. The firm itself had been a market leader in software and technology. The Third Respondent had originally worked for IJ. He had an exceptional reputation in his industry and considerable knowledge and skills in finance. He joined the practice full time in 2007 although the Third Respondent had worked with the firm since 2004 having been instrumental in the acquisition and running of the Nottingham office. The evidence before the Tribunal was of a culture of best practice and scrutiny throughout the business. The actions of the Third Respondent were devious and manipulative.

There was no evidence before the Tribunal as to how the debtor overpayments had come about. It was apparent that strenuous and serious efforts had been made by the partners to resolve the issue once it had been brought to their attention by IJ, at great cost to themselves given the value of the sums involved from less than £1with an average of £20 owing to 72,250 clients. Action plans were before the Tribunal demonstrating the approach to be adopted. It was evident that the exercise proved far more difficult and demanding than anticipated.

30.72 The Tribunal heard and accepted that the Third Respondent had been very experienced in financial matters and had had a long association with the firm and with the First Respondent. It noted that guidance note 20 to Rule 5.01 allowed for a situation where if appropriate arrangements for compliance were in place but one member of staff failed to follow those established procedures in a one-off case, the solicitors/firm would nevertheless have satisfied Rule 5.01 (1) (e) of the SCC 2007.

30.73 The Tribunal found that this was a case where arrangements had been put in place for the effective management of the firm which the partners had worked hard to achieve over a long period of time and which had faltered only due to the actions of the Third Respondent. The Tribunal was satisfied that one of the partners of the partnership namely the First Respondent was qualified to supervise and was delegated to supervise on a day-to-day basis together with being responsible for safeguarding assets entrusted to the firm and ensuring compliance with key regulatory requirements. It did not accept that the rule required all principals/partners in a firm to bear that supervisory responsibility on a daily basis. It found allegation 1.2 not proved against the Second Respondent.

Previous Disciplinary Matters

31. None.

Mitigation

32. Mr Treverton-Jones told the Tribunal that until 2007, there had been two practices with the same name. He said that the First Respondent had been the sole principal in the commercial debt recovery department and there had been the general practice of the First and Second Respondents which had merged in 2007. Historically, he said that in 2004 the business had been in the sole name of the First Respondent and it had been that period of time to which the misapplication of funds related in respect of 75,250 overpayments and the task had been to send them back to their rightful owners

where the average overpayment amounted to £13.28. He said that this had presented logistical problems and that had larger sums been involved, it would have been worth greater effort and expenditure. The sum of £67,138.09 had been returned to its rightful owners.

33. Mr Treverton-Jones referred the Tribunal to a "process flow" document which detailed the steps taken in 2004 to seek to identify the overpayments and return monies to debtors. He referred to an email dated 25 February 2004 from Ms FM at IJ to Ms TB at the firm, which stated:

> "Hi T,
>
> Have you had any thoughts yet on a) how you are going to go about returning the £0.99m debt overpayments, b) the related controls and checks that you will have in place, and c) the likely timescales?" to which Ms TB replied:
>
> "Hi
>
> Yes of course, we have a full plan compiled and letters and with all details split by years and value, along with this we have consulted with Accountants, in relation to the solicitors accounting rules and we have to return everything inclusive of 1 pence.
>
> As regards the time lines, we have a rough idea and all documents will be completed in relation to process flow".

34. Mr Treverton- Jones said that it was clear that the firm had taken the matter seriously and had managed to return some of the funds. He said that later in 2004 the Third Respondent had joined the firm from IJ and in the same year, the litigation practice including the commercial debt department had gained Lexcel accreditation. The firm had acquired the firm of Waldman & Co in 2006 and thereafter the Third Respondent had been responsible for financial management of the litigation practice and of the Nottingham practice. The firm had employed competent financial staff and Mr Treverton-Jones said that other non-lawyer managers had been employed including Mr KK who was a former financial director of IJ and had been employed as a consultant at the firm. In 2007 he said that Mr PF had been employed as the firm's non-lawyer Chief Executive and the Second Respondent had taken a back seat in a solely fee earning role.

35. It was in 2008 Mr Treverton-Jones said that it had all gone wrong. It was clear that the Third Respondent had taken money from client account and transferred it to the firm's office account without the knowledge of anyone else in the firm including the First and Second Respondents. He referred the Tribunal to the Rule 5 Statement which stated:

> "…
>
> 21. The transfers were apparently made in respect of bills of costs and other charges".

36. Mr Treverton-Jones submitted that it would have been extremely difficult to detect as bills had been raised purportedly explaining the transfer of monies from the client account to the office account and he submitted it was also difficult to see how reconciliations could have identified what the Third Respondent was doing. He said that the First Respondent had accepted his failings in his witness statement which stated "… I regret to say that Mike [the Third Respondent] had started failing to provide me with updates". The First Respondent had asked Mr KK to look into matters and discovered that the Third Respondent had disguised the real financial position of the firm by suggesting that its expenses were lower than they were in reality.

37. Mr Treverton-Jones referred the Tribunal to the firm's Management Accounts for the eight month period to 31 August 2008 which showed under year to date expenditure:

Rent	106,407
Rates and water	22,625
Insurance	26,836
Light and Heat	5685

38. There was then a Trading and Profit and Loss Account prepared by Mr KK for the period 1 January 2008 to 31 October 2008 which showed a significant difference in comparison of the figures:

Rent	182,193
Rates and water	73,372
Insurance	64,863
Light and Heat	38,029

39. Mr Treverton-Jones said that between May and November 2008 the Third Respondent had transferred improperly the sum of £728,500 from the firm's client account to its office account by pretending that bills had been raised. He said that the First Respondent had had no knowledge of that, having authorised only one of six transfers but not the client to office transfers. Mr Treverton-Jones submitted that this demonstrated how easy it could be for a senior and trusted employee to behave dishonestly without that being identified by senior partners/members of staff. He said it was not believed that the Third Respondent had utilised any of the monies for his own purposes but rather that the monies had been used for the purposes of the practice. In May 2009 the Third Respondent had been dismissed from the firm and following notification of the inspection, the First Respondent had informed the FIO of the matter and the firm had co-operated completely thereafter with the Applicant.

40. The investigation had been lengthy and Mr Treverton-Jones said that from the date of the inspection on 18 May 2009 the FI Report had been completed as at 23 September 2011. As a result, it had been hanging over both Respondents for four years and during that time they had both held clear practising certificates.

41. Mr Treverton-Jones said that both Respondents had admitted the SAR 1998 breaches having accepted that they were responsible for those as principals of the firm albeit the breaches would have been difficult to spot. He said that there had been a problem with regard to replacing the funds as they did not have monies of their own with which to do so and the insurers had also been reluctant to pay money into the firm's client account since most of the money owed was never likely to be reclaimed. Small balances and unclaimed balances would be paid over to charity and Mr Treverton-Jones said that the insurers did not want that to happen, having taken a commercial approach. He said that the insurers were keen to find a way to cover the repayments made but not to risk having to pay hundreds or thousands of pounds to charities. Mr West, as the Respondents' solicitor had written to the Applicant at the end of 2012 regarding the potential scheme to replace the client account shortage and account to the debtors and Mr Treverton-Jones said that although that had taken some time to achieve, it had now reached fruition.

42. Mr Treverton-Jones referred the Tribunal to the Tracing and Repayment Protocol document which he said had been drafted by the Respondents' solicitors. He said this was a detailed protocol for the sending out of letters to debtors including, inter alia, the payment of interest. The general principle was that efforts would be made where the debt exceeded £50. Mr Treverton-Jones told the Tribunal that the Applicant had agreed the protocol adopted by the Respondents and referred the Tribunal to email correspondence in that regard passing between the Applicant and Mr West on behalf of the Respondents from 11 July to 15 July 2013, which stated:

> "Dear Mr West
>
> I attach the following documents with proposed amendments and a draft issue agreement for initial review.
>
> 1. Tracing and Repayment Procedure
> 2. Annexes to the Repayment procedure which have been amended
>
> Tracing and Repayment Procedure
>
> We are of the view that this is a genuine and credible attempt to return the monies to the debtors and appreciate the time and effort that has been invested…"
>
> "Dear Mr Godson
>
> Thank you for your email of 11th July.
>
> The amendments you have made to the Protocol and three annexures are agreed.
>
> …
>
> Could you please confirm that you agree those amendments. I am asking DWF to also confirm the insurer agrees…"

"Dear Mr Godson

…

I am taking instructions on the issue agreement.

In the meantime could you please confirm that the amendments to the draft protocol sent to you over the weekend are agreed…"

"Dear Mr West

As I have already indicated the protocol appears to be a fair and genuine attempt to return as much of the debtors money as possible. Whilst the SRA has been involved in the formulation of the protocol and whilst there is an obligation for your clients to report progress to the SRA I do not see that the SRA has to formally agree the same.

I do feel that we need to know that DWF and GPB Solicitors LLP agree the terms as they both have obligations to perform…"

"Ian [Fishburns Solicitors]

Please confirm whether you have received the shortfall money into your client account…"

"Hello Nigel – Thank you for your e-mail of below.

I can confirm that the sum of £1,002,278.51 has been safely received from the Insurers…into my firm's Client Account, pending finalisation of the Tracing and Repayment Procedure".

43. Mr Treverton-Jones referred the Tribunal to a letter dated 15 July 2013 from the firm to the Applicant which stated:

"Dear Mr Godson

I refer to the tracing and repayment Protocol which is to be agreed between the [First Respondent – Redacted], [Second Respondent – Redacted], their Insurers and the SRA.

I confirm that [First Respondent – Redacted] and [Second Respondent – Redacted] have asked GPB to provide the staff, office premises and other facilities to administer the Protocol…"

44. Mr Treverton-Jones told the Tribunal that best efforts had been made by the Respondents to resolve matters albeit the insurers had been difficult in the matter.

45. In relation to the First Respondent, Mr Treverton-Jones said that he was aged 63 and was a decent and typical traditional solicitor who had worked for GPB for the whole of his working life. He had been admitted as a solicitor in 1978 and made a partner in

1979. The firm was embedded in the community it served as was the First Respondent. He had been Chairman of the local Citizens Advice Bureau ("CAB") and had served the CAB for 30 years and had also been a trustee and director of a hospice, a Town Councillor and a School Governor. He had assisted charities including Mencap and Relate and had helped to establish the local Duty Solicitor Scheme.

46. Mr Treverton-Jones submitted that the First Respondent was a pillar of the community and there had been no suggestion of dishonesty or lack of integrity on his part. He asked the Tribunal to also consider the testimonials provided on behalf of the First Respondent.

47. In relation to the Second Respondent, Mr Treverton-Jones told the Tribunal that he was aged 49 and had had very limited involvement in matters. He had admitted the SAR breaches and had been found not to have breached Rule 5.01 of the SCC 2007. He had had no management or accounting function within the firm and his culpability was at the bottom of the scale.

48. Mr Treverton-Jones said that the Second Respondent had become a salaried partner to enable him to undertake fee earning work only and he had not been involved in the bulk debt collection work.

49. There had been huge stress for both Respondents and Mr Treverton-Jones told the Tribunal that had impacted upon them and their families, both Respondents being married with children. Mr Treverton-Jones submitted that it was a tragedy that both Respondents were before the Tribunal and that neither needed any interruption in their respective abilities to practice.

50. Mr Treverton-Jones told the Tribunal that the monies had been misapplied by means of a sophisticated fraud carried out by a trusted employee in a senior position and he submitted that no systems could have prevented that.

51. Mr Cunningham told the Tribunal that the Applicant had inspected the firm following a report of its inability to pay staff salaries at Christmas 2008. Mr Treverton-Jones acknowledged that the debtor overpayments had only been reported to the FIO when he had attended at the firm. He said that the Applicant had been reluctant to engage for a period of time as initially it had wanted to complete its FI Report before engaging. Mr Cunningham told the Tribunal that no concrete proposals for replacement of the monies had been made until May 2013.

Sanction

52. The Tribunal had regard to its Guidance Note on Sanctions.

53. The Tribunal had regard to Bolton v The Law Society [1994] 1 WLR 512 which sets out the fundamental principles and purposes of the imposition of sanctions by the Tribunal and stated in the Judgment of Sir Thomas Bingham:

> "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" and "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…"

54. The Tribunal was satisfied that the First and Second Respondents had discharged their duties with complete integrity, probity and trustworthiness whilst the Third Respondent, albeit an unadmitted person, had not done so and had perpetrated a fraud within the firm which the First Respondent would have had great difficulty in identifying. The SAR breaches were breaches of strict liability which the First and Second Respondents had admitted at an early stage. The First Respondent had also failed in his obligations with regard to supervision of the Third Respondent.

55. The Tribunal had regard to culpability of the Respondents. It found that this was low with regard to the First and Second Respondents and significant with regard to the Third Respondent.

56. The harm caused had been the harm caused by the Third Respondent's actions and to a lesser degree the inaction of the First Respondent in not adequately supervising the Third Respondent although the Tribunal accepted that it was unlikely that the clever fraud perpetrated by the Third Respondent would have been discovered.

57. The Tribunal considered that aggravating features were that the fraud had involved a significant sum of money and breaches of professional obligations by the First and Second Respondents with regard to the SAR 1998.

58. In mitigation the Tribunal took into account that the misconduct had resulted from the deception of a third party namely the Third Respondent, that the First and Second Respondents had had effective systems and procedures in place at the firm, that they had co-operated fully with the Applicant and had sought to make the situation good and to replace the misapplied funds albeit only very recently.

59. The Tribunal had regard to the testimonials for both the First and Second Respondents and noted that both were men of impeccable character and were variously described as being honest, reliable and decent. The Tribunal did not doubt the integrity of both the First and Second Respondents.

60. With regard to the Third Respondent, he had not attended and had made no submissions in mitigation.

61. The Tribunal considered all of the sanctions available to it. It decided to impose fines upon the First and Second Respondents. It had regard to the case of Matthews v Solicitors Regulation Authority [2013] All ER (D) 299 (May) in relation to the amount of the fines for the First and Second Respondents respectively taking into account their financial circumstances.

62. The Tribunal ordered that the First Respondent, having regard to his age, the allegations proved against him and his means would have paid a fine of £5,000 but this was reduced to £3,000.

63. The Tribunal ordered that the Second Respondent having regard to his means, the allegations proved against him and that allegation 1.2 had not been found proved against him would have paid a fine of £3,000 but this was reduced to £2,000.

64. The Tribunal ordered that a Section 43 Order be imposed upon the Third Respondent.

Costs

65. Mr Cunningham referred the Tribunal to the Schedule of Costs and confirmed that he sought a costs order against the three Respondents in the sum of £77,356.11, subject to some adjustment of his fees since the hearing had gone short.

66. He said that the case had taken considerable investigation and preparation and he acknowledged that as a result the bill was substantial.

67. Mr Treverton-Jones submitted that it was not an appropriate case for summary assessment. He referred the Tribunal to the First and Second Respondents' financial statements. He said that where two Respondents were unable to make any payment for costs, if the Tribunal was minded to assess costs any order should not be enforced without leave of the Tribunal. If costs were ordered, Mr Treverton-Jones submitted that they should also be apportioned between the Respondents and that the Third Respondent should bear the majority of the costs on a percentage basis.

68. Mr Treverton-Jones said that the bill was substantial and he was not able to make detailed submissions on the bill as he had only just received it.

69. Mr Cunningham said that the Schedule of Costs had been sent to the Respondents' solicitor on the preceding Friday and Mr West confirmed that was correct. He said that the profession should not have to bear the costs of the proceedings which might not be recovered and he asked the Tribunal to summarily assess the costs and order a proportion of the costs to be paid on a joint and several basis and any remaining costs in relation to the First and Second Respondents to be ordered not to be enforced without leave. Mr Cunningham urged the Tribunal not to order a detailed assessment on the basis that that would incur additional costs and delay.

70. Mr Treverton-Jones referred to the FI bill. He said that he could not comprehend how a salaried employee of the Applicant could be charged out at £115 per hour when that employee [the FIO] was employed at the material time by the Applicant on a full time basis. He submitted that it was wrong to do so and equated to a salary of over £200,000 per annum.

71. Mr Cunningham said that this was the cost of the FIO's time and that there was no profit element.

72. The Tribunal had listened carefully to the submissions on costs and had had regard to the financial information provided by the First, Second and Third Respondents.

73. The Tribunal was satisfied that the costs were appropriate for summary assessment and it assessed the costs in the sum of £54,000 and ordered that they be apportioned between the three Respondents. The Tribunal considered that in light of the lack of

financial resources of all three Respondents, the costs ordered against them should not be enforced without leave of the Tribunal. The Tribunal considered the case of Solicitors Regulation Authority v Davis & McGlinchey [2011] EWHC 232 (Admin) in ordering costs and that they not be enforced without leave.

74. The Tribunal at conclusion of the hearing notified the parties that the time limit in which to appeal to the High Court against the Tribunal's decision had been reduced by the Rules Committee to 21 days commencing from the date of the Tribunal's Order. The Tribunal was required to notify the parties that any application for an extension of time within which to appeal should be made at conclusion of the hearing.

75. Mr Cunningham confirmed that the Applicant sought an extension of time to appeal with regard to allegation 1.2 having been found not proved against the Second Respondent and with regard to the sanctions imposed upon the First and Second Respondents.

76. Mr Treverton-Jones also sought permission for an extension of time to appeal if required.

77. The Tribunal granted the Applicant and the First and Second Respondents an extension of 21 days to appeal from the date of receipt of the Tribunal's Judgment.

Statement of Full Order

78. The Tribunal Ordered that the First Respondent, solicitor, do pay a fine of £3,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay 30% of the total costs summarily assessed and incidental to this application and enquiry fixed in the sum of £16,200.00, such costs not to be enforced without leave of the Tribunal.

79. The Tribunal Ordered that the Second Respondent, solicitor, do pay a fine of £2,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay 10% of the total costs summarily assessed and incidental to this application and enquiry fixed in the sum of £5,400.00, such costs not to be enforced without leave of the Tribunal.

80. The Tribunal Ordered that as from 16th July 2013 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Michael Pack

(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Michael Pack

(iii) no recognised body shall employ or remunerate the said Michael Pack

(iv) no manager or employee of a recognised body shall employ or remunerate the said Michael Pack in connection with the business of that body;

(v) no recognised body or manager or employee of such a body shall permit the said Michael Pack to be a manager of the body;

(vi) no recognised body or manager or employee of such a body shall permit the said Michael Pack to have an interest in the body;

And the Tribunal further Ordered that the said Michael Pack do pay 60% of the total costs summarily assessed and incidental to this application and enquiry fixed in the sum of £32,400.00, such costs not to be enforced without leave of the Tribunal.

Dated this.16th day of August 2013
On behalf of the Tribunal

Mr A Ghosh
Solicitor Member

On behalf of J Devonish, Chairman