The Second Respondent appealed to the High Court (Administrative Court) against the Tribunal's decision dated 15 October 2014 in respect of sanction. The appeal was heard by Mr Justice Mostyn on 23 April 2015, with Judgment handed down on 5 May 2015. The appeal was allowed in part, namely, the Tribunal's Order that the Second Respondent be suspended from practice as a solicitor for two years commencing on 3 September 2014 was set aside, and the Second Respondent was instead suspended from practice as a solicitor for one year commencing on 3 September 2014 and expiring on 3 September 2015.
No other part of the Order made by the Tribunal on 3 September 2014 is affected (namely, the Costs Order). There was no order for costs on the appeal. [ANNOTATION REDACTED]

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11209-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BOMA ELLIS-DOKUBO, First Respondent

[NAME REDACTED] Second Respondent

Before:

Mr D. Glass (in the chair)
Mr K. W. Duncan
Mr G. Fisher

Date of Hearing: 2nd & 3rd September 2014

Appearances

Mr Robin Havard, Solicitor of Blake Morgan LLP, Bradley Court, Park Place, Cardiff CF10 3DP for the Applicant

Mr Richard Nelson, Solicitor of Richard Nelson LLP, Priory Court, 1 Derby Road, Nottingham NG29 2TA for the First Respondent who was not present.

Mr Victor Wozny, Solicitor appearing pro bono for the Second Respondent who was present

---

JUDGMENT

Allegations

1.1 The First and/or Second Respondents have failed to act in the best interests of clients contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007") and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code of Conduct ("2011 Code").

1.2 The First Respondent has made statements, both oral and written, to clients and third parties which he knew to be untrue contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code.

1.3 The Respondents have transferred client monies from client account to office account in respect of fees without sending a bill of costs or other written notification to the client contrary to Rule 19 of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or where such transfers were made after 6 October 2011, Rule 17 of the SRA Accounts Rules 2011 ("AR 2011").

1.4 The Respondents have retained, without proper reason, client monies, contrary to Rule 15 SAR 1998 and/or, where such conduct took place after 6 October 2011, Rule 14 AR 2011.

1.5 The First Respondent has failed to provide clients with adequate information regarding costs contrary to Rules 1.02, 1.04, 1.06 and 2.03 SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4 and 6 and Outcome 1.13 of the 2011 Code.

1.6 The Respondents failed to fully investigate a credit balance existing on office account in respect of a client matter in breach of Rule 29 SAR 1998 and the SRA Guidelines at paragraph 2.8 of appendix 3 and/or, where such conduct took place after 6 October 2011, Rule 26 AR 2011 and the SRA Guidelines at paragraph 2.7 of appendix 3.

1.7 The Respondents have failed to cooperate fully with the SRA at all times and failed to comply promptly with a written notice from the SRA contrary to Principle 7 and Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.

1.8 The Respondents have failed to report to the SRA the fact that they and thereby the firm, Beevers Solicitors, were in serious financial difficulty contrary to Rule 20.06 of the 2007 Code and/or where such conduct relates to a period after 6 October 2011, Outcome 10.3 of the 2011 Code.

1.9 The Respondents have failed to maintain qualifying insurance in breach of Rules 4.1 and 5.1 of the SRA Indemnity Insurance Rules 2011.

1.10 In respect of Allegations 1.1 to 1.5, it is alleged that the First Respondent acted dishonestly although it is not necessary to prove dishonesty to prove the allegations themselves.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 17 December 2013 with exhibit MRH 1
- Chronology of complaint by Mr and Mrs Dee
- E-mail from Mr Dee to Mr Delme Griffiths of Blake Morgan dated 27 August 2014 (aide memoire)
- Office copy entries in respect of a property belonging to the First Respondent
- Office copy entries in respect of a property belonging to the Second Respondent
- Judgment in the case of Weston v The Law Society reported in the Times, 15 July 1998
- Schedule of costs

First Respondent

- Statement of the First Respondent in response to the Rule 5 Statement dated 1 August 2014
- E-mail from Mr Nelson to the Tribunal office dated 14 August 2014 enclosing:
- E-mail from Mr Nelson to Mr Havard dated 14 August 2014 enclosing:
- Letter from C Solicitors to Mr Nelson dated 13 August 2014 enclosing
- Letter from Beevers solicitors to C Solicitors dated 24 August 2010
- Legal Aid Assessment Certificate in the case of client B dated 14 June 2005
- E-mail from the First Respondent to Mr Nelson dated 1 September 2014 forwarding:
- E-mail from Professor P. C. Stanley dated 1 September 2014 attaching:
- A medical report dated 30 August 2014
- E-mail from AA to the First Respondent dated 1 September 2014

Second Respondent

- Statement in answer of Second Respondent dated 7 February 2014
- Personal Financial Statement of the Second Respondent dated 31 August 2014

Preliminary Issues

3. For the Applicant, Mr Havard informed the Tribunal that Mr Nelson's client, the First Respondent was not present. Mr Havard had only found out that he was not to attend the previous evening and had informed Mr Wozny who represented the Second Respondent. For the First Respondent, Mr Nelson handed up a document dated 30 August 2014 addressed "To whom it may concern" signed by Professor Princewill C. Stanley, Consultant Neuropsychiatrist, which read:

> "Medical Report Re Boma E. Dokubo
>
> "This is to certify that the above named male solicitor aged 53 years, currently in Nigeria has been examined on account of Psychological symptoms he presented with and found to be reacting to enormous Psycho Social Pressures and as such would be unable to stand the rigors of a trial/hearing.
>
> In due course, we may furnish you with a definite diagnosis..."

4. Mr Nelson informed the Tribunal that upon receipt of the First Respondent's e-mail with the medical report he had e-mailed back to ask if he wished to apply for an adjournment of the proceedings but the First Respondent indicated that he did not. Mr Nelson submitted that they were part and parcel of the root cause of the illness from which the First Respondent was suffering. Mr Havard confirmed that he did not object to the matter proceeding in the absence of the First Respondent. The Tribunal had regard to the provisions of Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which set out that:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

5. In view of the fact that the First Respondent had been properly served with the proceedings, was represented and had made it clear to his representative that he wished the matter to proceed in his absence, the Tribunal determined that it would be in the public interest and in the interests of justice for the hearing to take place as scheduled.

6. At a case management hearing which took place on 22 July 2014, the Tribunal made directions including, that:

> "Unless the First Respondent serves upon the Applicant on or before 4pm on Friday 1 August 2014 any documents on which he intends to rely, he shall not be entitled to adduce any evidence at the hearing without leave of the Tribunal;"

7. Mr Nelson wished to introduce into evidence a letter from C Solicitors to his firm dated 13 August 2014 relating to a client Mr B. Mr Nelson had provided a copy of the letter to Mr Havard on 14 August 2014. He had also now provided a copy to Mr Wozny; neither had any objections. The Tribunal agreed that the letter from C Solicitors should be admitted into evidence. Mr Nelson also wished to introduce an

e-mail which had been forwarded to him by the First Respondent from one AA dated 1 September 2014 said to be representing the client Mrs A. Mr Nelson stated that he had e-mailed the address from which the message had originated asking for confirmation of the sender's identity but no reply had yet been received. The e-mail indicated that Mrs A had been paid in full in respect of the claim which the firm was handling on her behalf. The Tribunal did not object to the document being admitted. Mr Nelson provided an update on his enquiries later in the proceedings. Mr Nelson advised the Tribunal that he had tried to check the bona fides of the email and he had received material that suggested that what was said in the e-mail was the case. The First Respondent had telephoned Mr Nelson and was anxious that the Tribunal should be aware of that fact.

8. In respect of witness evidence, Mr Havard informed the Tribunal that the Investigation Officer, Ms Beenham was no longer with the Applicant and was not present. The individual to whom she had reported at the Applicant was unable to attend because of illness but the current head of Forensic Investigation of the Applicant was present but he had no direct knowledge of the investigation. Mr Havard understood that no issue would be raised by the representatives of the First and Second Respondents about the absence of Ms Beenham. Mr Havard had intended to call client Ms H but he now understood from Mr Nelson that her statement was effectively agreed by the First Respondent. When the witness Mr Dee ("D") gave evidence (see below) it became apparent that he had prepared an aide memoire in the form of an e-mail to Mr Griffiths of Morgan Cole containing his observations upon the Response of the First Respondent. Mr Nelson informed the Tribunal that Mr Havard had unused material that the First Respondent had looked at but which Mr Nelson had not seen and it was understood that some of the notes the witness had made referred to that material. The Tribunal considered that if the witness was to be permitted to refer to the document then it must be admitted into evidence and copies provided to all parties. The e-mail dated 27 August 2014 was duly admitted into evidence.

9. For the First Respondent, Mr Nelson confirmed that allegations 1.1 through to allegation 1.9 were admitted by the First Respondent, but he denied the allegation of dishonesty at allegation 1.10 in respect of allegations 1.1, 1.2, 1.3, 1.4 and 1.5.

10. Mr Wozny confirmed that the Second Respondent admitted all the allegations brought against him, i.e. Allegations 1.1, 1.3, 1.4, 1.6, 1.7, 1.8 and 1.9. He would not give evidence on his own behalf but a plea in mitigation would be submitted.

Factual Background

11. The First Respondent was born in 1960 and admitted in 1993. He did not hold a current Practising Certificate but, at all material times, practised as a partner at the firm which operated under the style of Beevers Solicitors ("the firm") in Ashton-Under-Lyne, Lancashire. The First Respondent was a partner at the firm from 4 January 1997 to 8 November 1999 when he became Senior Partner of the firm and sole equity partner until it ceased trading on 25 July 2012 and was the subject of an intervention pursuant to a decision dated 29 November 2012.

12. The Second Respondent was born in 1965 and admitted to the Roll in October 1995. He held a current Practising Certificate with conditions. Throughout the material time, he was an Assistant Solicitor at the firm from 17 December 1998 to 8 November 1999 when he became a Salaried Partner.

13. On 14 January 2013, both Respondents were adjudicated bankrupt.

14. An Investigation Officer ("IO") of the Applicant attended the offices of the firm on 10 July 2012 to carry out an inspection. In anticipation of her attendance, an "Investigation Notification Letter" dated 3 July 2012 had been sent to the firm setting out the information required to be made available to the IO at the start of the investigation to include core documents such as bank statements, cash books and client account reconciliations.

15. The IO and Ms AF from the Applicant's Supervision Department met with the Second Respondent on 10 July 2010. The Second Respondent said that he did not have access to and knew little about the firm's books of account. He said that he was not a signatory to the firm's bank account and that the First Respondent had provided him with approximately eight pre-signed client account cheques in case there was a requirement to draw on client funds. Having undertaken as much of an investigation as she could, the IO prepared a Forensic Investigation report ("FIR") dated 27 July 2012.

16. Even though the IO was not able to obtain the full accounting records, it was possible for her to obtain a list of client balances which showed that, as at 30 June 2012, the firm should be holding the sum of £993,548.49 in general client account and the sum of £39,238.51 in designated deposit accounts although it was not possible to verify those figures save that information was produced relating to 2012 Financial Transactions. The IO was not able to satisfy herself that the books of account were in compliance and that client money was safeguarded. Certain client ledgers also came into the possession of the IO which highlighted matters of concern. In the following judgment in references to numbers of clients; the parties counted Mr and Mrs D as one client for the purposes of submissions.

<u>Client Mr W - accident at work</u>

17. Mr W's client ledger indicated that his matter was being handled by the First Respondent by way of initials ED on the ledger and that the matter related to personal injury. The financial transactions relating to the matter took place from February 2008 to December 2009. On 16 December 2008, the client ledger showed that a sum of £10,000 was paid into client account described as "Royal Sun Alliance Settlement". Of that amount £5,000 was paid to Mr W on 17 December 2008, described as an interim payment and £5,000 was transferred on 16 December 2008 to office account in respect of costs. It had not been possible for the IO to inspect the file. Subsequently between 9 April 2009 and 15 October 2009 the firm received four payments also described as "Royal Sun Alliance Settlement" amounting to £175,000. In the same period no monies were paid out to Mr W but £153,597 was taken in costs. On 16 October 2009, £10,000 was paid to Mr W by way of damages and then the firm took a further £21,029.70 in respect of costs. The ledger showed that the firm

transferred approximately 90% of the funds received in connection with this client account, totalling £160,000 by way of 10 transfers into office bank account.

Ms H, road traffic accident

18. In her statement dated 6 December 2013, Ms H said:

> "In October 2004 I was involved in a road accident while I was stood on a pavement waiting to cross the road. This left me with a fractured C2 bone in my neck, a compound fracture to my tibia and fibula, a punctured lung, cracked ribs and a broken collarbone.
>
> The accident left me affected psychologically. I will not wear skirts or shorts without tights as I have a large scar on the inside of my left leg as a result of the accident. My left leg is also constantly more swollen than my right meaning I struggle with finding shoes and boots that fit properly and I suffer pain in my leg occasionally. I also have a large scar on the back of my head, as a result of my head hitting the ground, which means that I cannot wear my hair in certain styles. I am also weary (sic) when near roads and traffic and try to avoid the place where the accident occurred."

19. A settlement was achieved by an award of damages in the amount of £34,000. The financial transactions relating to the matter took place from June 2005 to February 2010. According to the client ledger:

- The cheque for damages was received on 4 March 2009. Subsequent transactions included:
- On the same day the damages were received, the First Respondent transferred the sum of £16,969.65 out of the damages and into office account
- A further transfer of £1,461.36 on 9 March 2009 representing the balance of the costs
- On 10 March 2009, a further sum of £3,323.27 was transferred in respect of costs.
- On 22 May 2009, a transfer of £10,000 was paid in respect of costs.
- On 23 June 2009, the sum of £1,000 was recorded as paid to Ms H in respect of damages
- On 16 November 2009, a cheque for £17,500 from Aviva was recorded.

20. Further transfers were taken subsequently in respect of costs and there was no reference to any payment being made to Ms H. The ledger recorded that the firm transferred approximately 98% of the funds received in connection with this client to the office bank account.

Mrs A, road traffic accident

21. It had not been possible either to make contact with Mrs A or obtain access to the file. The client ledger illustrated that between 18 January 2010 and 14 September 2010, three amounts totalling £110,700 were received into client account.

22. The ledger also showed that £15,000 of the amount received was paid to Mrs A on 21 October 2010 with costs of £12,267.81 having been taken on 20 January 2010 and 2 February 2010.

23. The most up-to-date records as shown by the client ledger dated 24 July 2012 showed a credit balance on client account of £83,432.19 which had existed since 21 October 2010.

Mr B, probate

24. This client file was not available for inspection by the IO. According to the client ledger on 27 August 2010, £15,422.95 was lodged in office account described as "estate money" which created a credit balance of £14,348.01 on the office side of the client ledger.

25. The ledger showed a credit balance on office account from 27 August 2010 and there was no record of any movement of funds since that time or of any monies received into client account.

Mr and Mrs "D", neighbour dispute

26. In 2008, Mr D and his wife Mrs D became involved in a neighbour dispute and instructed the First Respondent to act on their behalf when the neighbours issued proceedings against them. Mr and Mrs D had the benefit of legal expenses insurance cover up to a maximum value of £50,000.

27. By letter of 9 February 2009, the First Respondent set out the firm's terms of business. In Mr D's statement dated 6 December 2013, he confirmed that the First Respondent's estimation of costs in such a dispute was £15,000 plus VAT and disbursements of £5,000 and the letter stated that: "...in the event that a party loses the case, he or she is likely to meet both sides costs and so the costs will have to be doubled".

28. No updates were provided nor were interim invoices delivered.

29. The case went to trial on 26 to 28 October 2010. Both parties indicated to the Judge that their costs would be approximately £20,000.

30. Mr and Mrs D lost at trial. At that stage they discovered that the successful party had entered into a "no-win/no fee agreement" and the Judge awarded them a 90% uplift.

31. It transpired, taking account of the £50,000 legal expenses insurance that the shortfall that Mr and Mrs D would be expected to pay was £42,354.47. The First Respondent requested Mr D to provide a cheque for £30,000 on account of the projected shortfall whilst negotiations took place.

32. On 16 December 2010, Mr D provided the firm with a cheque in the sum of £17,500.

33. On 31 January 2011, the First Respondent indicated that a Judgment Order had been received and that he had written to the insurers for the release of £50,000.

34. Mr D continued to correspond with the First Respondent asking him for updates and requesting a receipt for the payment of £17,500 paid on 16 December 2010. The information was not forthcoming.

35. On 9 March 2011, the First Respondent indicated that he would update Mr D.

36. On 9 May 2011 the firm received payment of £50,000 from Mr D's insurer, Family Plus. Mr D wrote directly to the insurers on 17 February 2013 and he found out by their letter of 18 February 2013 that the £50,000 had been paid to the firm on 9 May 2011.

37. A County Court Judgment ("CCJ") was entered against Mr and Mrs D together with a charging order on their property because they did not comply with an order of 6 August 2012. Mr and Mrs D only became aware of the CCJ via tenants living at the property who had sent on a letter that had been addressed to Mr and Mrs D from the neighbours' solicitors.

38. In the course of ongoing discussions with the neighbours' solicitors, in circumstances where the firm held by that stage £67,500 of Mr and Mrs D's funds, a counter offer by way of settlement was made to Mr and Mrs D in the sum of £79,949.86. This included provision for interest of £9,034.06 and the costs of a detailed assessment which amounted to £15,665.80. Mr and Mrs D had not been informed of the detailed assessment proceedings.

39. Finally settlement was achieved and by e-mail of 6 December 2012, the First Respondent stated "I will sort the balance from the insurance company." The First Respondent also requested Mr and Mrs D to send to the neighbours' solicitors the sum of £28,500 which they duly did.

40. On 11 December 2012, Mr D was contacted by the First Respondent stating that there was a delay in receiving the insurance funds and that there was a shortfall of £13,592 to be paid by 4pm that day. Mr D transferred the funds and confirmed to the First Respondent that he had done so. Although Mr D requested, and subsequently received an email dated 11 December 2012 informing him that the sum would be refunded to Mr and Mrs D out of funds which Mr D believed were still to be received from the insurer, no such refund was made.

41. These exchanges took place after the date of the intervention into the firm which took place on 29 November 2012. Mr D was not aware of the intervention although the First Respondent claimed that he had notified clients of the closure of the firm. E-

mails were still being exchanged between Mr D and the First Respondent from early January 2013 onwards but the refund was not made.

42. Ultimately Mr D applied to the Applicant's Compensation Fund and on 16 September 2013, the Compensation Fund paid to Mr and Mrs D £13,626.87.

Alleged failure to deal with the Applicant in an open, timely and cooperative manner

43. From the outset of the investigation on 10 July 2012, the First Respondent was primarily involved in communicating with the IO and the Applicant generally. Initially the First Respondent requested the commencement of the investigation to be delayed as he was out of the country in Nigeria and all books of accounts and other relevant documents were locked away.

44. On 10 July 2012, the Second Respondent met with the IO and Ms AF of the Applicant's Supervision Department and he confirmed that he had no access to, or knowledge of, the firm's books of account.

45. As the Second Respondent was unable to assist the IO and Ms AF, it was agreed that the IO would return on 24 July 2012 as it was understood from the Second Respondent that the First Respondent was due to return to the office that week.

46. On 23 July 2012, the Second Respondent notified Ms AF that the First Respondent had not returned from Nigeria but, as it was understood the firm's cashier would be attending the office, the meeting arranged for 24 July 2012 would go ahead. However on attending the office on 24 July 2012, the cashier informed the IO that: she had no access to bank statements; did not conduct any reconciliations; and her duties were limited to inputting information into the system in accordance with directions from the First Respondent.

47. It was on this occasion that the IO was able to obtain the list of client balances, the client cash book and the ledgers of clients Mr W, Ms H, Mrs A, and Mr B.

48. Whilst it was the intention of the IO to return on the following day to continue her investigation, this proved impossible. The Second Respondent had contacted her at approximately 8:30am that morning asking her not to attend the offices because he was going to be in Court in Leeds that day and the cashier was also unable to attend the firm. They had therefore arranged for the IO to resume the investigation the following day. During the initial meeting of the IO with the Second Respondent, he said that the First Respondent owned the building where the firm operated. The Second Respondent did not mention the possibility that the building might be repossessed. It was also recorded in the FI Report that on 25 July 2012, the IO received a telephone call anonymously from a member of the firm's staff. The anonymous caller said that earlier that day all of the firm's employees were requested to leave the building because it was being repossessed.

49. The IO attended the firm from approximately 10:15am to 11:30am on the following day, 26 July 2012, and found the building was shuttered and the locks were in the process of being changed. Other than a sign stating the name of the estate agent to

contact to obtain any personal possessions from the building within a 14 day period, there was no sign informing clients who to contact regarding their matters.

50. During the period that the IO attended the firm's offices she observed three different individuals who tried, unsuccessfully, to gain access to the building.

51. After liaising with the estate agent, the IO was contacted by Miss FW of MB Solicitors who confirmed that they were acting for the lender who had repossessed the building.

52. By e-mail of 1 August 2012, the supervisor Ms AF raised a number of issues with the First and Second Respondents. The Second Respondent did not respond. There were two responses from the First Respondent in e-mails drafted in general terms without any detail as to how client interests were to be protected.

53. In the course of the office having to close by reason of repossession, access was permitted to enable the First and Second Respondents to clear the office premises of client matters but it was not possible to make contact with the First and Second Respondents on the telephone numbers provided to the Applicant.

54. By a decision of the Panel of Adjudicators Sub-Committee of 20 August 2012, it was decided to defer any decision to intervene into the firm until 23 August 2012. The basis of this decision was that, on 17 August 2012 the First Respondent sent an e-mail to the Applicant requesting more time to respond fully to the matters raised in the FI Report and the supervisor's report and the e-mail from Ms AF of 1 August 2012.

55. On 23 August 2012, the First Respondent sent a letter to the Applicant. On the basis of the information provided, the Applicant decided again to stand over the decision to intervene until 1 October 2012 to enable the Respondents to undertake certain tasks to ensure the orderly transfer of files to other firms and the closure of the firm.

56. In giving its reasons for doing so, the Applicant stated that it expected the First Respondent:

> "...to keep in regular and frequent contact with the [Applicant] through Ms [AF] and to co-operate fully and in a timely manner with any and every reasonable request made by the [Applicant] in connection with the continuing process of closing the firm. The Committee reminds [the First Respondent and the Second Respondent] that they are not entitled to practise as managers (principals) in light of the absence of insurance cover and the steps they take towards closing the firm must be with the knowledge and consent of the [Applicant]."

57. On 8 October 2012, the Panel of Adjudicators Sub-Committee again agreed to stand over the consideration of an intervention until 1 November 2012.

58. In his letter of 28 September 2012, the First Respondent gave an update on the closure of the firm and this was summarised in the section headed "Current Position" in the Decision of 8 October 2012. It stated that the First Respondent confirmed that all live files had been transferred.

59. By a decision of 29 November 2012, the Panel concluded that it was necessary to intervene in the practice of the firm. The primary reason was that there was a failure to respond comprehensively to a request for documentation contained within a Notice served on the Respondents on 22 October 2012 pursuant to Section 44B of the Solicitors Act 1974 (as amended).

Alleged failure to notify the Applicant of serious financial difficulty

60. In addition to the possession proceedings, there were the following financial difficulties. Both Respondents were the subject of a Bankruptcy Petition pursued by HMRC and a hearing was due to take place on 30 July 2012. The Respondents were also the defendants in separate proceedings in the Northampton County Court issued by FA Ltd and LC Ltd.

Professional Indemnity Insurance ("PII")

61. Correspondence took place between the Respondents and their insurance brokers L between 27 October 2011 and 20 June 2012. It showed that cover would be provided on payment of the premium of £39,220 and that £14,000 had been paid by January 2012.

62. By their letter of 14 May 2012, L stated that "... insurers will not confirm cover even if money is received..." recommending the First Respondent contact the Applicant.

63. Attendance notes of a telephone conversation between Ms AF and Mr J of L dated 31 July 2012 and Mr J's e-mail of 31 July 2012 confirmed that the firm did not have cover in place.

Correspondence with the Applicant

64. In addition to the communications between the Applicant and the Respondents following the commencement of the investigation into the firm on 12 July 2012 up to and including the intervention on 28 November 2012:

- On 26 March 2013, the Applicant wrote to the Respondents requiring an explanation for their conduct and a response to the allegations set out, to be provided by 27 March 2013.

- On 26 March 2013, the First Respondent sought an extension of time for his response to 19 April 2013.

- On 27 March 2013, the Applicant granted an extension to 5pm on 8 April 2013.

- On 27 March 2013, the Second Respondent also sought an extension of time for his response to 17 April 2013. The Applicant similarly granted an extension to 5pm on 8 April 2013.

- On 8 April 2013, both Respondents sought a further extension. In response, the Applicant confirmed that no further extensions would be granted.

- On 10 May 2013, the Applicant wrote to the Respondents confirming that consideration was to be given to referring their conduct to the Tribunal and inviting comments within 10 days.

- On 20 May 2013, both Respondents again requested extensions of time to respond which were refused.

Witness

65. Mr Alan Dee gave evidence. He confirmed the truth of his witness statement dated 6 December 2013. He had received a copy of the First Respondent's Response from Mr Havard's firm. The witness confirmed the truth of the contents of the aide memoire in respect of the First Respondent's Response in the witness's e email to Morgan Cole dated 27 August 2014. The witness explained that the Response had been provided to him just as he was going on holiday hence his late comments. In evidence in chief, the witness emphasised that he had no dispute with the First Respondent regarding the advice which the First Respondent had given him about the court case which the witness and Mrs D lost; the First Respondent had never guaranteed that they would win the case. His concern was with the First Respondent's conduct after the case and the length of time, two years, that he took in settling the other side's solicitors' bill. In that time the First Respondent never advised the witness of the £50,000 that he had received in May 2011. Furthermore the First Respondent then failed to advise the witness about the further court hearing in August 2012 that left the witness with a CCJ. The actions of the First Respondent had left the witness in a very precarious position.

66. In cross-examination, the witness agreed that he had a reasonable relationship with the First Respondent for some time after the court case concluded. He had helped the First Respondent regarding his mortgage and with a finance company. As to why he had instructed the First Respondent to act for him in the neighbour dispute, the witness explained that the First Respondent was local and under the legal expenses insurance policy the witness had a choice of whether to use the insurer's nominated solicitor which was "down south" while he was in the north and having regard to the volume of paper involved in the case he wanted to use a local solicitor. The witness explained the circumstances of the neighbour dispute and the neighbours taking court action which the witness chose to defend. The witness had opted to have the benefit of legal expenses insurance as part of his building insurance. The policy did not distinguish between costs which he incurred and those of the other side. The witness had not sought After The Event insurance for the case.

67. There had been a three-day trial with Counsel on both sides. As to whether Counsel whom he had met twice had discussed with the witness the consequences of his losing the case, the witness stated that the consequences of losing had always been explained, i.e. that he and his wife would be responsible for the other side's costs but at no point had the words "uplift" or "double the costs" been mentioned. There was nothing in the documents about the way the neighbours were funding the case and as the First Respondent confirmed in his Response, he did not know how the case was being funded for quite a while. The witness was unable to say whether the funding position had changed part way through the case; he was not a solicitor and he paid the First Respondent to advise him. It was suggested that as a financial adviser he was not

"the chap in the street". The witness rejected this suggestion as unfair; he was not a conveyancer but a mortgage adviser.

68. In respect of communications with the First Respondent, the witness stated that he still owned the property in respect of which the dispute had arisen but he and his wife moved out two to three months after the conclusion of the case. He had arranged for post to be redirected for the first six months thereafter. Most communications with the First Respondent had been by e-mail.

69. The witness stated that the documentation exhibited to his statement was not just what he considered relevant but all of it; the witness considered himself to be "pretty good" at keeping records as a mortgage broker.

70. As to the amounts of money which the witness had paid to the First Respondent in December 2010, the amounts asked of him (including the £50,000) amounted to around £90,000 in total. The First Respondent asked for £30,000 so that he could negotiate a lesser fee with the witness's barrister, as it was close to Christmas. The witness advised the First Respondent that he could get £17,500 quickly but the rest was in a notice account. The witness agreed that subsequently he had paid more to the other side's solicitors SM; this was on the advice of the First Respondent after the firm had been intervened in. The witness and his wife had expected a bill of around £20,000 or £30,000 for the other side's costs and suddenly it was £62,000 and because of the costs assessment it became £79,000 nearly £80,000. They were stressed at the time and basically the witness and his wife did as instructed in writing in the First Respondent's e-mails. As to whether the witness had asked the First Respondent why he was being asked to pay the other side direct and not the First Respondent, at the time he did not give it a second thought.

71. The witness agreed that he was quite closely involved in the negotiations about what was to be paid to the other side in that he had conversations with the First Respondent but this was quite a way down the line. He had sent e-mails, all during the two year period, advising the First Respondent to settle as quickly as possible; they just wanted to draw a line under the case and move their lives on. The conversation about what First Respondent might offer to the other side did not come until around 2012 by which time the First Respondent had allowed a CCJ to be obtained against the witness. The witness stated that of course the removal of the CCJ was part of his condition for settling as it should not have been there in the first place. The First Respondent had been to court in August 2012 and not informed the witness that an order for payment of £22,000 had been made against him. As to whether he asked First Respondent to get rid of the CCJ for £50,000, the witness stated that he and his wife were in a position to settle the other side's bill in May 2011. The First Respondent suggested £50,000 as a starting point; they discussed it and an offer of £50,000 was made, the witness therefore agreed that he said that he would pay up to £50,000. He was not really on good terms with the First Respondent at this point.

72. As to whether he instructed the First Respondent to do further work (in respect of a proposed claim against his former conveyancing solicitors who had helped acquire the property), the witness asked what else could they do; the work was part of the overall package once they lost the case but the matter did not get to the stage of the First Respondent doing any work against those solicitors.

73. As to when the witness first discovered that the firm had been intervened into this was in January or February 2013.

Findings of Fact and Law

74. 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.

(The submissions recorded below include those made orally at the hearing and those in the documents. Quotations omit cross references to other documents unless they aid comprehension. Paragraph numbers in quotations have generally been omitted.)

General submissions for the Applicant

75. Mr Havard asked the Tribunal to note that on 25 April 2014, a Civil Evidence Act Notice in Form 6 had been served on Mr Nelson for the First Respondent regarding witness evidence and on the Second Respondent directly.

76. Having regard to the absence of the First Respondent, Mr Havard invited the Tribunal to consider the adequacy of the medical evidence submitted to explain his failure to attend. Mr Havard asked that the Tribunal have regard to its Practice Direction number 5 dated 4 February 2013 which made reference to the case of Muhammad Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) where the President of the Queen's Bench Division, Sir John Thomas stated that "ordinarily the public would expect a professional man to give an account of his actions". The Practice Direction stated that:

> "The Tribunal directs for the avoidance of doubt that, in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This direction applies regardless of the fact that the Respondent may have provided a written signed statement to the Tribunal."

Mr Havard asked that the Tribunal take into account that the First Respondent's account of his conduct in respect of the only allegation that he contested, allegation 1.10 was not capable of being tested in cross-examination.

77. Mr Havard submitted that on a first view, the First Respondent's Response was a masterpiece of generality and vagueness, comments and submissions with nothing of substance behind it. In the 30 page document there was not one date or full name apart from that of the Second Respondent; "G" the former bookkeeper was mentioned by his first name only. The First Respondent relied on the fact that he had incompetent staff as a defence. When the IO attended upon the Second Respondent and cashier they had no access to financial documentation. Running through the

entirety of the response, the First Respondent put forward an explanation for the chaos regarding the accounting procedures that he was away for considerable lengths of time. Mr Havard did not wish to suggest that what the First Respondent said about his family concerns was not true but the First Respondent maintained the position of sole equity partner and he should have put arrangements in place to ensure the proper running of the firm.

78. In his statement in response to the Rule 5 Statement, the First Respondent said:

> "I subsequently found reconciliations had not been undertaken and that postings to the ledgers were wrong. I panicked knowing that it was a mess for which I was responsible.
>
> To make matters even worse, my last Accounts clerk, [G] resigned by text message and without giving proper notice. He was behind with the postings and the other accounting functions and left without bringing matters up-to-date. Matters had deteriorated so that [G] had been in control of the accounting function and only he knew where things were. He promised to return at the weekends to bring ledgers up-to-date and although I made arrangements to meet him at the office, [G] did not turn up.
>
> I am embarrassed to outline this and accept that it is no defence to blame my staff, particularly where I have delegated completely matters for which I would be responsible and which were so important for the practice. I do not in reality offer this as any form of mitigation but do so because it is factually accurate. The true position is that I was out of control and was operating blindly to a large extent. I became aware that I was not in a position to continue the practice because matters had deteriorated to such an extent that I was not in control at all.
>
> I accept that I should have reported this situation to the SRA but hoped at the time that I could resolve matters."

79. Mr Havard submitted that the First Respondent did not say when he had found out the reconciliations and other accounting functions were not being carried out and although he said that he was not doing so, the First Respondent was blaming the staff and admitting that he was not in control. Mr Havard referred the Tribunal to the Rule 5 Statement where he had submitted that as a result of the investigation undertaken by the IO and investigations that had subsequently been undertaken with former clients of the firm, it was alleged that the Respondents, and the First Respondent in particular, had made improper use of client monies at a time when the firm was in acute financial difficulty which ultimately led to repossession of the firm's premises and the intervention. Even though at the time the firm was in financial difficulty, not only had the partners failed to notify the Applicant of that financial difficulty, they had also failed to provide an appropriate level of cooperation to the IO and to provide her with the accounting records of the firm.

80. In his response statement, the First Respondent said:

> "It does appear from the accounting ledgers that improper use was made of client monies. The book-keeper may have made the entries out of sheer incompetence as he was highly incompetent. I accept due to my difficulties, supervision was lacking on my part."

Mr Havard submitted that the First Respondent was away and had no idea what was going on and he had appointed someone he described as highly incompetent to look after the accounts. He admitted that but attempted to abrogate a considerable amount of his responsibility to members of staff. He went on to say in respect of that part of the Rule 5 Statement which referred to the impossibility of verifying the figures which should be held in the client accounts, that "The figures are inaccurate." The First Respondent provided no evidence to support that assertion. In the FI Report the IO set out that she was in no position to reach a conclusion as to whether for example the ledgers were inaccurate or not. Mr Havard submitted that the First Respondent was himself in no position to say whether the accounting records were inaccurate. There was an alternative explanation for what was taking place; the First Respondent admitted that the records were inaccurate on the basis that that was less serious than admitting that he had retained and improperly used client money. An e-mail dated 26 November 2012, sent to Mr D by the First Respondent gave the lie to his being away and allowing matters to fall into disarray:

> "Hi Alan
> Just to update you am away until Friday but is (sic) in touch with the office daily…"

81. Mr Havard invited the Tribunal to look at the overall picture regarding how the firm and its accounts were managed. Regarding the Second Respondent, Mr Havard submitted that there was a distinction to be drawn regarding his compliance with the Accounts Rules. Mr Havard reminded the Tribunal that the investigation commenced on 10 July 2012 and the information which was requested of the firm in the Investigation Notification Letter included fairly standard requests for core documents. The IO's enquiries of the Second Respondent and cashier revealed that only the First Respondent had access to the accounting records and bank statements and that he was out of the country. Mr Havard relied on FI Report as an accurate account of what the IO found. He submitted that the person most culpable was the First Respondent. The Tribunal might give any credit which it thought the Second Respondent deserved regarding the accounts rules of which he was technically in breach; he experienced difficulties because of the level of control which the First Respondent maintained of the accounting records. However both Respondents failed to provide the Applicant with information and the obligation to do so fell on both of them and the financial difficulties that the firm was experiencing were quite obvious, for example the possession proceedings in respect of the office premises, the proceedings brought by HMRC and the CCJs entered against them.

82. Mr Havard submitted that the matters identified in the FI Report were all matters for which the First Respondent was responsible as fee earner; that was how he was described. For example in Ms H's statement she said that she had all her dealings with the First Respondent. The First Respondent made various assertions; he was not

aware that money had come in, had been paid out, or had been taken as costs but his assertions were not credible and the overwhelming inference that the Tribunal could draw was that he was aware that the money came into the firm's accounts as the fee earner and as the sole equity partner.

83. As to whether the accounts were wrong or incomplete, it was a fact, for example that Ms H ultimately received the damages that she was supposed to, although this was not shown in the ledger, Mr Havard submitted that whether the accounts were wrong or incomplete were two separate things. He asked Tribunal to consider the First Respondent's explanation that neither bills had been raised nor invoices had been sent to clients Ms H and Mr and Mrs D; the Tribunal was being invited to accept that someone other than the First Respondent was authorising the raising of invoices and the posting of bills.

84. Mr Havard submitted that it was admitted that the Respondents had failed to fully investigate a credit balance on office account in respect of a client matter; it was admitted that there were credit balances on office account and these could be seen in the client matter listing printed out by the IO on 24 July 2012 and referred to in the FI Report where she said:

> "The Investigation Officer was able to obtain the limited amount of accounting records when she visited the firm on 24 July 2012. She obtained a list of client balances from the firm's accounting system which showed, as at 30 June 2012, that there were approximately 1,180 clients (excluding those with nil balances). The listing showed that the firm should be holding the sum of £993,548.49 in the general client account and the sum of £39,238.51 in designated deposit accounts… The client listing also showed a number of credit balances on the firm's office account."

Mr Havard had added up the credit balances of which there were 117 and they amounted to approximately £108,000 which was a sizeable amount of money for a practice like this one and their existence had the potential to misrepresent the financial status of the firm.

Submissions for the Applicant on respect of particular client matters

Mr W

85. Mr Havard submitted that between 9 April 2009 and 15 October 2009, £175,000 had been received in four payments of which £153,000 had been taken in costs. Two payments had been made to Mr W, £5,000 and £10,000. At December 2009, there was a credit balance of just over £1,000 in office account. This was a breach of Rule 15 of the SAR 1998, by retaining money when there was no good reason for the Respondents to do so. Both the rules cited in this allegation required that client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary. Rule 15(3) of the SAR 1998 provided that:

> "Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after the solicitor has already accounted to the client, for example by way of a refund, must be paid to the client promptly."

86. Mr Havard submitted that costs had been retained and no bill had been delivered. The Applicant had attempted to contact Mr W but had received no response. In the Rule 5 statement it was submitted that it was not possible to determine the exact circumstances regarding the payments, whether in terms of costs or damages or their timing but it was alleged that the sums in respect of damages ultimately paid on 16 October 2009 could have and should have been paid to Mr W at an earlier date taking account of the significant credit balance that continued to be held on client account over the previous four months.

Ms H

87. Mr Havard submitted that the First Respondent failed Ms H at every turn in this matter. He failed to respond to her on a number of occasions when she attempted to contact him for example as she set out in her statement (on 1 September 2010 several times by telephone, on 8 September 2010 by telephone, on 28 March 2011 by telephone, on 29 March 2011 by his failure to call her back after he had left a message, on 31 March 2011 by telephone, on 1 April 2011, on 18 May 2011 by an appointment being cancelled, on 27 May 2011 when Ms H telephoned and on 1 June 2011.) She kept a record of the above instances and exhibited a copy of her notebook. She stated that she tried on many other occasions to contact the firm and the First Respondent by telephone and by physically visiting the office without success but of those occasions she did not keep a record.

88. Ms H's client ledger showed that the settlement monies were received on 4 March 2009, in the sum of £34,000. Her witness statement was agreed by the First Respondent. She stated and Mr Havard invited the Tribunal to accept that she was told by the First Respondent that there was no question of her having to be responsible for any costs in respect of her claim:

> "I was told by [the First Respondent] that because I was a minor at the time the accident occurred any costs that I incurred for [the firm] acting for me would be recovered from the other side and no money would be deducted from my settlement figure. However despite this, [the firm] refused to give me my settlement for many months afterwards as [the First Respondent] told me they were still arguing about their costs.
>
> I finally received my settlement on 14 November 2011, after I had started the complaints process with the Legal Ombudsman which I refer to above.
>
> I have now been provided by Morgan Cole LLP on behalf of the Applicant in these proceedings, with a copy of my ledger account maintained by [the firm]. I note from the ledger that it records two payments, one from Norwich Union Insurance Ltd of 4 March 2009 for £34,000.00 and one from Aviva Insurance on 16 November 2009 for £17,500. I confirm that the total amount I received

> from [the firm] was £34,000.00 and as I note above this was not received until 14 November 2011. This is over two and a half years from when the Norwich Union Insurance Ltd settlement monies were received, according to the ledger. I have not received any explanation for this delay."

89. Mr Havard referred to the ledger which recorded that on 4 March 2009, the same day as the settlement monies were received a bill was raised and further cost were taken subsequently as set out in the background to this judgment. Ms H stated that it was not until 14 November 2011 that she finally received a payment in the sum of £34,000 in respect of her damages, but it was not clear from the client ledger where this payment originated. It was over two and a half years from the date on which the firm received the settlement monies from Norwich Union Insurance Ltd.

Mrs A

90. Mr Havard referred the Tribunal to the client ledger for Mrs A which showed that fee earner was ED. The records on the ledger went to 21 October 2010. Between 18 January 2010 and 14 September 2010, £110,700 was received into client account in three payments (£13,000, £80,000 and £17,700). The ledger showed a transfer in receipt of costs in the sum of £8,000 on 20 January 2010 and £4,267.81 on 2 February 2010. Payment of £15,000 to Mrs A was recorded on 21 October 2010 before the final balance was arrived at. There had been unsuccessful attempts to contact Mrs A but the records illustrated that an amount of £83,432.19 was still held to the credit of her ledger as at 21 October 2010. The client matter listing which the IO printed out on 24 July 2012 showed the same credit balance. The Tribunal had seen the e-mail dated 1 September 2014 sent by AA which had been handed in by Mr Nelson. Mr Havard submitted that no one had any idea who this individual was. The e-mail stated:

> "This is to confirm that various sums of money totalling £93,000.00 were paid between August 2010 and October 2012 to Mrs [A] by [the firm] in respect of insurance claims relating to the road accident 2 November 2008.
>
> The above statement is given as the duly authorised relation/representative of Mrs [AA] during the prosecution of the claim by Beevers Solicitors, as the records would show."

Mr Havard submitted that the Tribunal had no idea whether this statement was true and that the ledger was inaccurate but incomplete; it showed nothing after October 2010. Money had been paid into client account but the Tribunal was now told that various sums had been paid to Mrs A over the successive two years. He submitted that even if the Tribunal accepted what was in the e-mail, the ledger was evidence that the First Respondent retained, as technically also the Second Respondent retained, money when it was inappropriate to do so. The e-mail was very vague and its provenance was not known. The Tribunal could place as much reliance on it as it thought appropriate. It took a significant amount of time for the monies to be released to the client and this was what had happened with the Mr W, Ms H and now also with Mrs A. In the Rule 5 Statement, it was submitted that in the circumstances it was alleged that the Respondents had retained client monies when there appeared to be no reason why such monies could not have been paid to the client but the firm was in financial difficulties. Mr Havard submitted that the two issues were not unrelated and

invited the Tribunal to conclude that. He confirmed that no bills had been raised in respect of any of the clients whose matters were relied on.

Mr B

91. Mr Havard submitted that late in the day, Mr Nelson had produced a letter from C Solicitors dated 13 August 2014. It included:

> "We confirm that we acted for [Mr B] the executor of the late [CB].
>
> On 24 August 2010 we received a fax from [the firm], a copy of which is enclosed, together with the Legal Aid Assessment Certificate attached.
>
> We then received a telephone call from Mr Dokubo at [the firm] on the 24th August 2010. The note of that telephone conversation reads:-
>
> "Attending Mr Dokubo on the telephone when he rang to say that in addition to the fax that he had sent me there was a further payment of £5195.34 due as a pre-legal aid bill. That meant that to cover all the costs £15,422.95 was required."
>
> The Solicitor dealing with this matter (who has now left our Firm) said that she would speak to Mr [B] regarding this.
>
> She then saw Mr [B] immediately afterwards, and he confirmed that we could make payment to [the firm].
>
> On the 25th August 2010 we sent a cheque to [the firm] for £15,422.95 described as "being payment of your settlement certificate in the sum of £10,227.61 and your pre-certificate legal costs of £5195.54" (though this should have read £5195.34)
>
> [The firm] acknowledged receipt on the 31st August 2010.
>
> As far as we were concerned, and these were our instructions, these were payments that we were making to [the firm] in respect of legal costs, partly under a Legal Aid Certificate, and partly as pre-certificate costs..."

92. Mr Havard submitted that the Rule 5 Statement relied on the client ledger and provided a summary. On the evidence available, it was alleged that money, £15,422.95 was lodged in client account on 27 August 2010 described as "estate money" which created a credit balance of £14,348.01 on the office side of the client ledger. On the evidence available it was alleged that the money was improperly paid into office account. Rule 29 of the SAR 1998 and Rule 26 of the AR 2011 stated:

> "The Firm should ensure that office account entries in relation to each client or trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or trust matters should be fully investigated."

93. The records showed a credit balance on office account since 27 August 2010, nearly two years and it was alleged that there had been a failure to remedy this breach.

94. Mr Havard submitted that C Solicitors' letter did not deal with the credit on office account; it was one of the 117 credit balances that Mr Havard had referred to earlier and there was no evidence that either the First or Second Respondents made any effort to investigate why they were there and if this money on B's ledger had been held as costs there should have been an appropriate entry. It was a credit which had been there a long time and was there when the IO printed out the client matter list. In response to enquiry from the Tribunal, Mr Havard accepted that the fee earner shown on the ledger was "EDCH" but the letter from C Solicitors referred to speaking to the First Respondent. Mr Havard submitted that the First Respondent had direct involvement. He should have ensured that all the credit balances were investigated and he did not. Mr Havard accepted that it was not known for sure that the First Respondent had paid the money in, save that it was a credit on the ledger. Mr Havard confirmed that he alleged that the balance on office account bolstered the firm and submitted that in this type of firm where there was one sole equity partner and one salaried partner the amount would clearly distort the financial position of the firm at the bank.

Mr and Mrs D

95. Mr Havard referred the Tribunal to the facts of this matter set out in the Rule 5 Statement and to Mr D's statement dated 6 December 2013. Mr D, an independent mortgage broker had acted for the First Respondent at some point and then Mr D instructed the First Respondent to act for him in a neighbour dispute. There was a client care letter dated 9 February 2009 which said:

> "We estimate the cost of litigating a matter such as this to be in the region of £15,000 plus VAT and disbursements of £5,000 plus VAT.
>
> In the event that a party loses the case, he or she is likely to meet both sides' costs and so the costs will have to be doubled."

and

> "We shall advise you of the costs position every six months.
> Should the cost estimate be reviewed you will be advised accordingly."

96. Mr D said that this was the only indication that he received of what costs would be and on that basis he took some comfort from the fact that his legal expenses would be around £20,000 plus VAT and that the other side's costs would be in the same area. As a result his legal expenses insurance cover of £50,000 would broadly cover his exposure to costs. Only when the case was lost at trial were Mr D and his wife told that the successful parties were on a "no-win no fee" agreement and they were awarded a 90% uplift in their costs. In his response, the First Respondent stated:

> "The issue of costs was discussed at the outset and I would have given my best estimate of costs with the rider that costs would have to be reviewed as the case progressed. That is what the initial client care letter would have said and I

> would have updated this from time to time and did update the position orally, but cannot now access the file to show whether or not I updated it in writing."

97. Mr Havard submitted that there was a direct conflict of evidence between the First Respondent and Mr D. Mr Havard asked the Tribunal to bear in mind when deciding whose evidence to prefer that Mr D was attending this hearing and exposing himself to cross-examination while the First Respondent was not doing that. Later in the response, the First Respondent stated:

> "..Whilst I was able to give an initial estimate on my costs subject to future revisions, I made it clear that I was in difficulty estimating the other side's costs as I could not predict just how the case would be litigated.
>
> ... It is my understanding that it is unusual for a Solicitor to estimate the other side's costs for their client unless it is a fixed costs case, which this was not. As a consequence, it is normal to work on the fact that the other side's costs will be roughly equal to our own...
>
> Neither myself nor my clients knew how their opponents were funding their case at the outset. That only became apparent much later. As legal aid was no longer available for such cases, I would have pointed out that my guess would be that their own (sic) opponents were either funding their case out of their own pockets or via an insurance policy.…
>
> I tried to cover the uncertainty of the matter and the success by instructing Chancery Counsel to advise on the merits of the case.…
>
> Eventually, the opponents served notice of funding on us indicating that their case was being funded by a conditional fee agreement with insurance cover…"

Mr D said that no such conversation took place about how the other side's costs were funded.

98. In his statement, Mr D said:

> "At the conclusion of the hearing, discussions turned to costs and the barrister for [the neighbours] asked the Judge for their costs together with a 100% uplift. I immediately asked [the First Respondent] what this meant. He told me it was just normal procedure. He had told us previously that [the neighbours] were on a no-win/no fee agreement but he did not explain what that was and he did not give any indication that it meant their legal costs would be effectively doubled. At no stage had he indicated that they would be entitled to an uplift on their costs.
>
> The Judge ordered that my wife and I pay [the neighbours'] costs together with a 90% uplift. Looking back, I think I was in a state of shock at having lost the case. That was a significant blow and resulted in us making the decision to move home as we did not wish to continue to live next door to [the

> neighbours]. The costs position was a secondary hit and was hard to process at once."

Mr Havard agreed that Mr D stated that he had been told about the no-win no fee agreement, but its implications had not been explained to him.

99. Mr Havard referred the Tribunal to a letter dated 14 December 2010 addressed to Mr and Mrs D which had inclusions at the right hand side which indicated that it had been written in "track changes" mode on a computer. This was the letter which Mr D said he had received. The First Respondent drafted the letter and someone made track changes and someone sent that copy out. The letter included:

> "As you will see, the claimant's costs schedule amounts to £67,924.62."

and

> "The indemnity limit provided by your funder was £50,000.00 which would leave a shortfall of £42,354.47.
>
> ...
>
> As you will see your own costs came to a total of £30,630.92."

At a certain stage in the First Respondent's Response he said that it took the other side over a year to provide details of costs but this letter gave the figures which was important for negotiating settlement of the other side's solicitors' costs.

100. The matter went to a detailed assessment which led to judgment being entered against Mr and Mrs D unbeknown to them and also led to an application for a charging order on their property. By the letter of 14 December 2010, the First Respondent requested £30,000 on account of the projected shortfall and on 16 December 2010, Mr D provided a cheque for £17,500 to the firm. The First Respondent estimated £15,000 plus VAT for costs and £5,000 plus VAT for disbursements but in the 14 December letter he gave a figure of £30,630.92. Mr Havard drew the Tribunal's attention to a schedule of costs oddly headed "Without Prejudice" addressed to Manchester County Court giving a breakdown which came to £31,222.32. The following exchanges took place:

- On 15 December 2010, Mr D sent an e-mail to the First Respondent stating:

  > "Looking at immediate funs (sic) available will be able to drop off cheque for £17,500 today to your office - who/what are you looking to pay with these initial funds?"

- The next day the First Respondent sent an e-mail beginning:

  > "Did you drop the cheque off as promised? I need to take advantage of the Xmas period in my negotiations with counsel."

The First Respondent did not provide a direct response to Mr D's question.

- On 31 January 2011, the First Respondent sent the "Judgement Order" to Mr and Mrs D saying:

  "I have also today written to your insurer providing them with a copy of the Order and inviting them to release the payment of the £50,000 immediately.

  I have also invited them to confirm that we have their authority to negotiate costs on your behalf in view of the fact that they no longer have an interest on (sic) the matter over and above the costs indemnity limit..."

101. Mr D continued to correspond with the First Respondent asking for updates.

- On 9 March 2011, two and a half months later Mr D e-mailed the First Respondent including:

  "Last conversation was end Jan 2011 when you were to advise insurance company of outcome and request £50K – has this been done and monies received?

  Negotiation of other side costs – has this been started/done?

  ...

  As already discussed we really need to sort all outstanding matters out bearing in mind the court case was end Oct 2010 and I do not wish to incur any interest penalties for matters out of my control."

- On 11 March 2011, the First Respondent wrote confirming that he had received from Mr and Mrs D the sum of £17,500 "on account of costs on your matter."

- On 30 March 2011, the First Respondent e-mailed:

  "I have chased and chased and chased, but been given the same info each time – "we are still waiting to hear from our costs person"…

  Will keep being a nuisance."

- On 4 May 2011, the First Respondent e-mailed:

  "I wrote a complaint to their CEO last week (28th) in view of the bank holiday break I am allowing a week or so for a response."

  Five days later the £50,000 was received by the firm.

- On 6 September 2011 Mr D e-mailed asking:

  "Can you give me an update on the other sides bill please."

102. Mr Havard referred the Tribunal to a chronology of the D case which he had submitted, including what had occurred after the payment was received. Despite the level of ongoing contact between Mr D and the First Respondent which was detailed in Mr D's statement, it was not until he wrote directly to the insurers on 17 February 2013, that he found out from Family Plus by their letter of 18 February 2013 that the £50,000 had been paid to the firm on 9 May 2011:

> "... In relation to your requests, we can confirm that the £50,000 has been paid directly to your Solicitors and this was paid on 9th May 2011.
>
> Unfortunately we will be unable to provide a breakdown of these amounts and you should request this from your Solicitors, as they will be able to provide you with a breakdown of their bill.
>
> We can confirm that since your Solicitors have been paid we have closed our file and have had no further involvement in the matter..."

103. Mr Havard submitted that as of May 2011, the First Respondent was in possession of £67,500 made up of the £50,000 legal expenses insurance payment and £17,500 from Mr D which was in excess of what the other side was claiming in costs. Taking account of what Family Plus said in their letter about a breakdown of the bill, it was inconceivable that the First Respondent did not know that the firm had received £50,000 in May 2011; he was the fee earner and sole equity partner. In March and May 2011 he said that he was chasing the insurers and had written to the Chief Executive. This showed that receipt of the £50,000 was very much uppermost in his mind. After his letter chasing the Chief Executive, there was no further evidence of him chasing the insurer. If he had sent such a letter, the insurer's response would have been to ask why as he had already received the money.

104. There were ongoing exchanges between the First Respondent and Mr D and no mention was made by the firm of the receipt of the money. Evidence of the exchanges was exhibited to Mr D's statement:

- On 25 October 2011 Mr D e-mailed:

  > "Can you update me regarding the other side's legal bill.
  >
  > Now almost 12 months to the day that the court case started – we didn't really expect to be chasing this 12 months on!
  >
  > Also need to speak to about registering our claim intentions against the original solicitors [T] as we do not wish to miss out on timings etc."

- On 30 January 2012, Mr D e-mailed:

  > "Where are we up to with the other side regarding the [property address] bill?

- On 5 March 2012:

  > "Where are we up to regarding the other sides bill?

> This matter is just going on and on – trial was October 2010!!!
>
> Also worried we will run out of time to launch claim against original solicitors – [address of the property] bought in 20 Sept 2005 - advice taken around June 2005.
>
> Also worried £50,000 still remains outstanding from building cover insurance."

- On 2 April 2012:

> "Can we book an appointment with you next week (any day from Tuesday 10th to Friday 13th April) at a time to suit you.
>
> We just need to see you face-to-face to discuss the following: –
>
> Other side's costs
>
> Your costs…"

- On 1 May 2012:

> "I know that you are busy but we really need to meet and get things sorted – it is now over 18 months since trial..."

105. In his statement Mr D said:

> "We eventually arranged a meeting with [the First Respondent] at the firm's office to try to settle the other side's bill. This took place on 28 June 2012 and both my wife and I were in attendance. Reflecting on that meeting, with hindsight it is clear that [the First Respondent] knew exactly what was going on and did not tell us."

106. Mr Havard submitted that this showed that the First Respondent was in the country and in the office. Mr D continued:

> "In particular he knew he had the money from the insurer. However, when we asked him at this meeting he simply told us not to worry. He said it would be there when we needed it but did not say it had in fact been received."

There was no mention of invoices. Mr D also stated:

> "We also pushed him in relation to settlement and [the First Respondent] said nothing about the commencement of detailed assessment proceedings against us…"

107. Bearing in mind that Mr and Mrs D had met with the First Respondent on 28 March 2012, Mr Havard drew the attention of the Tribunal to a letter from the other side's solicitors SM of 25 September 2012 to Mr and Mrs D enclosing a copy of the letter

which they had sent on the same date to the firm quoting the First Respondent's reference and also enclosing an interim charging order. The letter to the firm stated:

> "The Interim Charge is to secure the payment on account of costs of £22,650 ordered by the Court on 6 August 2012, payment of which has yet to be received. We note that your clients have also failed to make a further payment on account of £13,000 in accordance with the Court's order of 15th August 2012. We would therefore ask the Court to make a final charging order in favour (sic) Clients in the sum of £35,650 plus costs and interest at the hearing listed for 10am on the 23rd October 2012 in the Manchester County Court..."

108. The letter was passed on to the Ds by their tenants. Mr and Mrs D were previously oblivious to what was set out in SM's letter. Mr Havard reminded the Tribunal that in an earlier e-mail, Mr D said that the matter must be resolved and that they did not want to pay interest or penalties. Mr D said that he was aware that there had been a hearing (which took place on 8 August 2012) but had no idea what was involved in terms of the order for payment on account of costs of £22,000 and the costs of the application in the amount of £650 caused by the First Respondent's delay.

109. Mr D set out in his statement his reaction to the orders which had been made (including that had they been notified of the orders, they had funds available to pay within 28 days which would have avoided a CCJ being recorded against their credit profile; that ultimately Mr D could not continue to work as a financial adviser and had to take a temporary job with much longer working hours and earning a lot less money until the issue of the CCJ was resolved; that there was an impact on the capacity of Mr and Mrs D to borrow funds to cover the costs shortfall; and that they had to withdraw from the purchase of a property for development). In his particular work, Mr D relied heavily on having a good credit history.

110. In the Rule 5 Statement, it was set out that in the course of ongoing discussions with the neighbours' solicitors, in circumstances where the firm held £67,500 of Mr and Mrs D's funds without their knowledge, a counter offer by way of settlement was made to Mr and Mrs D in the sum of £79,949.86. This included provision for interest of £9,034.06 and the costs of a detailed assessment which amounted to £15,665.80 despite the fact that the First Respondent had not even informed Mr and Mrs D of the detailed assessment proceedings. Mr Havard submitted that very large sums were potentially being insisted on by the other side's solicitors, taking the amount demanded far in excess of what was anticipated. On 31 October 2012, the First Respondent sent an e-mail to Mr D setting out the details of the counter offer and suggesting that the Ds made an offer of £50,000 "all in for now". This was rejected and the other side made a counter offer of £75,000 inclusive of interest and costs of the detailed assessment.

111. Settlement was achieved and notified by an e-mail of 6 December 2012 from the First Respondent to Mr D:

> "We seem to have an agreement. Offer accepted. Please transfer direct into the [SM] accounts the £28,500 today. I will sort the balance from the insurance company…"

112. Mr Havard submitted that this e-mail was highly misleading because the First Respondent had had the £50,000 for 18 months. The e-mail was completely untrue. The firm had received £50,000, £17,500 and now £28,500 was being paid, totalling £96,000 of the Ds' money. The saga however was not ended; as Mr D recounted in his statement:

> "However on 11 December 2011 [2012] I received a telephone call from [the First Respondent] advising me that there was a delay in receiving the insurance funds and there was shortfall of £13,592.00 which needed to be paid to [SM] who had imposed a deadline for payment by 4pm that day. He had provided me with no advance notification. He instructed me to pay these funds directly to [SM] by bank transfer and these funds would be refunded to us within a few days, once the insurance funds were received.
>
> Obviously, I am now aware that [the First Respondent] was lying to me. As a letter from the insurers confirmed, he had been in funds for approximately 19 months by this stage."

113. On 11 December 2012, the First Respondent e-mailed Mr D confirming that the balance due to SM was £13,592 and stating: "it would be refunded to you". This brought the amount to £109,592. Mr Havard asked Tribunal to note that the request for this final payment and these exchanges with Mr D all took place after the date of the intervention into the firm on 29 November 2012 as Mr D mentioned in his statement, continuing: "I was not aware that the firm was in difficulties nor that it had been closed down..."A letter to the Applicant dated 31 October 2012 bearing the First Respondent's reference stated:

> "We are aware that in view of our closed status, we are not permitted to practice."

The admitted allegations: allegations 1.1 to 1.9

114. In respect of all the allegations which were admitted, the Tribunal had regard to the submissions for the Applicant, the submissions for the First Respondent, the evidence including oral evidence and the admissions of the First and Second Respondents.

115. **Allegation 1.1 - The First and/or Second Respondents have failed to act in the best interests of clients contrary to Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007") and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code of Conduct ("2011 Code").**

115.1 For the Applicant, Mr Havard relied on the Rule 5 Statement, the oral evidence and the admissions of the First and Second Respondents. He relied particularly on the failure of the Respondents to comply with the SAR 1998 and the AR 2011 and the First Respondent's conduct in respect of the clients Ms H and Mr and Mrs D. Mr Havard also referred the Tribunal to specific examples of failing to act in clients' best interests referred to in the Rule 5 Statement and detailed in the documents before the Tribunal as follows:

115.2 On 27 July 2012,Ms AF of the Supervision Department of the Applicant was telephoned by a Ms CB of Counsels' Chambers who explained that she had been advised that the firm had closed. She wanted to discuss non payment of barrister fees and pending court cases. She did not have the number of cases and possible names of clients to hand but promised that she would e-mail these. Ms AF informed her that she would ask one of the partners of the firm to telephone Ms CB. On 27 July 2012, Ms CB e-mailed Ms AF that Chambers had looked at its diary and there was only one case in court the following week, a legally aided matter. On 30 July 2012, she e-mailed again stating that she still had not heard from anyone at the firm and wanted to know the position with regard to cases. On 31 July 2012, Ms CB again e-mailed Ms AF to say that no one had contacted her yet.

115.3 On 26 July 2012, a barrister, Mr JL sent an e-mail to a reporting box at the Applicant, following up a call to a helpline in respect of difficulties he had experienced that day with the firm. He had attended Manchester County Court to represent a parent in care proceedings. He had received the papers the previous evening and he had not previously dealt with the matter. The papers were voluminous and a colleague in Chambers had previously represented the client but was unavailable. Having considered the papers overnight, Counsel formed the view that he needed to speak with the instructing solicitor about a number of queries including whether the solicitor had some documents that the barrister would be expected to have with the instructions but which did not appear to be present. Counsel arrived at court shortly after 9am and attempted to telephone the firm. His initial efforts resulted in "number unobtainable" tones on both the firm's land line and Family Department direct line. His clerk reported the same problem. The clerk agreed to try to get through by fax, asking the instructing solicitor to telephone Counsel who made further attempts by telephone, this time reaching an answer phone message saying that the office was closed and giving its hours of business although when he made the calls they were well within the stated hours of business. When he spoke to other advocates in the case to explain his difficulty, a solicitor advised him that the firm had stopped trading. She said that her firm had been telephoned by the firm the previous day to that effect. The client was not present and counsel could not contact him. The case had to be adjourned albeit for other reasons but directions were given affecting the client and counsel had no means of communicating with the firm and was in possession of highly sensitive documentation which he was reluctant to put into the post to an office which he understood was closed with a sealed letter box. Counsel sought the assistance of the Applicant.

115.4 On 8 August 2012, a partner in the regulatory department of a firm of solicitors reported to the Applicant:

- In respect of a childcare case in which his partner had been involved, the case was listed for a two-day hearing and all parties were in attendance apart from the solicitor from the firm. The outcome was that the case had to be adjourned.

- In a separate hearing, again no one attended for a parent and a solicitor for another firm was asked to take over at short notice; she was able to get the legal aid certificate transferred to her firm and new hearing date was set.

- A partner in the reporting solicitor's firm was contacted by a clerk from counsel's Chambers about a case in which counsel had been instructed. The client had rung the barrister direct to enquire what was happening because she was unable to make contact with the firm.

115.5 Mr Havard also relied on the Respondents' failure to co-operate with the Applicant and their failure to notify the Applicant of the firm's serious financial difficulty. On 26 July 2012, the IO attended the office premises to find it shuttered and locked. There was no information to assist clients as to who they should contact regarding their matters.

115.6 **The Tribunal found allegation 1.1 proved on the evidence to the required standard in respect of both the First and Second Respondents, indeed it was admitted.**

116. **Allegation 1.2 - The First Respondent has made statements, both oral and written, to clients and third parties which he knew to be untrue contrary to Rules 1.02, 1.04 and 1.06 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcome 1.1 of the 2011 Code.**

116.1 For the Applicant, Mr Havard relied on the Rule 5 Statement, the oral evidence and the admissions of the First Respondent. He relied particularly on the failure of the First Respondent to comply with the SAR 1998 and the AR 2011. He also relied in respect of Ms H on what he submitted was the First Respondent deliberately misleading Ms H including throughout the period referred to in her witness statement when she was attempting to contact him from 1 September 2010 until 1 June 2011 and the First Respondent concealing from Ms H that he had received payment of her damages.

116.2 In respect of Mr and Mrs D, Mr Havard relied on the First Respondent's conduct including:

- As demonstrated in various telephone conversations between the First Respondent and Mr D throughout 2011 and 2012 after the payment of £50,000 had been received from Mr D and Mrs D's legal expenses insurers;

- The e-mail sent by Mr D to the First Respondent on 5 March 2012 enquiring about progress in respect of the other side's bill and insurance monies which he believed to be outstanding;

- The meeting which took place on 28 June 2012 between the First Respondent and Mr and Mrs D when no made mention was made by the First Respondent of the money having been received from the insurer over 12 months before;

- The First Respondent untruthfulness in telling Mr D on 11 December 2012 that there was a delay in receiving the insurance funds and providing assurance to him that the shortfall of £13,592 would be refunded to him when he could not possibly have known such funds would be available as the firm had already been intervened into;

- The First Respondent's continued communications with Mr D after the firm had been intervened in without the First Respondent making a refund to Mr and Mrs D of the sum of £13,952 which he assured them they would be repaid;

- His deliberate concealment of information regarding receipt of their money; and his communications to them which he knew contained false information.

In summary, Mr Havard alleged that the First Respondent deliberately concealed vital information from Mr and Mrs D in relation to their exposure to the liability for costs which was not in their best interests, and that he deliberately concealed information regarding the receipt of client monies.

116.3 Mr Havard also relied on the First Respondent's letter dated 28 September 2012 giving the Applicant an update on the closure of the firm which stated that all live files had been transferred taking account of the ongoing correspondence, for example, between the First Respondent and Mr D when this was clearly not the case and Mr Havard submitted that the First Respondent deliberately misled the Applicant. Mr Havard also relied on the First Respondent's failure to deal with the Applicant in an open timely and cooperative manner.

116.4 **The Tribunal found allegation 1.2 proved on the evidence to the required standard in respect of the First Respondent, indeed it was admitted.**

117. **Allegation 1.3 - The Respondents have transferred client monies from client account to office account in respect of fees without sending a bill of costs or other written notification to the client contrary to Rule 19 of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or where such transfers were made after 6 October 2011, Rule 17 of the SRA Accounts Rules 2011 ("AR 2011").**

117.1 For the Applicant, Mr Havard relied on the Rule 5 Statement and the oral evidence and the admissions of the First and Second Respondents. He relied particularly on the failure of the Respondents to comply with the SAR 1998 and the AR 2011; the transfers in the cases of Mr W; in respect of Ms H in respect of whom at no stage did she receive any correspondence from him enclosing invoices in relation to the costs he had taken from the damages money; the case of Mrs A; and in respect of Mr B it was alleged on the evidence available that £15,422.95 was improperly paid into office account described as "estate money"

117.2 **The Tribunal found allegation 1.3 proved on the evidence to the required standard in respect of both the First and Second Respondents, indeed it was admitted.**

118. **Allegation 1.4 - The Respondents have retained, without proper reason, client monies, contrary to Rule 15 SAR 1998 and/or, where such conduct took place after 6 October 2011, Rule 14 AR 2011.**

118.1 For the Applicant, Mr Havard relied on the Rule 5 Statement and the oral evidence and the admissions of the First and Second Respondents. He relied particularly on the failure of the Respondents to comply with the SAR 1998 and the AR 2011; illustrated

by the First Respondent's conduct in respect of Ms H in that having provided her with the reassurance that she would not be responsible for any costs in respect of her claim, there was no proper reason why the First Respondent withheld payment of damages to her; the First Respondent's conduct in respect of Mrs A, for which as a breach of the accounts rules the Second Respondent was also responsible, in the circumstances of having retained Mrs A's monies when there appeared to be no reason why such monies could not have been paid to her; and in the case of Mr and Mrs D, the First Respondent making improper use of clients' monies in the form of the £50,000 paid by the insurers. He also relied on the cases of Mr W and Mr B.

118.2 **The Tribunal found allegation 1.4 proved on the evidence to the required standard in respect of both the First and Second Respondents, indeed it was admitted.**

119. **Allegation 1.5 - The First Respondent has failed to provide clients with adequate information regarding costs contrary to Rules 1.02, 1.04, 1.06 and 2.03 SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4 and 6 and Outcome 1.13 of the 2011 Code.**

119.1 For the Applicant, Mr Havard relied on the Rule 5 Statement, the oral evidence and the admission of the First Respondent. He relied particularly on the failure of the First Respondent to comply with the SAR 1998 and the AR 2011; on the First Respondent's conduct in respect of Ms H in respect of failure to provide any correspondence enclosing invoices as set out in respect of allegation 1.3 above; on the First Respondent's conduct in respect of Mr and Mrs D, in respect of costs including regarding the discussions with the other side's solicitors and the costs relating to the various court hearings and costs of the detailed assessment proceedings of which he did not make Mr and Mrs D aware.

119.2 **The Tribunal found allegation 1.5 proved on the evidence to the required standard in respect of the First Respondent, indeed it was admitted.**

120. **Allegation 1.6 - The Respondents failed to fully investigate a credit balance existing on office account in respect of a client matter in breach of Rule 29 SAR 1998 and the SRA Guidelines at paragraph 2.8 of appendix 3 and/or, where such conduct took place after 6 October 2011, Rule 26 AR 2011 and the SRA Guidelines at paragraph 2.7 of appendix 3.**

120.1 For the Applicant, Mr Havard relied on the Rule 5 Statement and the admissions of the Respondents. He relied particularly on the failure of the Respondents to comply with the SAR 1998 and the AR 2011. In the case of Mr B, the records showed a credit balance on office account which existed since 27 August 2010 and was still present when the client matter listing was printed out on 24 July 2012.

120.2 **The Tribunal found allegation 1.6 proved on the evidence to the required standard in respect of both the Respondents, indeed it was admitted.**

121. **Allegation 1.7 - The Respondents have failed to cooperate fully with the SRA at all times and failed to comply promptly with a written notice from the SRA contrary to Principle 7 and Outcomes 10.6, 10.8 and 10.9 of the 2011 Code.**

121.1 For the Applicant, Mr Havard relied on the Rule 5 Statement which set out the history of the investigation and the admissions of the Respondents. Regarding co-operation with the Applicant, Mr Havard submitted that it was important that the Second Respondent understood the basis upon which the case was put against him. The Applicant put the Second Respondent in a different category from the First Respondent. There was contact between the Second Respondent and the IO and Ms AF of the Applicant. He said that he could not assist either of them because all the records were under the control of the First Respondent. A meeting was arranged for 24 July 2012 when the IO obtained the list of client matters. Her intention was to return the next day when the Second Respondent then advised her that the cashier was unavailable, the First Respondent was out of the country and that he the Second Respondent had to go to court. The Second Respondent said nothing about repossession of the premises. Mr Havard submitted that Mr Wozny on behalf of the Second Respondent would say that this was because the First Respondent had assured him that the possession proceedings would be resolved. However this did not completely absolve him; he was the person in discussion with the IO and he should have told her and Ms AF about the possession proceedings.

121.2 The Rule 5 Statement referred to the Applicant's attempts to obtain information during the investigation including by Ms AF's email of 1 August 2012 to both Respondents; there being only two responses from the First Respondent and none from the Second Respondent; the impossibility of making contact with the Respondents after the repossession of the office premises on telephone numbers provided. Mr Havard submitted that the Applicant had stood over its decision about intervention a number of times based on particular assurances from the First Respondent. The Applicant reminded the Respondents that they could not practice as managers (principals) and the First Respondent assured the Applicant that all live files were transferred but he continued to deal with Mr D. Mr Havard referred the Tribunal to the records of contact between the Applicant and the firm exhibited to the Rule 5 Statement concerning the possibility of intervention and including documents relating to the Applicant issuing an order under section 44B of the Solicitors Act. The primary reason for the intervention was failure to provide documents in response to the Section 44B notice which suggested that the Respondents did not comply with their obligations and cooperate with the Applicant. Mr Havard reminded the Tribunal that the First Respondent in his Response admitted failure regarding correspondence with the Applicant and said it was caused by the same reason he had explained in respect of the other allegations (the distractions occasioned by family matters). This failure continued subsequent to the intervention as set out in the background to this judgment when the Respondents failed to respond substantively to the Applicant's letter dated 13 March 2013 seeking an explanation of their conduct. Mr Havard also relied on the failure of the Respondents to notify the Applicant of their serious financial difficulty and of the firm's not notifying the Applicant of its failure to take out and maintain qualifying insurance. In the circumstances it was alleged that neither the First nor Second Respondents had complied with their legal and regulatory obligations and dealt with the Applicant in an open, timely and co-operative manner.

121.3 **The Tribunal found allegation 1.7 proved on the evidence to the required standard in respect of both the Respondents, indeed it was admitted.**

122. **Allegation 1.8 - The Respondents have failed to report to the SRA the fact that they and thereby the firm, Beevers Solicitors, were in serious financial difficulty contrary to Rule 20.06 of the 2007 Code and/or where such conduct relates to a period after 6 October 2011, Outcome 10.3 of the 2011 Code.**

122.1 Mr Havard relied on the Rule 5 Statement and the admissions of the Respondents. He recognised that notifying the Applicant that the firm was in financial difficulties was difficult for solicitors to do but the failure occurred in the face of ongoing possession proceedings as evidenced by the e-mail from the mortgagees' solicitors dated 26 July 2012 already referred to, which, after recording that the firm was instructed in the proceedings in July 2011 gave the history of the matter. There were a number of hearings during which the amount of arrears was growing. A repossession hearing was held on 5 September 2011 and a suspended possession order obtained; MB Solicitors was instructed to apply for eviction on 13 November 2011 and an initial eviction date was set for 13 January 2012. There was an application to suspend the warrant which was heard on 4 January 2012 and the Second Respondent applied to be joined and his application was adjourned. The adjourned application was heard on 9 February 2012 by which time arrears stood at £66,731.58. This hearing was also adjourned. The application was then transferred to and heard at Liverpool on 25 May 2012 by which time the arrears had reached £84,842.58 and this hearing was also adjourned on the basis that the First Respondent had to go to Nigeria at short notice. The matter was then listed on 1 June 2012 and by consent it was ordered that the warrant was suspended on terms. The application was then dismissed on the non-attendance of both parties and the First Respondent's failure to produce evidence of his trip to Nigeria as ordered. No payments were made under the order and MB was instructed to enforce on 19 June 2012. On 24 July 2012, the defendant (the First Respondent) made another application which was dismissed as was an application on 25 July 2012 when the court finally ran out of patience. When discussing the matter with the Second Respondent at 8.30am on the morning of 25 July 2012, namely the date on which possession was taken, the Second Respondent requested the IO to defer the meeting as he would be in court and the cashier was unavailable. It was on that basis that the IO attended on the following day. However the Second Respondent made no mention of the possibility that the building might be repossessed.

122.2 In addition to the possession proceedings, Mr Havard submitted that HMRC was also bringing bankruptcy petitions and a hearing was due on 30 July 2012 but this was not mentioned to the Applicant (albeit adjourned to a later date), until raised by Ms AF on 31 July 2012 when the First Respondent stated in a telephone conversation that the hearing was adjourned until 27 October 2012. The Respondents were finally adjudicated bankrupt in 2013; it was clearly a failure to bring the situation to the Applicant's attention. Furthermore the Respondents were defendants in County Court proceedings. The nature of these claims was unknown. However on the basis that the Respondents failed to defend the claims, default judgment was entered against them in both actions for the sums of £2,430.81 and £1,712.38 respectively. Mr Havard submitted that it was evident that the Respondents were in significant financial difficulty and had been for some time which should have been reported to the Applicant.

122.3 **The Tribunal found allegation 1.8 proved on the evidence to the required standard in respect of both the Respondents, indeed it was admitted.**

123. **Allegation 1.9 - The Respondents have failed to maintain qualifying insurance in breach of Rules 4.1 and 5.1 of the SRA Indemnity Insurance Rules 2011.**

123.1 Mr Havard submitted that the First Respondent's Response was vague in the extreme on this allegation. He said:

> "The balance was eventually paid and banked by [L]. By this time, I was under the belief that matters were resolved. However, [L] subsequently returned the cheque and advised they could not provide cover. I rang an agent I knew at AON and sought his advice on the matter and he advised that [L], having banked the remainder of the premium money, there was a binding agreement to provide cover. I was advised to write the letter that I sent to [L] preserving our position on the matter. Subsequently, the intervention meant that the matter could not be pursued..."

123.2 Mr Havard submitted that this explanation did not tally with the correspondence between the firm and L which communication was summarised in an exhibit to the Rule 5 Statement showing 51 separate entries between 27 October 2011 and 20 June 2012 which included:

> "1 November 2011 e-mail to [the First Respondent] chasing payment, firm not considered to be on cover until payment received.
>
> ...
>
> 18 November 2011 e-mail to [the First Respondent] – not received payment… cover is not confirmed…
>
> 21 November 2011 Telephone message chasing payment
>
> 21 November 2011 letter out to [the First Respondent]… cover is not confirmed
>
> ...
>
> 28 November 2011 Telephone attendance note with [the First Respondent], he is using finance provider and has outstanding invoices with LSC, and therefore should have finance within two weeks
>
> ...
>
> 14 December 2011 e-mail to [the First Respondent]… Insurer further confirms that if claim made, this will not be covered by them…
>
> ...

17 January 2012... Insurer will most certainly not backdate cover to 1 October 2011..."

123.3 Mr Havard submitted that as early as 1 November 2011 cover was not being confirmed and this was repeated later in the communications. For the First Respondent to say that he thought the firm was on cover was nonsense; the documents did not bear it out. Certain payments were made but ultimately it was made absolutely clear to the First Respondent and as was plain from the 2012 entries on the schedule, the Second Respondent was also involved in communications that the firm was not on cover. Therefore there was never compliance with the SRA Indemnity Rules 2011 by failing to take out and maintain qualifying insurance for the indemnity period beginning 1 October 2011.

123.4 **The Tribunal found allegation 1.9 proved on the evidence to the required standard in respect of both the Respondents, indeed it was admitted.**

124. **Allegation 1.10 - In respect of Allegations 1.1 to 1.5, it is alleged that the First Respondent acted dishonestly although it is not necessary to prove dishonesty to prove the allegations themselves.**

124.1 For the Applicant, Mr Havard submitted that overall regarding dishonesty, there was a pattern of improper retention of clients' monies; the First Respondent was holding onto client money when there was no reason or entitlement to do so and was concealing it from the clients. Mr Havard relied on the evidence of Ms H and Mr D; he submitted that it was enough to look at their evidence and conclude that it was not credible that the First Respondent knew nothing about the receipt of large sums into the firm's bank account. The only conclusion was that the First Respondent had acted dishonestly and a common denominator was that this occurred when the firm was going through financial difficulties. The motivation was provided by the e-mail dated 26 July 2012 from the mortgagee's solicitors setting out the history of the possession proceedings in respect of the firm's premises. On 26 July 2012, Ms W of MB Solicitors for the First Respondent's mortgagee wrote to Ms AF of the Applicant confirming in respect of the firm's office premises:

"We were instructed in mortgage possession proceedings in July 2011"

Mr Havard submitted that payments must have been in arrears before then.

124.2 In the case of Mr D, in the Rule 5 Statement it was set out that:

- The First Respondent failed to act in their best interests (allegation 1.1)
- He failed to provide them with the best possible information, both at the time of engagement and when appropriate as the matter progressed about the likely overall cost of the matter (allegation 1.5)
- He concealed vital information from them in relation to their exposure to the liability to costs (allegation, 1.1, 1.2 and 1.5)

- He deliberately concealed information regarding the receipt of client monies (allegations 1.1 and 1.2)

- He made improper use of clients' monies namely the £50,000 paid by the insurers (allegation 1.4)

- He sent communications to Mr and Mrs D which he knew contained false information (allegation 1.2)

- Both in terms of specific incidents to include providing Mr and Mrs D with false information, and his overall conduct of the matter on behalf of Mr and Mrs D, the First Respondent acted dishonestly and he knew his behaviour was dishonest (allegation 1.10)]

124.3 Mr Havard submitted that the evidence was conclusive that the First Respondent knew that the firm had received £50,000 from the Ds' insurers. There was no indication that the First Respondent chased the insurance company after the money was received; this was because he knew that he had received the money. He misled Mr D on a number of occasions including when he said to Mr D on 11 December 2012 there was a delay in receiving the insurance fund and after the date of the intervention asked for more money that he said would be refunded. He had no basis on which he could assure Mr D of a refund. The Tribunal had heard Mr D give evidence; the Tribunal could assess him as someone who still felt very strongly about what had happened and his evidence was unchallenged as far as the chronology of events was concerned. Mr Havard submitted while the breach of duties were admitted, dishonesty was denied by the First Respondent but there was an irresistible inference that the Respondent misled Mr D and in doing so he knew was acting dishonestly. Furthermore the retention of client funds clearly misrepresented the financial state of the firm.

124.4 In respect of Ms H's matter, Mr Havard relied on her undisputed statement and the submissions made above about her matter. Mr Havard also submitted that at no stage did the First Respondent notify Ms H that he had received the £34,000. He said that he was not aware that the firm had received the money but this was not credible against the entirety of the evidence. This same explanation also related to Mr W, Mrs A and Mr and Mrs D and so this pattern of behaviour was replicated on more than one occasion subject, as Mr Havard agreed with the Tribunal that in the case of Ms H she was originally a minor, aged 13 at the time of the accident. Mr Havard submitted that the Tribunal was entitled to infer that the First Respondent knew full well about the settlement money coming into client account on 4 March 2009 for Ms H. The ledger showed that he was the fee earner "ED". Ms H did not have contact with anyone else. He had conduct of the file. Mr Havard stated that in discussion with Mr Nelson, it was accepted that Ms H was effectively misled as a consequence of the money arriving in March 2009 and her not being paid until 2011, some two and a half years later. The First Respondent disputed that it was he who had misled her, deliberately or otherwise. Mr Havard submitted that the Tribunal could conclude based on the Applicant's evidence that the First Respondent knew full well that the money came in and that Ms H was only paid two and a half years later.

124.5 As to whether the ledger was inaccurate or incomplete, no invoices were sent to Ms H although costs were taken on a regular basis. In his Response, the First Respondent included:

> "The fact that the ledger account balances were inaccurate is shown by the fact that Ms [H] confirmed that she was paid in full despite the picture presented by her ledger. This shows the inaccuracy of the ledgers and bears out my point that people would have complained if they had not received payment at all."

124.6 Mr Havard submitted that this was an attempt to distort the true position and that there was a perfectly proper alternative explanation which was that as at November 2011, the First Respondent used other clients' money to pay Ms H because she lost faith and started the complaint to the Legal Ombudsman; she complained and she was paid. The fact that the ledger did not record the payment did not mean the ledger was inaccurate. There was no evidence to suggest it was. It might be incomplete but it might suggest payment of £34,000 and that it was not known where it came from. The Applicant did not dispute that Ms H finally received the money. In his response regarding Ms H's matter, the Respondent stated:

> "Once again I repeat the observations I have made above in respect of Mr [W's] matter. The ledgers are inaccurate, which I have admitted. By that very reason, they cannot be used as evidence to show that they are an accurate reflection of what took place.
>
> Again, I have not been able to see the full file to provide evidence to confirm what I have said. However, I can say that Ms [H] has been paid in full. I would attribute the inaccurate ledger entries to incompetence and lack of supervision.
>
> As far as the client costs are concerned, I would have expected these to be paid by the insurers along with the claim. Ms [H] was a minor at the time of the accident and so I communicated with her parents rather than with her direct.
>
> I very much regret that she had difficulty contacting me. If that was the case, it was probably because of my absences from the office and from the UK.
>
> We had a client care letter which explained to clients that we would not release damages without being paid our costs. Having said that, I cannot recall the particular circumstances of this individual file. I cannot even concede that I knew that the settlement monies were received but I can say that I did not deliberately delay the payment of the costs in order to retain the clients' funds improperly. Unfortunately, what I cannot say is that the funds were paid out promptly. All I know is that the ledger is inaccurate.
>
> I admit that I failed to act in the best interests of the client by not knowing what was happening on the financial front but I certainly did not conceal from the client that the money had been received and I have yet to see any evidence that showed I even knew it had been received."

124.7 Mr Havard submitted that this was a clever attempt to twist and distort the position on the basis of no evidence from the First Respondent. Unfortunately he was not here for his account to be challenged and Mr Havard submitted that one could place little or no weight on what he had to say.

124.8 Mr Havard relied on the two limbed test for dishonesty in the case of Twinsectra Ltd v Yardley [2002] UKHL 12 where Lord Hutton had said:

> "... before there can be a finding of dishonesty it must be established that the conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

and

> "...dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although he should not escape a finding of dishonesty because he set his own standards of honesty and does not regard as dishonest what he knows would offend the normally accepted standards of honest conduct."

Mr Havard submitted any ordinary and honest person would find the First Respondent's conduct in acting for Ms H was dishonest and he must have known that when holding onto the money and giving her assurances that she would not be responsible for any costs in respect of her claim and where there was no proper reason why he withheld payment of the damages to her.

124.9 Mr Havard referred the Tribunal to the case of Weston where it had been said, referring to the Tribunal:

> "They were at pains to make the point which is in my judgment a good point, that the Accounts Rules exist to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed. That is a duty which binds solicitors, quite apart from a duty to act honestly and in accordance with the duties of a trustee.
>
> Recognition of that principle does not mean that, in any case where one solicitor is dishonest and as a result both he and a partner commit breaches of the Accounts Rules, both must automatically be struck off even if the second partner is guilty of no dishonesty. That would be to lay down much too inflexible a principle. The striking off of any solicitor found to have acted dishonestly in relation to clients' monies must now be seen as all but automatic. The position of a partner guilty of non-compliance with the Accounts Rules but without dishonesty will depend on all the circumstances of the case. In this case as it seems to me the tribunal were entitled to bear in mind that this firm was, to Mr Weston's knowledge, in a "parlous financial condition". He knew of a statutory demand by the Customs and Exercise for £60,000. He signed a cheque jointly with Mr North, in favour of the Customs

> and Excise for that sum. In fact, as we now know, the payment was made out of funds dishonestly transferred from Mr LTN's estate. That was something which at the time Mr Weston did not know and that is a matter which must be emphasised. But if he had performed his duty under the Accounts Rules it is something of which he would have been aware and something which he would have been able to prevent.
>
> ...
>
> It is important to appreciate that in speaking of "trustworthiness" in that passage the court had in mind, of course, honesty, but also had in mind the duty of anyone holding anyone else's money to exercise a proper stewardship in relation to it. That is violated if one solicitor with a duty to see that the rules are observed fails to do so. The tribunal was in my judgment entitled to take the view that the situation in this firm was one which called for the close personal attention of Mr Weston as senior partner. It was entitled to conclude that it was not in all the circumstances enough for him to say that the firm's finances were managed by Mr North and could therefore be left to him. We must remind ourselves that the primary judgment in matters of this kind is not ours but that of a professional tribunal, which includes a lay member and which may be expected to be sensitive both to what protection of the profession demands and also to public perceptions."

Submissions for the First Respondent in respect of allegation 1.10

124.10 Mr Nelson submitted that this was an unusual case; the First Respondent made it plain that he fell short of the required standards including those regarding managing the firm. Usually Mr Nelson would seek to persuade the Tribunal that a different consequence should arise out of his admissions but the First Respondent appreciated that he would be struck off; that was known to him throughout the course of the proceedings. The Respondent had made his acceptance of the outcome plain to Mr Nelson and they had told the Applicant of that acceptance in respect of a possible Regulatory Settlement Agreement (RSA) but the First Respondent did not accept that he had been dishonest. He had said that he would withdraw his name from the Roll and undertake not to work in a solicitor's practice again and not to seek readmission to the Roll; the First Respondent was arguing his case for his reputation and not for his future as a solicitor. He accepted that clients suffered consequences because of the closure of the firm and because of his inadvertence, negligence and his attention being directed elsewhere. He accepted that he would pay for that.

124.11 Mr Nelson submitted that there had been much cynicism about the absence from the hearing of the First Respondent and his medical position and the Response statement that he had made in August 2014. The Response was not intended to replace the evidence that he would have given and be cross-examined upon. The Response was filed in response to a direction to file a statement setting out what was admitted and what was denied. Right until the day before the hearing it had not been plain whether the First Respondent would be attending. Mr Nelson and Mr Havard's preparation had been undertaken on the basis that he would attend. As it turned out more detail would have been welcome. Mr Nelson also submitted that the First Respondent found it very difficult to address the case throughout. Inevitably the Applicant made a cynical

judgement. One could deconstruct the position with the benefit of hindsight and it was easy to see how that could happen but it was not necessarily the true position. Having regard to the criminal standard employed by the Tribunal, (sure beyond reasonable doubt), to satisfy that standard there must be facts of which the First Respondent must have been seized; advertent conduct was needed with deliberately allowing or misusing of client funds. The First Respondent needed knowledge and belief to be dishonest. It was not dishonest if one put forward facts believing them to be true and it turned out that they were not. The question was whether the First Respondent was possessed of the requisite knowledge or belief. Mr Nelson submitted that there was an absence of evidence to confirm who did what and an absence of accounting evidence. Some of the fault for that lay at the First Respondent's door; the accounting records were locked away while he was in Nigeria and as the FI Report stated he was away for some time however the records were to some extent historical relating to past reconciliations.

124.12 Mr Havard challenged Mr Nelson's interpretation of the purpose of the Response. The idea of the Response was to answer the allegations and if facts were not agreed to give the basis upon which they were not agreed. Had Mr Havard known of the issues now being raised he could have explored them with witnesses in advance of the hearing. However Mr Nelson said that he would not trespass too far away from the evidence. The First Respondent was said to have been away for some time but the firm ran on and the IO looked at the accounting system on her second visit in a way which was not available during the first visit. The cupboards had been locked in the interval. It was the Applicant's case that the First Respondent had the key. Mr Nelson presumed some accounting records were created in the interim and were in the control of Ms C the bookkeeper to whom the IO spoke. She was said to be operating under the instructions of the First Respondent. She was a relatively recent appointment to replace G who left at short notice. There was no criticism of Ms C or any investigation of her or of G by the Applicant. She would have operated some system and G would have had bank statements, dockets, and instructions but none found their way into the papers before the Tribunal. The firm had run in the absence of the First Respondent and apparently on his instructions and there would have been some accounting records to show how he ran the firm. The balances were the same on two different documents, the client ledger and the client matter summary. Mr Nelson did not seek to implicate the Second Respondent. The firm functioned on as best it could in the absence of the First Respondent.

124.13 Mr Nelson submitted that there was an assumption of blame on the equity partner; that he must have known what was going on. Accounting records made up a huge part of the case and the absence of them provided fertile grounds for speculation but Mr Nelson submitted that they could not found grounds for a conclusion of dishonesty by the First Respondent. The Applicant could have looked more closely and looked at live files, matching them to the ledgers albeit not with the way the ledgers were maintained. There were issues that the ledgers were not accurate. Mr Nelson asserted this and it was perverse of the Applicant to say the ledgers were not accurate and then rely on them to prove a set of circumstances. Mr Havard said that the ledgers were accurate but incomplete; that could not be correct. It did not seem right that according to the ledger in Mr W's case £150,000 of £183,000 had been taken in costs. On Ms H's file only £1,000 was referred to by way of damages and Mr Nelson asked where was the £34,000 to come from; the ledger must be wrong. Even if matters were

recorded as true transactions the ledger could not relate to that matter. G created the ledgers and the First Respondent relied on him; he knew that it was wrong to do so but did he know what G was doing when the First Respondent's attention was directed elsewhere. The First Respondent did not seek to avoid responsibility for appointing him and for not supervising him and that was one of the reasons for which he would be struck off. What was the First Respondent doing: there was a recession and a decline in respect of the firm which had lost sections work and staff leading to greater and greater pressure on the principal staff as a consequence. They had to take on more work which staff would have done with less time for management of the firm. There were more demands from clients and less time to respond leading to an unpleasant and chaotic end.

124.14 Mr Nelson submitted that in his personal life, the First Respondent was a proud and able man; he has good legal ability and was well respected for that. Even Mr D was happy with how the First Respondent handled his case, could recall it in a positive light and was prepared to instruct the First Respondent on a fresh matter. The First Respondent was increasingly looking towards Nigeria because he had a series of difficulties; his father died and he felt that if he had been there his father would have fared better. Other family members also died and his wife had health problems. Everything in his personal life was going wrong and he felt great guilt about his family responsibility. This was the real reason for him looking elsewhere. He started by trying to fit a quart into a pint pot and then into a jam jar and then a thimble. His attention to the practice had to give. He placed reliance on someone who was not reliable and the First Respondent did not know what was coming in and going out of the practice. There was no evidence to show that the First Respondent was aware of the £50,000 received for Mr D and the monies for Ms H on the dates recorded. Mr Nelson could not challenge those dates; he accepted that Ms H's money must have come in before 1 June 2009 as Norwich Union merged with Aviva on that date. (Mr Havard pointed out that it was known when Mr D's £50,000 was received because the letter dated 18 February 2013 from the insurers Family Plus stated that it had been paid directly to his solicitors on 9 May 2011.) Mr Nelson submitted that this was not the point; his issue was about future contact with the firm.

124.15 Mr Nelson submitted that in the case of the client Mr B, it was known that the ledger was wrong in recording the monies as estate monies because they were costs. If a bill had been raised the monies recorded as a credit balance might have been transferred to the bank.

124.16 As to whether Mr Nelson was saying that the First Respondent would not know about receipts because of deficiencies in the internal workings of the firm, the Tribunal asked whether he would not have been alerted because he was being chased by the client. Mr Nelson responded that he was chased by many clients and responded when he could. Also he ignored a lot of the chasing. The Tribunal suggested that all the First Respondent had to do in the case of Ms H was to check the records. Mr Nelson responded that it was a question not of whether he could do that but whether he did check the records. As to Mr D, he had stopped chasing and the Tribunal had not seen the files which troubled Mr Nelson because they had been taken on the intervention. There was no hard evidence to show that the First Respondent knew of the receipt of the monies.

124.17 Mr Nelson submitted that it was easy to say that the First Respondent's motivation arose from financial difficulties; while it added to the pressure that did not mean that he knew more. The Tribunal was left to guess and deduct and conclude. It was the First Respondent's case that he understood that in respect of the three claims for Mr W, Ms H and Mr and Mrs D, money was paid out. The trigger for Mr D and Ms H's anger was the fact that they had been informed that the money was in the client account earlier than they realised and they assumed that the First Respondent knew at that time but it was an assumption. Mr Nelson did not challenge Ms H's statement because she would feel that she had been misled based on the information provided to her about when the money came into client account. It was accepted that the First Respondent had not dealt well with the issues and failed to control the situation as the fee earner and principal. He was running from one file to another which was as forceful a conclusion as that he took the money for the benefit of the firm. His breaches of the rules showed neglect not subtlety. He recorded in an open way how the money had been retained, that there were no bills; he did not seek to cloud the picture. His failures did not mean that he acted deliberately. Anyone looking at the ledgers would raise eyebrows. The way the ledgers were kept was rather amateurish and not the actions of an able professional man.

124.18 Mr Nelson took no issue with the references Mr Havard made to the Weston case; these were serious matters and Mr Nelson's heart would be "in his boots" if he were arguing against strike off in respect of them. However lack of proper scrutiny of the accounts rules by a principal and not knowing the position could not be described as dishonest.

124.19 In summary there were things distracting First Respondent, there were physical absences and absences in supervision. The position regarding clients was largely speculation. As to Mrs A and Mr W, if one speculated, possibly there was a reason why they did not seek to cooperate with the Applicant but there was no evidence they were unhappy with the situation. It became a simple question; in reality did the First Respondent actually know or believe that funds had been received and if they had and he did not know, he did not tell a lie. If he did not know that funds had been received then he could not use them for the purposes of the firm. Mr Nelson did not say that funds had not been used for that purpose but could not say by whom; that was a gap in the prosecution case.

<u>Findings of the Tribunal regarding allegation 1.10 against the First Respondent</u>

124.20 The Tribunal had regard to the submissions for the Applicant, the submissions for the First Respondent, the oral evidence and the test for dishonesty set out in the case of Twinsectra.

124.21 The Tribunal noted that although the First Respondent said that he was sick and had remained abroad, he had asked through his representative that the matter continue to be heard against him. He was aware of the Tribunal's Practice Direction No 5 and the expectation that a solicitor would appear in person at the Tribunal and give an account of his conduct. He had chosen not to seek an adjournment of the proceedings. The Tribunal had carefully considered his Statement in Response and did not find it to be compliant with the directions given by an earlier division of the Tribunal on 25 February 2014 and repeated on 22 July 2014; the Response was almost totally

devoid of specificity or detail particularly in respect of dates and full names. The First Respondent relied on absences abroad but provided no corroborative evidence to establish when he went to Nigeria. The document did not offer a cogent explanation for his conduct save that chaos reigned in his practice. It had been submitted for the First Respondent that if he had attended he would have given evidence in greater detail than in the Response but had this occurred he would have attracted the criticism of the Tribunal on that account for not having provided the detail in the first place. The Response did not assist the First Respondent and if anything undermined his credibility.

124.22 The Tribunal noted that the allegations of dishonesty against the First Respondent related to detailed allegations 1.1 to 1.5 and that these were strongly disputed by the First Respondent. These allegations related to the affairs of five named clients. The Tribunal found dishonesty had been proved by the Applicant in respect of four of those clients. By the failure of the First Respondent to disclose to the clients, Mr W, Ms H, Mrs A and Mr and Mrs D his receipt of funds and his retention of those funds for very substantial periods without disclosure of the true position, the Tribunal found the First Respondent to be dishonest. The Tribunal was satisfied that the First Respondent knew about the receipt of these funds in each case and failed to disclose to his clients the true position when he could and should have done so. The Tribunal did not find any dishonesty proved in respect of client Mr B where different considerations applied. As a result of these findings and looking at the allegations as pleaded the Tribunal found dishonesty proved to the required standard regarding allegations 1.1, 1.2, 1.3 and 1.4. The Tribunal was not satisfied that dishonesty as alleged was proved to the required standard in respect of allegation 1.5 although allegation 1.5 was of course admitted.

124.23 The Tribunal's detailed reasons for its findings in respect of dishonesty were as follows.

<u>Mr W</u>

124.24 The ledger for this client recorded that the First Respondent received £10,000 by way of a settlement on 16 December 2008 and on the same day transferred £5,000 of the sum to office account and on 17 December 2008 made an interim payment to Mr W of the same amount. The ledger recorded other payments received in settlement (totalling £185,000) and a plethora of transfers to office account for unbilled costs, largely in round sums for example on 15 October 2009, the ledger recorded the receipt of £25,000 by way of settlement and £10,000 paid by way of damages to Mr W on 16 October 2009. Almost immediately the First Respondent then applied the remaining monies in costs, reducing the balance on the ledger to nil by 1 December 2009. There was no evidence of any bill having been raised and no sensible explanation was given for the First Respondent's actions. The First Respondent relied on the incompetence of his staff and the inaccuracy of the ledger. In his Response, the First Respondent said:

> "Mr [W] was the husband of a cleaner who used to work at the firm. I explained that one cannot trust the ledger entries. My recollection is that Mr [W] suffered a nasty injury but I cannot recall now what the settlement figure was. The ledger does not represent the true financial position and I am

very clear that Mr [W] did receive his money. If he had had a serious injury and had not received it would surely have been in touch and would certainly have been willing to cooperate with the [Applicant]."

124.25 The Tribunal considered that it was completely incredible for the First Respondent to say that he did not know was happening in respect of Mr W and also found completely unconvincing his assertion that Mr W had received his money when the First Respondent did not say when or how much. The Tribunal found that such money as the records showed Mr W had received, had been held for an inordinate period. It had to be borne in mind that at that time the office account had 117 balances totalling in excess of £108,000. In all the circumstances, the Tribunal considered that the objective test for dishonesty in Twinsectra had been satisfied and furthermore that the First Respondent knew that his conduct in retaining, without proper reason, client monies contrary to Rule 15 SAR 1998 (all the conduct having taken place during the currency of the SAR 1998) was dishonest. Dishonesty was therefore proved to the required standard in respect of in the case of Mr W.

Ms H

124.26 The Tribunal noted that Ms H's witness statement was accepted unchallenged by the First Respondent. He had retained her damages for a period of over two and a half years and she had inordinate difficulties getting anything out of him including a coherent explanation. The First Respondent said that he was not aware that the firm had received the money while he as fee earner, was in charge of the accounts, was the senior partner and had been chased vigorously by this client in respect of progress. The First Respondent relied in his Response on an assertion that the firm had a client care letter that said they would not release damages without their costs being paid. According to her statement, Ms H had been told that she would not have any deduction for costs made from her damages because the other side would pay. The ledger was headed "no-win no fee" which seemed to support what she was saying. The Tribunal noted that according to the ledger money was moved as soon as it was received and over a two-month period all the money had been used in costs by 22 May 2009. The firm then received a payment of £17,500 by way of costs in November 2009 but still the First Respondent did not finalise the matter. Ms H finally received the money on 14 November 2011 but the ledger did not demonstrate where the First Respondent obtained the money from. He asked the Tribunal to believe that he had paid the client £34,000 without looking at the ledger. He said he was away a lot but the Tribunal noted that he could use the telephone. The Tribunal considered that this demonstrated the totally unsatisfactory nature of his Response. The First Respondent had been frequently chased by Ms H and in order to check the situation about the receipt of her damages all he would have to do was pick up the telephone and ask the bookkeeper. As he had control of the accounting records he could also have checked the position himself. Having regard to the extent of Ms H's pursuit of the First Respondent, the Tribunal was not convinced that any amount of pressure would have prevented the First Respondent from dealing with a situation which was so quick and simple to resolve if he was acting honestly. The Tribunal considered that the First Respondent's actions were dishonest by the objective test in Twinsectra and that in acting as he did the First Respondent knew that he was being dishonest. Dishonesty was therefore proved to the required standard in respect of Ms H.

Mrs A

124.27 On 18 January 2010, according to the client ledger £13,000 had been received described as "part payment for claim", on 15 July 2010 a further £80,000 was received and on 14 September 2010 the sum of £17,700. On 21 October 2010, the payment of £15,000 to Mrs A was recorded. £12,268 was transferred to office by way of £8,000 on 20 January 2010 and the balance on 2 February 2010. The remaining £83,432.19 was retained on client account and was there on 24 July 2012 when the client matter list was printed. The Tribunal found that the First Respondent had failed to give any sensible explanation for monies due to the client being held for some three years. This was a classic example of a situation calling for the solicitor to give an account of himself as referred to in the case of Iqbal. The Tribunal found that the circumstances of this case were very similar to those of Mr W and Ms H and it found that the First Respondent's conduct in retaining monies in client account without proper reason was dishonest and that the Respondent knew it to be so. Accordingly dishonesty was proved to the required standard in respect of Mrs A.

Mr B

124.28 In this matter on 27 August 2010, the sum of £15,422.95 was lodged in office account described as estate money which created a credit balance of £14,348.01 on the office side of the client ledger. The First Respondent admitted (allegation 1.3) transferring client monies from client account to office account in respect of this without sending a bill of costs or other written notification to the client and failing to fully investigate a credit balance on office account (allegation 1.6) but denied dishonesty. The Tribunal had the benefit of the additional evidence by way of the letter from C Solicitors. The Tribunal found that the letter established that the money in question was money that the First Respondent was entitled to. There had been accounting failures but the Tribunal did not find that the way in which the First Respondent had dealt with the money would be regarded as dishonest by honest and reasonable people and therefore the objective test in Twinsectra was not satisfied. Accordingly it was not necessary for the Tribunal to consider the subjective test concerning the First Respondent's knowledge. The allegation of dishonesty in respect of Mr B's matter was found not proved to the required standard.

Mr and Mrs D

124.29 The Tribunal considered the question of dishonesty in respect of Mr and Mrs D chronologically. It noted that the Applicant did not have the benefit of a client ledger to put before the Tribunal in respect of Mr and Mrs D's matter but relied on the witness evidence of Mr D. Mr D had given evidence that he had been told nothing about no-win no fee agreements or uplifts at any stage of his contact with the First Respondent. The First Respondent made assertions in his Response which were that the issue of costs was discussed at the outset with Mr D giving a best estimate and then updating it from what was said in the initial client care letter from time to time. He stated that he was unable to access the file to show whether or not he updated the costs information in writing. He also stated that when it did become apparent that the other side was operating under a conditional fee agreement, he discussed the implications with Mr D and advised him about the possibility of an uplift and success fee. The Tribunal found that the First Respondent had produced nothing in writing to

support these assertions while Mr D had come to give sworn evidence that he had not been provided with updated costs estimates or with information about the implications of the conditional fee agreement. While gain was not an essential ingredient in dishonesty, the Tribunal noted that the Respondent had nothing to gain from being dishonest in respect of the fee situation and had just put himself into difficulty by not explaining properly. The Tribunal accepted Mr D's evidence about what was and was not said but found that the First Respondent had been incompetent rather than dishonest in his admitted failure to provide Mr and Mrs D with adequate costs information. Accordingly the Tribunal did not find that dishonesty had been proved in respect of allegation 1.5 regarding Mr and Mrs D.

124.30 As to how the First Respondent dealt with the question of costs after the litigation was concluded, it was accepted that the firm had the benefit of £50,000 of legal expenses insurance money to which Mr and Mrs D were entitled for a considerable amount of time. This was against the background of a firm which was in financial difficulty. The First Respondent allowed his clients to get into serious difficulties including with the court including having a CCJ entered and a charging order applied for in respect of their house while he sat on the money for 20 months. Furthermore he continued to ask for additional funds. The Tribunal was being asked to accept, as in the case of Ms H that the Respondent did not know that the money had been received by the firm. The Tribunal found this assertion to be completely incredible especially having regard to the length of the period during which all these things were happening and in the circumstances the Tribunal concluded that the First Respondent had failed to inform Mr D about the receipt of the £50,000 quite deliberately. He ignored Mr D's request for information about what he had done with the additional £17,500 which he had obtained from Mr D towards costs and the Tribunal inferred that this was because he had put the money somewhere that he should not. He resisted providing a written acknowledgement of the payment for a considerable time. In his statement Mr D listed the things about which the First Respondent had failed to notify him and his wife; the Order of 8 August 2012, the application that led to the order being made (although the Tribunal recognised by virtue of the nature of an application for a charging order Mr D would not initially have been advised of it); a subsequent Order dated 15 August 2012 which required Mr and Mrs D to pay £35,000 on account of costs by 4pm on 19 September 2012; the application for a charging order; an interim charging order dated 11 September 2012 and correspondence from the other side's solicitors SM in which these issues were addressed. The Tribunal found it to be quite incredible that the First Respondent failed to advise his clients about all these events other than from a dishonest motive. The Tribunal also noted that when on 11 March 2011, the First Respondent finally confirmed receipt of the sum of £17,500 (which had been paid on 15 December 2010 on account of costs) he still failed to answer Mr D's question about what he was doing with the money. The Tribunal found that an honest and reasonable person would consider that it was dishonest to fail to advise the clients of all these highly relevant events and to answer their questions and that the First Respondent knew that in doing so he was being dishonest.

124.31 On 11 December 2012 the First Respondent asked Mr D for a further payment of £13,592 which he said was a shortfall because he had not yet received the legal expenses insurance monies. The Tribunal found that as it was satisfied to the required standard that the First Respondent knew that he had already received the money in May 2011, his statement about the shortfall was untrue. As to the fact that his firm

had already been intervened in when he made his request and gave an assurance that the money would be refunded to Mr D when the insurance payment had been received, the Tribunal found that the First Respondent knew that it would not be possible to refund the money through the firm and he was misleading the client if what he said meant that the firm would pay Mr D back. In respect of the reference to the refund, this could only have referred to the additional money being requested. The First Respondent said in his Response:

> "I do not challenge that fact that Mr [D] was eventually due a refund for excess payment as he claims. By the time he was entitled to this, matters had been taken out of my hands due to the intervention."

However the Tribunal found that matters had been taken out of his hands before the First Respondent asked for the money and he should not have asked for it because the £50,000 had already been paid to the firm by the insurers. Actually £67,000 had been paid in total. The honest and reasonable person would find this conduct to be dishonest and the Tribunal found that the First Respondent knew that what he was doing was dishonest.

124.32 The Tribunal found that First Respondent had carried out a dishonest course of conduct in respect of Mr and Mrs D which started when he became aware that there was £50,000 of their money in the firm's client account. He asked for money from the client and the consequences of his failure to use the £50,000 generated actions by the other side which were adverse to the interests of his clients whom he failed to protect.

124.33 Regarding the allegation of dishonesty in respect of allegation 1.5, in the case of Ms H he had failed to provide her with costs information and whilst dishonesty had been found in respect of his retention of her monies and otherwise the Tribunal did not consider that it had been proved to the required standard that his failure to provide cost information had been dishonest. In the case of Mr and Mrs D, as set out above no information about costs had been provided after the initial client care letter but the Tribunal found that this was attributable to incompetence at the outset and during the conduct of the action rather than to dishonesty. The First Respondent's conduct regarding costs after the action had been completed was a completely separate matter. The Tribunal found dishonesty proving to the required standard as set out elsewhere in this judgment. In the case of Mr W, Mrs A and Mr B, the Tribunal did not consider that it had been provided with evidence to establish dishonesty in respect of the provision of costs information and accordingly dishonesty was not found proven to the required standard in respect of these three clients.

Previous Disciplinary Matters

125. None in respect of either the First or Second Respondent

Mitigation

<u>First Respondent</u>

126. Mr Nelson submitted that the First Respondent was resigned to being struck off whatever decision was made in respect of the allegation of dishonesty and in the light

of the Tribunal's finding regarding dishonesty Mr Nelson felt that he could not argue against that sanction in any event. There were matters that fell outside that finding. There had been blindness on the First Respondent's part regarding PII; the Panel of Adjudicators Sub-Committee on 24 August 2012 when it considered intervention noted with concern that "[the First Respondent] despite the clearest of statements from [L], believes that insurance cover has been in place for the firm...". The First Respondent was advised by a third party that once money had been paid cover was enforceable but the reality was quite different.

127. Regarding the case of Mr and Mrs D particularly and the First Respondent's continued activity after the intervention, Mr Nelson submitted that this was just a desire to tie up as many loose ends possible because ironically he had a good relationship with Mr D throughout.

Second Respondent

128. For the Second Respondent, Mr Wozny said that he was grateful for the assistance of Mr Havard and Mr Nelson. The Second Respondent did not challenge Mr Havard's submissions subject to some fine tweaking regarding the PII matter but that did not affect the outcome. The Second Respondent had submitted an Answer dated 7 February 2014 which seemed to mount a defence. He had lacked funds to pay privately for representation and was sorry for any previous difficulties but his Answer depended on what the First Respondent said. Following the commencement of the proceedings, despite the fact that the Second Respondent still did not know or have a proper explanation for the mess the accounts were in or about the particular clients, he had to respond with a few days grace to the Tribunal. The Second Respondent apologised for the statement as he had submitted it. He recognised his onerous obligations as a partner in the firm and that he had fallen short. There had been no need for witnesses to be called in respect of his actions; he took no part in case management; that was a matter for the First Respondent. If he had had more expertise available when he filed his statement he would have given more background about becoming a partner in the firm which Mr Wozny would provide. The Second Respondent had come to the UK as an A-level student intending to become a lawyer. He attended a polytechnic and took the professional exams. However there were factors which counted against him in seeking employment. He sent his CV to many firms of solicitors including Wozny & Co, where he was invited to become a clerk to gain experience. Within three months it became clear that he had ability and he was recommended to join an exclusively legal aid firm undertaking criminal and welfare law. He obtained a training contract and became a solicitor undertaking criminal legal aid work. At neither Wozny & Co nor his later firm did he have any experience of management or accounts. There was any in any event no client account.

129. The Second Respondent was then head hunted by a third firm which later became Beevers to start a criminal practice and build it up.; it was well respected in a number of areas of law including private law work undertaken by the First Respondent. The First Respondent made an application for a legal aid franchise as it was then called. The Second Respondent was the expert; he was getting in work and dealing with it. Initially he was there as an assistant solicitor. Each solicitor had to do more and more work on the file for less including police station attendances at all hours, magistrates' court appearances and visiting clients in prison. The Second Respondent had higher

rights of audience and exercised them but not initially to a great extent. He was then invited to become a salaried partner and he felt that this was progress and that it would be advantageous to become a partner in a well maintained firm. He acquired all the duties and none of the benefits; he was a salaried partner throughout. The firm was then one of the most respected in East Manchester in several areas of work and had clients from all over the city. When he joined the firm it was quite large for the area. The First Respondent was a very good advocate and businessman although he did not appear in court often. The Second Respondent had faith in him which continued but which was misplaced towards the end. There were a number of partners and assistant solicitors when the individual cases which had been the subject of this hearing started. The Second Respondent did not place any blame on those individuals but it showed that he could relax in the thought that this was a very well maintained operation. The Second Respondent did not undertake any of the "book work" for legal aid. The First Respondent and the staff did all that. The Second Respondent was proud of the fact that in each of the audits his departments passed with flying colours and were congratulated by the auditor. All the other departments passed too but Second Respondent did not know how well they did. There was then a serious downturn in work mostly on private side. However the Second Respondent's legal aid work grew. Slowly people left the firm including the conveyancing partners and ultimately the Second Respondent was on his own with the First Respondent. The Second Respondent had faith; he admired First Respondent as a good solicitor and businessman who told him that he would make it right. Continuous assurances were given to the Second Respondent and he became aware now and then of debts being chased and judgments entered against the practice. He raised this with the First Respondent who told him that it would be dealt with and an additional factor was that he said that the judgments would be set aside because they were faulty and subsequently were defended; which the Second Respondent took to demonstrate the ability of.

130. Mr Wozny submitted that it was a considerable time before the Applicant came into the firm. The Second Respondent was receiving documents about impending bankruptcy. He realised that he should have told the Applicant but it was to the Second Respondent's mind the First Respondent job to put things right.. The First Respondent said that he would put it right. The Second Respondent was in some degree of panic and clung to that reassurance. Following the intervention, the Second Respondent wrote to the Law Society notifying his position because an application was made for him to practise despite the pending bankruptcy. Mr Wozny had assisted him in this application which was successful in that he was given a severely limited Practising Certificate. The notification to the Applicant was too late for the purposes of the allegations here but it was done.

131. As to the issue of the premises; the Second Respondent knew of the difficulties because the First Respondent told him but said he would put it right and to some extent that was correct. A number of adjournments were recorded in the documentation and these delays gave the Second Respondent reason to believe that someday the position would come right. The firm was still busy in his area of law; clients were still coming through the door. Regarding the staff being locked out and the Second Respondent's interview with the IOs, when they came on 24 July 2012 the Second Respondent was there despite knowing nothing about the accounts and their running. He put the IO into a room so that she could make investigation and she

obtained the documents which the Tribunal had seen. He gave her some assistance although not much and the bookkeeper was there. The Second Respondent still had a full schedule of work and knew that the following day he had to make a short appearance in Leeds Crown Court before a Recorder. He told the IO that this was the case and asked if she really needed him, advising her that she could get into the premises and go through the accounts with the bookkeeper. The IO responded that this was not a problem. The Second Respondent knew that possession proceedings were being heard but he was told by the First Respondent that Counsel would be instructed to obtain an adjournment. The Second Respondent had no idea that the premises would be repossessed or of inconveniencing the Applicant in the investigation. The next day the bookkeeper told him that her father had terminal cancer and she could not come to work. The Second Respondent telephoned the IO about that and asked her to hold over until the next day as the bookkeeper would be there and for what it was worth he would come in for the morning. He then learnt of the lockout at the premises and wrote to Leeds Crown Court to obtain an adjournment, successfully. He turned round and went to the firm only to be locked out. Mr Wozny submitted that Leeds Crown Court confirmed that the Second Respondent did not attend and another firm went on record for that client shortly afterwards. The Second Respondent did not put the IO off, knowing of the lockout and that she would not be able to get to the accounts. He attended the premises on 26 July with the bookkeeper and the IO and could not get in. There was correspondence on file with the Applicant regarding the lockout. The initial reaction of the mortgagees was not to allow access to the premises but correspondence resulted in limited access. The directions which the Second Respondent has were to remove everything as quickly as possible; if the premises were closed again with files inside it would have been a disaster. The Second Respondent walked around "with shells exploding around his ears" in ignorance of what was subsequently found out by the investigation and because of his ignorance of work needed regarding the accounts. The First Respondent was not there to assist.

132. M Wozny submitted that the Second Respondent in his limited way did try to do what he could. If he had reported matters more timeously he would be in a better position; he could not say as he did in his original response that he had acted in the best interests of clients because they were not best served by the delay in notification. However he always acted in the best interests of his own clients and was not aware of any complaints from them including regarding handing over their files which mostly went to one particular firm. The Second Respondent was a partner and bore responsibility for any shortcomings regarding the firm.

133. In respect of clients who were let down, the Second Respondent knew nothing about the letters from two barristers regarding care proceedings but the office being locked must have added to the difficulties. He did not know how these matters had been resolved and he did not know if there were any complaints about these or other matters. Once the office was closed most of the ongoing correspondence with the Applicant was undertaken by the First Respondent. Sometimes the Second Respondent received letters and made no response. It would have been simpler for him to say that he could not answer until he heard from the First Respondent but he accepted that there should have been a response to the Applicant so that the Applicant would know that he was attending to the matters instead of burying his head in the sand out of panic.

134. Of the client matters concerning the Tribunal those relating to the accounts were run by the First Respondent. The Second Respondent did not have a shred of knowledge of these clients or their cases, of complaints or any problems regarding their accounts. Mr D had a meeting with the First Respondent; this was known but it was not known where and the Second Respondent neither saw Mr D nor knew of the problem. Regarding the other cases, the Second Respondent would not have known how to conduct them or to carry out the accounting in respect of them. As a partner he should have known and demanded to know and so he had to admit that charge.

135. It was a major undertaking to get the files and computers out of the firm. It was done in a great hurry and everything was originally placed in a warehouse in very poor order. This disorder built on the failures for clients which the Tribunal had heard about. The First Respondent was asking for an adjournment from the Applicant, putting off the inevitable but the Applicant had had enough and intervened into the firm.

136. It was a death blow to the firm when the Legal Services Commission ("LSC") stopped all payments regarding family and criminal law work although there was nothing wrong regarding the criminal books or files which was accepted by a representative of the LSC. There were issues about the family law matters although the files showed notes of work done and the Second Respondent had no doubt the work had been done but the necessary time sheets had not been kept up-to-date. This led to a discrepancy which caused the LSC to act quickly even though the criminal work was in order. It was hoped against hope that the income stream would start to flow again but it did not.

137. After the visit of the Applicant, the Second Respondent could not seek a practising certificate in October of that year not least because of this hearing which was a cloud over his head. In March 2012 he was allowed to practise until October 2013 when he made a further application for a practising certificate which was not granted into June 2014.

138. Mr Wozny submitted that the Second Respondent was completely impecunious, leaving aside the matter of the bankruptcy. He was being assisted by family and friends to maintain himself and his children. A family member had funded his attendance at this hearing. Mr Wozny informed Tribunal about the number of children for whom the Second Respondent was responsible and his family arrangements and difficulties which he had experienced during the material period. He also mentioned that the Second Respondent had also had family problems to deal with in Nigeria. The Second Respondent was undertaking a lot of police station work as an agent; as a freelance his income varied from month to month. The Tribunal was presented with a Personal Financial Statement which showed an estimate of total monthly income of £1,350. His outgoings clearly outweighed that.

139. As to sanction, Mr Wozny submitted that the Second Respondent already had conditions on his practising certificate including that he could not practise as a sole practitioner or partner or handle clients money and this would be sufficient to rule out any immediate fear of similar offences being committed in future. Furthermore he was never physically involved in the accounts. The Second Respondent admitted dereliction of duty in that connection. The importance of the public and clients being

sure that their affairs would be dealt with fairly properly and scrupulously was accepted. If any of the clients in question had been asked if they have lost faith in the Second Respondent as a result of what happened, they would have said that they knew nothing about him as they had dealt with the First Respondent. However if they were asked what they thought about the firm they would be scathing about the experience.

140. Mr Wozny submitted that there were features which distinguished the Second Respondent's position from the case of Weston. Mr Weston had been an equity partner and the firm's affairs were in a parlous state and knowing that he signed a cheque for £60,000 for which funds were not available. The Second Respondent did not at any stage have use of clients' money for any purpose nefarious or otherwise. He was not an equity partner who could be expected to take a more hands-on role. In respect of the salaried partner in the Weston case, she had made transfers which the Tribunal found she must have known to be incorrect. She had played an active part which was not the case with the Second Respondent. His fault lay in his inaction. The salaried partner in the Weston case was suspended while Mr Weston was struck off which was what the Second Respondent feared would happen to him. Weston made it clear that one did not need to be dishonest to be struck off. Mr Wozny reminded the Tribunal that the First Respondent had said in his Response that the Second Respondent had no part in the matters of the particular clients. Mr Wozny was aware that to make this admission was a double edged sword because the First Respondent had been found guilty of dishonesty but he need not have said it. Thankfully no allegation of dishonesty had been brought against the Second Respondent because that would be the end of him personally and professionally. It was hoped that the Tribunal would accept that although there had been breaches of duty by the Second Respondent the circumstances behind them was such that it did not need to take away his livelihood.

141. As to a possible fine, Mr Wozny submitted that because of the Second Respondent's impecuniosity he could not immediately pay a fine or costs. If this were a criminal court they would say that there was no point in fining him and look for alternatives. Conditions could be imposed on his certificate as a given or he could be suspended or struck off but Mr Wozny expressed the fervent hope that given his circumstances the ultimate sanction would not be imposed.

142. In response to enquiries from the Tribunal, Mr Wozny explained that there had been no discussions about the Second Respondent becoming an equity partner in the firm. There had been no partners' meetings; these had been subsumed into general office meetings where all staff attended. The Second Respondent did not examine the management accounts and signed the annual accounts; he was assured that the firm was run properly, so he signed.

143. As to his bankruptcy, Mr Havard stated that a bankruptcy search had been undertaken which confirmed that the Second Respondent had been discharged. When his position at the firm had been stable, the Second Respondent had been drawing approximately £40,000 a year under his initial contract which lasted until 2011 but then his salary was reduced drastically.

144. In response to the Tribunal's enquiry Mr Wozny submitted that the Second Respondent had taken very few steps to make himself au fait with the role and duties of a partner in an organisation of this nature apart from what he has gleaned during practice and discussions with existing partners who told him that they would deal with the accounts. He did not go on courses and did not know what happened in other practices.

145. Mr Wozny apologised on behalf of the Second Respondent for having to appear before it and expressed the Second Respondent's shame which he felt throughout the proceedings.

Sanction

146. The Tribunal had regard to its Guidance Note on Sanctions and to the mitigation made for the First and Second Respondents.

First Respondent

147. The First Respondent admitted all the considerable number of allegations brought against him save dishonesty and that had largely been found proved. He was the sole equity partner of the firm, had excluded the Second Respondent his salaried partner from the accounting process and in the case of the most serious matters where individual clients were involved, the First Respondent was also the fee earner. The Tribunal found the operation of his firm to have been a shambles; serious breaches of the accounts rules had been admitted. These findings even without dishonesty placed the First Respondent's conduct at the most serious end of the spectrum as his actions exposed his clients to great risk and the harm caused by the First Respondent was serious and considerable. There were several factors aggravating the seriousness of the misconduct. The Tribunal had found him to have been dishonest, undertaking a deliberate course of conduct over a period of time which in the case of one client Ms H kept her out of her damages for a two and a half years and in the case of Mr and Mrs D exposed them to further court action, additional costs and undermined Mr D in his professional activities by saddling him with a completely unnecessary CCJ. The First Respondent deliberately concealed his wrongdoing from his clients even when pressed by them repeatedly for information. In the case of Mr and Mrs D, his actions had resulted in a significant liability to the Compensation Fund. The misconduct was such that the First Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the profession. The First Respondent's mitigation was personal in that he said that he had numerous family distractions in Nigeria and this led him effectively to abandon oversight of the firm's accounts but his Response was devoid of detail. He also blamed incompetent staff. He produced no testimonials but he had not previously appeared before the Tribunal. In respect of the finding of dishonesty, the Tribunal concluded that the First Respondent had not established any exceptional circumstances such as would justify any sanction other than strike off being imposed. The Tribunal also wished to make clear that even if dishonesty had not been found proved, it would have arrived at the decision to strike off because of the seriousness of the misconduct admitted.

Second Respondent

148. The Second Respondent had made early admissions in respect of all the allegations brought against him. He cooperated with the Applicant and complied with directions of the Tribunal. He had not been involved in the specific client matters where dishonesty had been found proved against the First Respondent. However the role of partner involved onerous responsibilities with regard to the management of the firm particularly of its finances. The Tribunal accepted that in 1999, the Second Respondent joined a well-run firm with five partners. Things clearly went wrong in the mid 2000s. The Second Respondent should have been aware of this and assumed his responsibility to inform himself of what was happening and to deal with the problems arising, as well as reporting matters to the Applicant at an early stage. The whole point of the rules was to ensure that problems of this nature were spotted and addressed early on. The problems should have been highlighted by his knowledge that the First Respondent was absent for what appeared to be significant periods when he was supposed to be running the firm. In determining sanction the Tribunal had to consider the respective culpability of the Respondents and carry out a balancing exercise. In doing so it had regard to the case of Weston. In all the circumstances the Tribunal did not feel that it would be appropriate to strike off the Second Respondent but that he should be suspended for a fixed term of two years because sanction must reflect the seriousness of the breaches of the rules in this case.

Costs

149. For the Applicant, Mr Havard applied for costs in the amount of £29,527.91 which he had reduced from the amount in the schedule submitted to allow for the fact that the trial had occupied two rather than three days as estimated. He asked that the Tribunal consider making an order that was immediately enforceable rather than one that could only be enforced with leave of the Tribunal on the basis that it was extremely rare where a matter was brought back to the Tribunal to have that restriction removed and that the Applicant was best placed to monitor the financial circumstances of an individual. The First Respondent seemed to remain an undischarged bankrupt but Mr Havard had handed to Mr Nelson office copy entries in respect of a property to which the First Respondent and, it was to be assumed, his wife had title. Mr Havard referred to the case of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin) and submitted that it was too easy for the First Respondent to say that he was an undischarged bankrupt. There might well be individual discrete circumstances regarding a person that might alter their position. The First Respondent had been advised including by the Tribunal that if he wished to put forward submissions about his ability to pay costs then he should provide information which the Second Respondent had taken the trouble to do. Having regard to the Second Respondent Mr Havard submitted that it was for the Tribunal to apportion costs. He accepted that the Second Respondent had been bankrupt but he was in gainful employment and had a property. The Tribunal commented that the property did not have much equity at present but Mr Havard submitted that Applicant could seek a charge over the property and await events to see if the property appreciated in value. The Applicant was keen to get its costs but could take a pragmatic approach as well.

150. For the First Respondent Mr Nelson submitted that what Mr Havard said was in the realms of speculation and it might be that the First Respondent's discharge from bankruptcy had been suspended because the property had not been realised. He was bankrupt and so could not meet the costs. This had been drawn to the attention of Applicant earlier on when an offer of an RSA was made. Mr Nelson invited the Tribunal to decide the issue having regard to the fact that the First Respondent had made an early declaration of his financial position; his discharge having been suspended indefinitely. His ability to pay costs would depend on the largesse of his extended family.

151. Regarding the proposed RSA, Mr Havard submitted that it had clearly been in the public interest for the Applicant to proceed with this matter to a hearing because the allegation of dishonesty was denied and there was an interest in the Tribunal hearing the allegation and for it to be seen to be disposed of by the Tribunal and the findings of the Tribunal vindicated that decision by the Applicant. It was not right for matters of this seriousness to be resolved in the easy fashion proposed by the First Respondent. He had every opportunity to provide the information that he needed to, so that the Tribunal could understand his financial predicament. The circumstances of his suspended discharge from bankruptcy were not known but on the face of the office copies he was still the owner of a property. Mr Havard asked the Tribunal to make an award which would allow the Applicant to pursue costs. Mr Nelson responded that he was not raising the RSA to dispute the Applicant's policy decision but to only show when the issue of the First Respondent's ability to pay costs became live.

152. Mr Wozny submitted that more time had been taken up by matters relating to the First Respondent than to the Second Respondent and in respect of the Second Respondent's ability to pay costs, he was impecunious.

153. The Tribunal considered the amount of costs claimed for the Applicant generally to be reasonable and assessed the total amount to be paid by the Respondents at £29,000. Having regard to the degree of culpability of the respective Respondents and the early admissions by the Second Respondent, the Tribunal apportioned liability as to £25,000 for the First Respondent and £4,000 for the Second Respondent. In those circumstances their liability should be several only. As to whether the costs order should have immediate effect, the Tribunal had regard to the information available about the financial position of each Respondent; the First Respondent was still an undischarged bankrupt and although the Second Respondent had been discharged the information which he had provided to the Tribunal demonstrated that his outgoings exceeded his income. However both Respondents had property and in order to be fair to the Applicant, the Tribunal determined that it would make an order that should not be enforceable without leave of the Tribunal but the Applicant should be permitted to apply for a charging order in respect of any property owned by each of the Respondents.

Statement of Full Order

First Respondent

154. The Tribunal Ordered that the Respondent Boma Ellis-Dokubo, solicitor, be struck off the Roll of Solicitors and it further Ordered that he do pay £25,000 towards the costs of and incidental to this application and enquiry, such costs not to be enforced without leave of the Tribunal save that the Applicant may apply for a Charging Order in respect of any property owned by the Respondent.

Second Respondent

155. The Tribunal Ordered that the Respondent, [NAME REDACTED], solicitor, be suspended from practice as a solicitor for the period of two years to commence on the 3rd day of September 2014 and it further Ordered that he do pay £4,000 towards the costs of and incidental to this application and enquiry, such costs not to be enforced without leave of the Tribunal save that the Applicant may apply for a Charging Order in respect of any property owned by the Respondent.

Dated this 15th day of October 2014
On behalf of the Tribunal

D. Glass
Chairman