SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11262-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

[*FIRST RESPONDENT – NAME REDACTED*] First Respondent

BENNY THOMAS Second Respondent

Before:

Mr D. Green (in the chair)
Mr R. Hegarty
Lady Bonham Carter

Date of Hearing: 18 March 2015

Appearances

Mr Peter Steel of Bevan Brittan LLP, Fleet Place House, 2 Fleet Place, Holborn, London, EC4M 7RF for the Applicant.

The First Respondent appeared and was represented by Mr Andrew Blatt of Murdochs solicitors, 45 High Street, Wanstead, London E11 2AA.

The Second Respondent appeared and was represented by Ms Zahra Ahmed, Counsel of One Inner Temple Lane, London EC4Y 1AF.

JUDGMENT

Allegations

1. The allegations against the First Respondent, contained in a Rule 5 Statement dated 18 July 2014, were that:-

1.1 He failed to maintain properly written up books of account in breach of Rules 1 and 29 of the SAR;

1.2 He failed to ensure regular reconciliations of client account in breach of Rule 29.12 of the SAR; and

1.3 He failed to account to clients for interest earned on client money in breach of Rule 22.1 of the SAR; and

1.4 He breached Principle 8 of the Principles in that he failed to run his business or carry out his role in the business effectively and in accordance with proper governance principles. In particular he:

1.4.1 permitted non-lawyers to be members of the firm without obtaining SRA approval; and

1.4.2 as set out above, failed to ensure there was a proper system for handling client money.

2. The allegations against the Second Respondent, Benny Thomas, contained in a Rule 5 Statement dated 18 July 2014 were that:

2.1 He failed to ensure compliance with the SAR in breach of Rule 6 SAR;

2.2 He failed to remedy breaches of the SAR promptly on discovery in breach of Rule 7 SAR;

2.3 He failed to ensure the proper protection of client assets and money in breach of Principle 10 of the Principles in that:

2.3.1 He failed to maintain properly written up books of account in breach of Rules 1 and 29 of the SAR;

2.3.2 He failed to ensure regular reconciliations of client account in breach of Rule 29.12 of the SAR; and

2.3.3 He failed to account to clients for interest earned on client money in breach of Rule 22.1 of the SAR;

2.4 He breached Principle 8 of the Principles in that he failed to run his business or carry out his role in the business effectively and in accordance with proper governance principles. In particular he:

2.4.1 permitted non-lawyers to be members of the firm without obtaining SRA approval; and

2.4.2 failed to ensure there was a proper system for handling client money.

2.5 He breached Principles 1,2 and 6 of the Principles in that:

2.5.1 he submitted (or allowed to be submitted on his behalf) an out of hours application form to the Court on or about 26 March 2013 in which it was misleadingly asserted that:

"Solicitor instructed yesterday morning";

2.5.2 in a statement containing a Statement of Truth dated 18 April 2013, he stated that, "I do not have conduct of this case" and that Mr "A", a non-lawyer, was "...the solicitor having conduct of this case";

2.5.3 he was found guilty of Contempt in the face of the Court by Mr Justice Cranston in the High Court on 31 July 2013;

2.5.4 in the course of a hearing on 6 August 2013, he gave evidence on oath which was found by the Court to be untruthful (and it is also alleged that in doing so, the Second Respondent was dishonest);

2.6 He breached principles 2, 6 and 7 of the Principles in that he:

2.6.1 provided misleading information to the Legal Ombudsman in relation to the handling of a complaint by a Mr "Am"; and

2.6.2 provided misleading information to the SRA;

2.7 He failed to run his business and/or carry out his role in his business in a way that encouraged equality of opportunity and respect for diversity in breach of Principle 9 of the Principles and Outcome (2.2).

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant

- Application dated 18 July 2014;
- Rule 5 statement dated 18 July 2014, together with exhibit bundle PS1.
- Statements of Elizabeth Bond dated 29 August 2014 and 19 January 2015;
- Statement of Rebecca Randy dated 23 January 2015;
- Copy of an extract from Practice Direction 81 (White Book);
- Copy of the judgment in Choudry v The Law Society [2001] EWCA Civ 1665;
- Copy of the judgment in Constantinides v The Law Society [2006] EWHC 725 (Admin);

- Copy of the judgment in R (on the application of Hamid) v Secretary of State for the Home Department [2012] EWHC 3070 (Admin);
- Copy of the judgment in R (on the application of Awuku and others) v Secretary of State for the Home Department [2012] EWHC 3298 (Admin);
- Copy of the judgment in Brett v the SRA [2014] EWHC 2974 (Admin);
- Copy of the judgment in Bryant and another v Law Society [2007] EWHC 2043 (Admin);
- Copy of the judgment in Batra v Financial Conduct Authority [2014] UKUT 0214 (TCC).
- Applicant's Statement of Costs dated 27 February 2015.

First Respondent

- Response of First Respondent dated 22 October 2014;
- Statement of First Respondent dated 26 November 2014;
- Witness Statement of Mr Muhammad Saeed Zafar;
- Witness Statement of Mr Peter Boekman;
- Letter to the First Respondent from the SRA dated 2 March 2015.
- Statement of means of First Respondent.

Second Respondent

- Response of Second Respondent dated 27 November 2014;
- Further Response of the Second Respondent dated 19 December 2014;
- Witness statement of the Second Respondent dated 16 February 2015, with enclosures;
- Copy Appellant's Notice and Annex dated 3 September 2013;
- Copies of certain pages of the passport of the Second Respondent;
- Copy of Chapter 28 of Archbold on Criminal Pleading, Evidence and Practice ("Archbold").
- Copy of the judgment in R v O'Brien [2014] UKSC 23;
- Statement of means of Second Respondent.

Tribunal

- Memorandum of case management hearing 24 September 2014;
- Memorandum of case management hearing 15 December 2014.

Factual Background

4. The First Respondent was born on 11 February 1975 and was admitted to the Roll on 15 June 2007. Between 1 March 2013 and 2 September 2013 (when the firm was intervened into) he practised as a member of Consilium Chambers LLP ("the firm"). He does not hold a current Practising Certificate and is not currently practising as a solicitor.

5. The Second Respondent was born on 27 November 1967 and was admitted to the Roll on 15 January 2008. Between 1 October 2012 and 2 September 2013 he practised as a member of the firm. He holds a current Practising Certificate.

The Forensic Investigation Report

6. Following authorisation of an inspection of the books of account and other documents of the firm, the SRA began an inspection at the firm on 23 July 2013. The inspection resulted in a report dated 21 August 2013 ("the FI Report"). The FI Report identified the following issues and/or breaches of the SAR:

   a) Since the firm began trading in March 2012 no proper books or records had ever been maintained. There were no client ledgers as at the date of the first inspection visit and client transactions were only recorded by way of details or receipts and payments on individual client files;

   b) The firm had no bank account until October 2012, when it opened an office and a client account at Barclays Bank PLC;

   c) There had been no client account reconciliations since the firm started trading in March 2012; there was no client account cash book and interest had been credited to the client bank account;

   d) Despite the firm's efforts in the light of the inspection visit, as at the date of the FI Report the opinion of the FI Officer was that the books still failed to comply with the SAR, in that there was no cashbook, the cashbook figure and client liability figures on the client reconciliation statements the firm produced were taken from the bank statements (and could therefore not be taken as accurate) and there were no office account entries on the revised client account ledgers the firm had produced.

7. During a meeting with the FI Officer, the Second Respondent accepted that he had breached Principle 10 of the Solicitors' Code of Conduct in connection with his handling of the books of account and management of client money. The First Respondent told the FI Officer that despite being a partner, his only responsibilities were to supervise the work of others and he was not a signatory to either of the bank accounts maintained by the firm, nor did he have any other formal financial responsibilities. He accepted that he might have "involved myself more in the firm and checked that things were in place".

8. The FI Report also noted that the firm's receptionist, Mrs "A", was a non-lawyer member of the firm, despite the fact that the firm was not authorised as an alternative business structure. The Second Respondent took steps to remove Mrs A from the membership as of 26 July 2013. It appeared that Mrs A had invested money in the firm and was also a signatory on both bank accounts.

9. The FI Officer also established that on the firm's annual "Renewal of Practising Certificate/registration - Authorised Body" form for the year 2012-2013, the Second Respondent had stated "No" in response to the question: "Did the organisation, or individuals within your organisation, hold or receive client money or operate a client's own account as signatory in the 12 months to 31 October 2012. The form would have been submitted through the "mySRA" website by the Second Respondent in his capacity as the firm's authorised signatory.

10 The FI Report also referred to Court orders made in the cases of Mr "U" and Ms "K".

Further Investigations

Information provided to the SRA

11. Enclosed with the FI Report was a Current Appointments Report obtained from Companies House, dated 19 August 2013 showing the names of all of those who had been members of the firm. Amongst the names listed was Mr "SA", who was a member of the firm between 8 August 2012 and 5 March 2013. Further enquiries established that he was a non-lawyer, despite the fact the Second Respondent had asserted to the SRA supervisor ("the Supervisor") during a meeting with him on 23 July 2013 that Mr SA was a barrister. The Current Appointments Report also showed that the First Respondent had not become a member of the firm until 1 March 2013.

12. The Second Respondent wrote to the SRA on 2 September 2013 and amongst other matters, he stated that he had filed a NM1 form with the SRA on 4 May 2012 confirm Mr "K"s departure from the firm and the First Respondent's joining as a member.

The complaint by Mr "Am"

13. During the 23 July visit, the Supervisor had reviewed a file concerning a complaint to the Legal Ombudsman against the firm by a client, Mr Am, who had complained about a number of aspects of the service he had received from the firm. However the only part of that complaint which was upheld related to an offensive email sent to Mr Am by Mr SA, the caseworker handling his case, on or about 3 May 2012. Mr SA apparently wrote to Mr Am: "You truly are a Paki bustard (sic). You did not pay my fees and I was kind enough to pay your Court fee".

14. In his response to the Legal Ombudsman dated 6 August 2012, the Second Respondent commented as follows:

> "Racially abusive comment
>
> This is an unfortunate incident which has been immediately owned up by Mr [SA] as it was his email which was used to send an email to Mr [Am]. Mr [SA] was taken advantage of and on at least two occasions received discourteous and abusive phone calls from both Mr [Am] and Mrs P. After it became apparent to us that both Mr [Am] and Mrs P misrepresented about the payment of fees we questioned Mr [SA]'s reference of credibility for both of them. Mr [SA] was asked to reimburse the costs to the firm which he did. He provided a cheque for £1,225. The mail was sent in the "first person" address of Mr [SA]. This was result (sic) of a misunderstood joke of Mr [SA] about how his trust was abused by Mr [Am] and that similar incidents have had happened with him (sic) in the past and in all cases the client was Pakistani man. This was not meant to be a racial abuse or to undermine any class of people. It was a simple statement of fact for incidents he faced. However, as I have mentioned earlier, we share the same room for case work. I can confirm that one of our colleagues Mr [K] misunderstood the discussion and sent email to Mr [Am]. There was no instruction on him to send an email ... Mr [SA] took complete responsibility for the actions of Mr [K] and immediately provided an unconditional apology to Mr [Am]."

15. In his response to the Legal Ombudsman, the Second Respondent continued: "I was satisfied on the matter as a result of my own investigations and found that Mr [K] ought to have been careful about this…considering the contribution of Mr [Am]. I decided to dismiss Mr [K] without his running month's pay and cancel his fee earner agreement with us without any employment reference from our firm."

16. However, during the meeting with the Supervisor on 23 July 2013, the Second Respondent asserted that Mr K had left the firm before he was dismissed. He disputed that he thereby intended to mislead the Legal Ombudsman. The Legal Ombudsman upheld Mr Am's complaint about the email and decided that the firm should pay him £100 by way of compensation.

17. During the visit on 23 July 2013, the Supervisor asked if the firm had an equality and diversity policy and was told that it did not.

The Immigration Proceedings of Mr U and Ms K

18. The firm acted for two clients in immigration matters: Mr U and Ms K. Mr U was an illegal immigrant who had been detained and ordered to be deported. Ms K had breached the terms of her student visa by working hours in excess of those permitted and was also ordered to be deported. In both instances the firm brought unsuccessful Judicial Review proceedings on behalf of their clients against the Secretary of State for the Home Department.

19. In Mr U's case, having had his application for permission refused on the papers on 16 January 2013, the firm applied for an oral renewal of the application for permission which was heard on 26 March 2013. No one instructed on behalf of Mr U attended the hearing and the application was dismissed with costs. The Second Respondent submitted a witness statement dated 18 April 2013 to the Court asserting

that the firm had not received any notification of the listing of 26 March. In that statement (which contained a statement of truth signed by the Second Respondent) he wrote:

> "I do not have conduct of this case. The solicitor having conduct of this case, Mr [A], is out of the country for a short period. I make this statement in his stead and in support of the Claimant's application for leave to appeal the order of Mr Clive Lewis sitting as a Deputy High Court Judge."

Mr A was in fact an unqualified caseworker.

20. The firm also made an out of hours application to the Administrative Court for an injunction in Mr U's matter on 26 March 2013. The out of hours form named Mr A as the "solicitor" and contained a tick in the box next to the statement, "Please tick to confirm that this application is being made in compliance with your professional obligations". The form contained the statement "Removal is due to take place at 20.45 tonight. Solicitor instructed yesterday morning".

21. At some point the firm lodged an appeal at the Court of Appeal, though it is not clear how this came about, as the firm's file appeared to be incomplete.

22. In Ms K's case the application for Judicial Review was issued on 22 March 2013. An application for a stay of the removal directions against Ms K was refused on the papers by Mrs Justice Nicola Davies the same day. The application for permission was refused by HHJ Stephen Stewart QC on 29 April 2013. A notice of renewal was apparently served at Court by the Counsel instructed by Ms K on 21 May 2013 along with an out of hours application for an urgent injunction, signed by the Second Respondent, preventing Ms K's deportation at 20.45 that evening. This application was rejected by Mr Justice Ousely the same evening

23. In Ms K's matter, the out of hours form named Mr A as the "solicitor" and again asserted that the application had been made in compliance with his/the firm's professional obligations. The form also stated that, "Solicitors instructed 16 May".

24. In both cases the Court wrote to the firm and to Counsel retained on behalf of both Mr U and Ms K on 8 July 2013 to report that both matters had been called into the list by the President of the Queen's Bench Division and Mr Justice Cranston on Thursday 11 July 2013 at 10:00am for an explanation as to why the Court should not deal with them "...in accordance with Hamid [2012] EWHC 3070 (Admin), Awuku [2012] EWHC 3298 (Admin), Awuku (2) [2012] EWHC 3690 and B & J [2012] EWHC 3770".

25. The letter in Mr U's case stated:

> "In particular the Court requires your attendance to explain how the totally unmerited out of hours application came to be made on 26 March 2013".

The letter in Ms K's case stated:

> "In particular the Court requires your attendance to explain why an out of hours application was pursued on 21 May 2013, given that the claim had twice been certified as totally without merit (by HHJ Stephen Stewart QC and Mr Justice Ouseley) when refusing permission and latterly, interim relief, respectively on the papers".

26. On 9 July 2013, Counsel for the firm emailed the Administrative Court Office to explain that he was unable to attend himself on 11 July 2013 and that Mr A was in Bangladesh and unable to attend a hearing until after 25 July 2013. He also invited the Court to list the matter after 25 July in order to allow him an opportunity to consider in full the firm's files on the matter so that he might comply with his professional obligations.

27. Consequently Mr Justice Cranston vacated the hearing on 11 July 2013 and both cases were relisted on Tuesday 30 July 2013 at 11:00am. The Second Respondent did not attend Court on 30 July 2013 at 11:00am nor did he attend at 3:00pm as he had been ordered to do.

28. At the second hearing on 30 July 2013, the Court ordered the Second Respondent to provide a medical certificate confirming that his non-attendance at Court had been due to illness. On 31 July 2013, Mr Justice Cranston found the Second Respondent guilty of Contempt in the face of the Court and directed that he should appear before the Divisional Court on 6 August 2013 to show cause why he should not be committed for that Contempt.

29. The Second Respondent did attend Court on 6 August 2013 and was represented by Counsel. In giving the judgment regarding the committal hearing, the President of the Queen's Bench Division, Sir John Thomas said:

> "6. He told us, despite his qualification as a solicitor, that he did not know that he could obtain a medical examination by a private doctor and a report from that private doctor. He also told us that he did not consider obtaining a subpoena for the doctor he had seen.
>
> 7. We find his evidence to be untruthful. We cannot believe that a man who has qualified as a solicitor can have failed to appreciate the gravity of the position that he was in, and failed to have appreciated that he was bound to have obtained either from the doctor he saw through means of a subpoena, or to have obtained from a private doctor, whom he could have seen that afternoon, that he had been ill. We granted sufficient time.
>
> 8. Mr [A] has given evidence in relation to [the Second Respondent]'s illness. We do not know whether or not he was ill. On the evidence provided to us we cannot find it is proved to the necessary standard that he was not ill. However, we reject as entirely dishonest his explanation that he has given us today. No person who is competent to act as a solicitor, let alone be the senior partner of a firm, let alone

supervise others, and let alone to bring proceedings before this Court could possibly be as ignorant as he claims to be.

9. Although Mr [A] has apologised profusely for what has happened, [the Second Respondent] has done no such thing. He has merely, through his Counsel, made a number of what only can be described as feeble excuses for his conduct.

10. We have, in respect of two matters today, asked the Law Society to examine the fitness of this firm to practice. We would ask the Law Society also to consider the findings that we have now made in relation to [the Second Respondent]'s untruthful evidence to this Court and his general abilities in respect of the conduct of litigation.

11. As we have made that reference to the Solicitors Regulation Authority, we consider that to punish him further would be inappropriate, particularly in the light of what has been put forward eventually on his behalf, namely that he considered the order ambiguous. We may be taking a charitable course in not committing him forthwith to prison for a short while, but we trust that sufficient steps will now be taken to examine his practice and the fitness of this firm to conduct business.

12. The Court has been deeply troubled by the dishonest way in which he has conducted himself before it today, but believes that no further action is necessary."

Witnesses

30. The following witnesses gave sworn oral evidence:

- Elizabeth Bond, the FI Officer;
- Rebecca Randy, the SRA Supervisor;
- The Second Respondent.

The Submissions of the Applicant

31. Mr Steel took the Tribunal carefully through the evidence before it.

Allegation 2.5

32. Mr Steel referred to the case of R (on the application of Hamid) v Secretary of State for the Home Department in which the principles that must be taken into account by legal advisers on attempts to obtain Judicial Review of removal decisions were cited from the case of R v (Madan) v Secretary of State for the Home Department [2007] 1 WLR 2891 at paragraph 17:

> "i) …Such applications must be made promptly on the intimation of a deportation decision, and not await the actual fixing of removal arrangements.
>
> ii) The detailed statement required by PD 18.2(c) must include a statement of all previous applications made in respect of the applicant's immigration status…"

The President of the Queen's Bench Division went on to say in Hamid:

> "However, we will for the future do the following. If any firm fails to provide the information required on the form and in particular explain the reasons for urgency, the time at which the need for immediate consideration was first appreciated and the efforts made to notify the defendant, the Court will require the attendance in open Court of the solicitor from the firm who was responsible, together with his senior partner. It will list not only the name of the case but the firm concerned. Non-compliance cannot be allowed to continue.
>
> …
>
> These remarks apply equally to the form soon to be introduced for out of hours applications and the form for renewals when an application has been refused on the papers."

This guidance was underlined in the case of R (on the application of Awuku and others) v Secretary of State for the Home Department. In that case the President of the Queen's Bench Division said:

> "We make this observation. All of those who have appeared before us today have accepted that there rests upon an advocate or other officer of the Court the highest obligations of disclosure when making an application to the Court for ex parte (or without notice) relief. The Court relies upon those in the legal profession for the performance of that obligation in entertaining ex parte (or without notice) applications. It must be appreciated, in particular in this kind of case where many days this Court is faced with a very large number of applications, that it is absolutely essential that there is put on the face of the submission all points that tell against the grant of relief; that is the absolute duty of the solicitor or Counsel.
>
> We surmise that had that been done in these cases, no application would have been made because if, in preparing a document for the Court, which showed the true points against the grant an injunction staying removal, it would have been obvious to the author of that document that the Court would not entertain such an application."

33. The Second Respondent had accepted that stating that Mr A was "the Solicitor having conduct of this case" was inadequate and had happened because of an oversight and was a clerical mistake. However, the Applicant said that there was a high obligation upon a solicitor as was made clear by Mr Justice Wilkie in the case of Brett v the SRA:

> "106. It has always been the duty of a barrister, solicitor, legal executive or any other professional representing a client in proceedings before any Court to discharge not only the duties to his client but the duty to the Court…
>
> 110. Every lawyer must be alive to the fact that circumstances arise during the course of any lawyers professional practice when matters come to his knowledge (or are obvious to him) which may have the effect of making his duty to the Court his paramount duty and to act in the interests of justice…
>
> 111. The reason why that is so important is that misleading the Court is regarded by the Court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit. It is not simply a breach of rule of the game, but a fundamental affront to a rule designed to safeguard the fairness and justice of proceedings…"

34. In Mr Steel's submission, if the Respondent had given false evidence to the Court knowingly then he must also be dishonest. Two High Court Judges had found that the Second Respondent's evidence before them had been untruthful. In Mr Steel's submission in giving that evidence the Second Respondent had also been dishonest. Mr Steel noted that the Judges had disputed his explanation and not whether he had been ill at the relevant time or not.

35. The Applicant also alleged a lack of integrity. In relation to lack of integrity the Applicant adopted the meaning of "lack of integrity" in Batra v FCA where it was said that the Upper Tribunal agreed with the guidance in the previous case of First Financial Advisors Limited v FSA [2102] UKUT B16 (TCC):

> "even though a person might not have been dishonest, if they either lack an ethical compass, or that ethical compass to a material extent points them in the wrong direction, that person will lack integrity". The Upper Tribunal concluded that "a lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements."

36. Mr Steel said that the Second Respondent did not appear to dispute that he had committed the Contempt of Court alleged in allegation 2.5.3 and there had been no successful appeal. The standard of proof applied by the President of the Queen's Bench Division had been the criminal one, as could be seen from the Civil Practice Rules relating to Contempt of Court. Practice Direction 81 said that:

> "in all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt."

37. The findings of Contempt and dishonesty therefore had the same evidential effect as a criminal conviction and Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") applied. The findings of fact upon which the conviction was based were therefore admissible as conclusive proof of those facts save in exceptional circumstances (Shepherd v the Law Society).

38. In Mr Steel's submission the Tribunal was entitled, in any event, to take the findings of the Court in relation to Contempt and dishonesty as determinate proof. Rule 15 (4) of the SDPR concerned the judgments made in civil Courts and stipulated that the findings of fact upon which the judgment was based should be admissible as proof but not conclusive proof of those facts. In Choudry v the Law Society and Constantinides v the Law Society, both cases had engaged the forerunner to Rule 15 SDPR in the 1994 Rules. Mr Steel suggested that the position in this case was conceptually the same and the weight to be given to the findings was to be determined by the Tribunal on the specific facts before it. In Mr Steel's submission, five principles could be distilled from the cases of Choudry and Constantinides:

    i) Rule 30 of the 1994 Rules had been superseded by Rule 15 of the 2007 Rules and prior judgements could stand as evidence or proof of their findings;

    ii) a prior judgement could be given determinate weight by the Tribunal (Choudry);

    iii) whether it was appropriate to give determinate weight to a prior judgement depended upon the "particular circumstances" of a given case (Constantinides);

    iv) the factors that would incline a Tribunal to give determinate weight to a prior judgement included:

        a) whether the Respondent had played a part in the hearing giving rise to the judgement (Choudry);

        b) whether the factual matrix was sufficiently similar to that before the Tribunal (Constantinides);

    v) where a prior judgement had been admitted by the Tribunal then the burden was upon the Respondent to show that that judgement was not correct (Choudry).

39. Mr Steel acknowledged that the Second Respondent had not been present at the hearing giving rise to the finding of Contempt but his representative had been present. The Respondent had been represented at the committal hearing and he had played a full part in those proceedings. The allegation was on all fours with the committal proceedings and therefore no matter how the Tribunal treated the Court's findings, in Mr Steel's submission, they must be afforded determinative weight; it was for the Respondent to show that the judgement of the Court was incorrect. IT was axiomatic that a finding of Contempt of Court against a solicitor was a very serious matter.

Allegation 2.6

40. Mr Steel said that in his explanation to the Legal Ombudsman, the Second Respondent clearly represented that he had dismissed Mr K in response to the e-mail incident. However in his Letter of Response to the SRA dated 8 October 2013, the Second Respondent suggested that this was a mistake and he intended to say that Mr K was no longer working with the firm. Mr K himself said that he had resigned. The Second Respondent's explanation to the Legal Ombudsman was therefore misleading when scrupulous accuracy had been required. In Mr Steel's submission, the definition of "integrity" in Batra clearly also applied to this situation.

41. The Second Respondent, or those answering to him, had also submitted two forms to the SRA which were inaccurate and misleading. One of the forms had indicated that the firm did not hold or receive client money. The Second Respondent had stated in his letter to the SRA dated 8 October 2013 that the firm had started to receive client money only after the client account was opened on 5 October 2012 and that until that time monies such as disbursements and Court fees were paid by clients directly. However notwithstanding that answer the firm must have been receiving client monies.

42. The MN1 form, notification of a manager change, submitted to the SRA and signed by the Second Respondent, showed that the First Respondent had joined the firm on 4 May 2012 whereas in fact this had not occurred until 1 March 2013. This form was therefore inaccurate and misleading. The Second Respondent said that he had not been responsible for the form and in fact Mr A had forged his signature upon it. In Mr Steel's submission this was a surprising allegation given that the Second Respondent had sent a letter to the SRA dated 2 September 2013 in which he acknowledged that the MN1 form had been sent to the SRA on 4 May 2012.

Allegation 2.7

43. Mr Steel said that at the time of the inspection the firm did not have an equality and diversity policy in place and that constituted a breach of Principle 9 and a failure to achieve Outcome (2.2).

Summary of the evidence of Elizabeth Bond, the FIO

44. Ms Bond confirmed that she had been the author of the FI Report and that she had made a witness statement dated 19 January 2015 in the proceedings.

45. In cross-examination by Ms Ahmed for the Second Respondent, Ms Bond was asked about the notes of the forensic inspection and supervision visit made on 23 July 2013 and in particular the discussion she had had with the Second Respondent and Mr Boekman, the firm's accountant, about fee structures. She was asked whether the Second Respondent had given her a description and she responded that they had talked about what had happened prior to the set-up of a client and office account by the firm and the firm's difficulties in obtaining a bank. Ms Bond was asked about what she knew about plans to computerise the accounts; she responded that IRIS software had been purchased by the Second Respondent and was available at the firm and that she was aware that the firm was hoping to fully utilise the system.

46. Ms Bond said that she had spoken to the accountant who was trying to reconstruct the books of account. There had been two parts of the inspection at the firm and between those parts she had asked for information to be provided to her by way of weekly update. She admitted that there had been no information to suggest the client monies had been misused but said that on the information given she had been unable to make a decision. She had asked for the client account reconciliations and was concerned about liabilities. She had been unable to confirm that the bank statement agreed with the client account and there had been negative balance on some client accounts and she could not ascertain whether there was a shortfall.

47. Ms Bond was then asked about 20 August 2013, when she had again met the Second Respondent and the accountant. She said that on that occasion certain documents had been given to her but that they were still not satisfactory. There was for instance no cashbook and she had needed to see reconciliations. There had been no mention to her that any form of electronic cashbook had been held. Steps had been taken to improve the position with the accounts but there was no cross referencing of ledgers to client files and the Second Respondent and the accountant had said that that was the next step. She had still not been able to rely on the liabilities. She had discussed with the Second Respondent whether he had attended COLP and COFA courses and he had confirmed that he had done so. She noted that as senior partner the Second Respondent had been obliged to sign off the accounts.

48. In cross examination by Mr Blatt for the First Respondent, Ms Bond was asked why the First Respondent had not been at the meetings. She replied that he had not been available and that the officers had actually questioned whether he existed. The Second Respondent had been the principal of the firm. Mr Blatt asked whether Ms Bond had got the impression that Mr A had some involvement and was in fact the real owner of the firm. She said that she had not got that impression although others in the SRA were concerned about it; she had been told that he was an employee and practice manager and was not in charge.

49. Mr Blatt referred to the interview that Ms Bond had carried out with the First Respondent on 20 August 2013 and asked what impression she had got from him. She said that it seemed he had been there to assist with supervision and had obtained the impression that he was thinking about his long-term career. He was still associated with another firm and whilst he was a partner in this one he was not "hands on". He had said to her in the interview:

> "So, my understanding with [Mr A] and [the Second Respondent] was that since this firm is establishing itself, so once it is established as far as the SRA guidelines, then I can stop working with [the other the firm] and become a full-time at Consilium Chambers. So I have continued in that capacity for the last one year and with regard to work with Consilium Chambers, basically here again my specialisation is immigration…"

50. Mr Blatt asked Ms Bond whether the First Respondent had appreciated his responsibilities at the firm. She replied that she could not say but that he had probably not appreciated them. He had had no responsibility for financial or managerial governance, just supervision on immigration matters. Whilst the Second Respondent

had told her that the First Respondent was a signatory to the bank account his professional history form suggested that he was not but she had been unable to clarify. She confirmed that the First Respondent had told her that he had regretted not involving himself more in the firm.

Summary of the evidence of Rebecca Randy, the SRA Supervisor

51. Ms Randy confirmed that she had made a witness statement dated 23 January 2015 in the proceedings and that she had nothing to amend or to add to it.

52. In cross-examination by Ms Ahmed she was asked about the meeting on 23 July 2012 and confirmed that she had attended that meeting, along with Ms Bond, the Second Respondent and the firm's accountant. She said that based upon her notes she could say that the Second Respondent and the accountant were asked by Ms Bond about reconciliations and the accountant had said that they were done every four weeks. There had subsequently been some correspondence with the Second Respondent in which the steps to be taken had been discussed and Ms Bond had reviewed the results.

53. The case had been allocated to her when the SRA had received the report from the Legal Ombudsman and she had first met the Second Respondent on 21 July 2013; there had been no supervision by the SRA before that time.

54. Ms Randy was asked whether there was any discussion at the meeting on 23 July 2013 about when payment from a client was due on immigration matters. She said that she believed that there were three stages, the first being the fee for application. She was asked whether that fee was payable to the firm or to the Home Office but said she could not recall and had no reference to that in her notes.

55. She said that according to her notes at the point of her visit the accountant was still preparing the accounts manually but there was some reference to use of an IRIS system which Ms Bond would have reviewed.

56. Ms Randy agreed that the Second Respondent had accepted that he was a principal of the firm. It was her understanding that he, the First Respondent and Mrs A were members.

57. Ms Randy said that she could not recall if any further enquiries were made by the SRA into the Second Respondent's contention that he had telephoned the SRA and had received the information that it was permissible to have a third member who was unqualified.

58. Ms Randy was asked to confirm that the Second Respondent had said in the meeting on 23 July 2013 that no other complaints had been made to the Legal Ombudsman other than that made by Mr Am. She responded that she did not know but could confirm that the note of the meeting with accurate and reflected what had been said at that meeting. She did not recall that she had been told that Mr K had been sacked during the meeting. Her notes said that the Second Respondent told her at the meeting that Mr K had left the firm. It had then been put to the Second Respondent that he appeared to have told the Legal Ombudsman that Mr K had been dismissed. Her note recorded that the Second Respondent "says nothing to this".

59. Ms Randy confirmed that an equality and diversity policy had been discussed; the firm had not had one but a policy had been produced after the meeting. She had reiterated at the meeting that the firm needed such a policy and staff needed training on the issues.

60. In cross-examination by Mr Blatt, Ms Randy said that she had never met the First Respondent. The duty of the SRA supervisor was to overlook the firm and consider the approach to be taken. Mr Blatt asked Ms Randy whether she agreed that in his e-mail to her of 19 February 2014, the First Respondent had accepted that he was a member of the firm and his responsibilities.

61. Ms Randy agreed that the First Respondent had made payments to the SRA with regards to the intervention costs but said that she would not want to read much into that fact.

Preliminary Matter before the evidence of the Second Respondent

62. Before the Second Respondent commenced giving his evidence Ms Ahmed asked for two further documents to be admitted into evidence. The first was the Appellant's Notice in the cases of Mr U and Ms K. In her submission this document had probative value of the Second Respondent's efforts to appeal, although it was not disputed that the Contempt remained on record. The Second Respondent would say that the Appellant's Notice had been lodged at Court but he had heard nothing and the Notice had been returned to him without comment some months later. He had taken legal advice which concluded that any application would be time barred. The second document concerned the Second Respondent's assertions concerning the forgery of his signature. His expired passport would corroborate that he was not in the country at the time he was alleged to have signed the document in question.

63. The Tribunal, having heard representations from Mr Steel concerning late production of these documents, determined that both the documents would be allowed into evidence. The Second Respondent had been unrepresented until very recently and the Appellant's Notice appeared to be relevant to the question of whether the Second Respondent accepted the finding of Contempt made against him. The Second Respondent's expired passport would also be allowed into evidence, as the Second Respondent had not had the benefit of legal advice until shortly before the hearing. However, the Tribunal noted that there was no mention in the interview conducted with the Second Respondent of such a forgery and considered that it was surprising that the matter should be brought up for the first time at the hearing.

Summary of the Evidence of the Second Respondent

64. In examination in chief by Ms Ahmed, the Second Respondent confirmed the content of his detailed admissions and denials document in the trial bundle. He also confirmed that his witness statement dated 16 February 2015 was true and accurate to the best of his knowledge and belief.

65. The Second Respondent said that he had been in India and had sent his Practising Certificate to Mr A in order to set up the firm and he had joined it on 17 February

2012. The firm had been authorised by the SRA from 1 March 2012 and Mr "G" had been the other member. Mr A and Mr G were running the firm at that time.

66. Ms Ahmed asked the Second Respondent about the application form for initial recognition of the firm as an LLP that had been sent to the SRA dated 17 January 2012. The Second Respondent said that whilst this form bore his name and purported signature it was not his signature and in fact Mr A had made the application, which he had told him about in a telephone conversation. His expired passport showed the dates that he had been travelling and his signature. He had only found out that his signature had been forged when these proceedings had started at the beginning of 2014.

67. Similarly, the NM1 form dated 4 May 2012 contained a signature purporting to be his but which had been forged. He had been told by Mr A that the form had been completed but he had only found out later that his signature had been forged.

68. The Second Respondent said that he had known Mr A for around four years and they had previously worked together; Mr A had told him that he was struck off barrister. Mr A had handled the day-to-day management of the firm and had acted on many matters. The Second Respondent said that and that he had trusted him.

69. The Second Respondent was asked to describe the procedure adopted with the accounts. The Second Respondent said that a physical file was opened for each client and that would have a unique reference number. Invoices would be sent to the client and a copy retained on the file. The receipt of client money, reconciliations and invoicing were all to be computerised and training had been provided by the software company. However the accounts were not up-to-date due to software issues and the original accountants had left in around April or May 2013. After that Mr Boekman had arrived and he had prepared the accounts manually.

70. The Second Respondent said the firm had encountered initial problems in opening a bank account and there had been no client or office account for the first six months of the firm's operation. During those first six months the firm had been receiving money only for files which were completed and had used that money for the payment of rents and salaries. There had been a physical cash book from the beginning which had been available at the time of the inspection, although the Second Respondent accepted that it was not complete. There was cross-reference between individual clients and their monies but the IO had been unable to identify which was which.

71. The Second Respondent said that he had specialised in immigration work and almost 100% of his work was in that area. In most of those matters clients would pay after completion of the matter but if there were disbursements to the Home Office or Counsel or the Courts then the client would make the payment direct to that body.

72. Ms Ahmed asked the Second Respondent about Mr Am's complaint to the Legal Ombudsman. The Second Respondent said that by the time of that complaint Mr K had already left the firm; the Second Respondent had spoken to him at the time of the incident and told him that he should resign or he would be sacked. He had immediately resigned. He said that when he had written to the Legal Ombudsman he had meant to say what had occurred – that he had allowed Mr K to resign to save face.

The Second Respondent pointed out that this had been the only part of the complaint upheld by the Legal Ombudsman and the £100 fine had been paid.

73. In relation to the Contempt of Court matter the Second Respondent said that he had been notified of the hearing on 30 July 2013 some two to three days beforehand. He knew that he had needed to attend in person but he had not been able to do so and had instructed Counsel. He had had very bad food poisoning and had not been able to travel. The medication that he had taken had made him drowsy and he had woken up too late to attend Court. He had received a message from Counsel telling him to attend Court at 2 pm but he had still been too ill to go. At 4pm Mr A had attended and explained what had occurred. On the next day he had again been ordered to attend the Court and had been feeling better but had started to be very ill just before leaving for Court. He had attended a walk-in-centre at the Royal London Hospital where they had advised rest and had given him a note of his attendance. He had explained everything at the committal hearing on 6 August 2012 but the Court had not been prepared to listen to him or his barrister and would not accept his apology. He had said "so I ask your Lordships to pardon me". He had been asked a number of times for a medical certificate but he had explained to the Court that he had not got one and could not obtain one retrospectively. He had never done the sort of work that would bring to his attention the need for medical certification in these circumstances. He had now produced medical evidence showing that his GP was located in Enfield when he was living in Mile End; he had not been able to attend his GP when he was ill in Mile End.

74. The Second Respondent said that after the committal hearing he had only been provided with a short Order and the transcript had not been available. He had been unable to appeal without the transcript so could only file his application on 3 September 2012, which was out of time as it should have been within eight days from 6 August 2012. He had heard nothing and had taken advice and had been told that he was time-barred. He had received his application back from the Court with no explanation at the end of 2012. By that stage intervention agents had been appointed and that may have explained the delay. The date on the front of the Appellant's Notice was 3 September 2013 and that was the filing date of the Notice.

75. Ms Ahmed asked the Second Respondent about the presence of Mrs A as a member of the firm. The Second Respondent said that he had asked the SRA and had been told that one third of the membership could be non-legally qualified and that was why he had included Mrs A in the membership. Once he had been told that it was not allowed he had immediately removed her as a member.

76. In relation to the diversity and equality policy he had known that it was important and he had researched the matter on setting up the firm. He had a copy on his computer but had not realised that the policy should be printed and kept on file.

77. In cross-examination by Mr Steel the Second Respondent was asked about his letter to the SRA dated 8 October 2013 and his detailed admissions and denials to the Rule 5 statement. In his detailed admissions and denials, he had denied allegation 2.1 on the basis that he had taken all reasonable steps to ensure compliance with the SAR, but there had been a delay in updating the accounts.

78. Mr Steel asked the Second Respondent why he had said in his detailed admissions and denials that "account reconciliation work was completed as per the deadline given by the Forensic officer" when, in his letter to the SRA dated 8 October 2013, it was said that they could not be completed before the intervention. The Second Respondent said that the officer had not been happy with the reconciliations; however he repeated that he had produced them as requested.

79. In regard to allegation 2.3, Mr Steel put it to the Second Respondent that his statement in his detailed admissions and denials was incorrect. He had said that:

> "the allegation that the second respondent didn't keep books of account is not correct. The second respondent had written books of accounts and had purchased the best software "IRIS Opsis legal accounting software available in the market for the accounting. The entry in the software was not complete at the time of investigation as there were issues with the software and the first accountant…"

Mr Steel said that when the forensic investigation had occurred there were no proper books of account and no current balances on the files. The Second Respondent replied that the books were incomplete and current balances were not possible as there was no client account cash book. He agreed that account reconciliation could not be done regularly; the reconciliations were not up-to-date before the first part of the inspection because of the software issues.

80. It was put to the Second Respondent that he should have known, as the COLP of the firm, that it was not permissible to have a member who was not legally qualified except by application to the SRA. The Second Respondent repeated that he had not known that and the SRA had told him that it was permissible.

81. Mr Steel asked the Second Respondent about his statement in his detailed admissions and denials in regard to allegation 2.4 that "the client money was transferred to the office account only after the completion of the work and raising proper invoices". He was asked how this could be true if the cash books were not written up. The Second Respondent replied that this part of the accounting system had been embedded in the software which had not worked correctly and so the new accountant had started operating physical books of account. He agreed that at the first inspection the books of account were not up-to-date but said that this was due to a technical issue with the software.

82. Mr Steel asked the Second Respondent about his response to allegation 2.5:

> "The second respondent denies this allegation. This statement was correct. Even though the firm was acting for the client from long time, this detention matter was instructed only one day before the submission of the application to the Court. The firm had been given instructions from the detention and the money was deposited into the firm account only one day before the application to the Court. So, when the second respondent stated that "solicitor instructed yesterday morning" the second respondent meant to say that the client gave instruction and money for this application just one day before the application…"

The Second Respondent said that he accepted that he should be candid in these matters but even with hindsight he still maintained that this was a true statement. Mr Steel put it to him that it was not candid as the history of the matter had not been explained; the firm had been instructed in the previous October and there had been an unsuccessful Judicial Review. The Second Respondent agreed that that information should have been made available but maintained that this was a new matter; to that extent he accepted that he was in breach of his duty to be candid.

83. In relation to the second part of allegation 2.5, the Second Respondent said that his statement that Mr A, a non-lawyer, had conduct of the case was an oversight and not intentional. He had not read the form in detail.

84. Mr Steel asked the Second Respondent about the allegation that he had been found guilty of Contempt in the face of the Court on 31 July 2013. He put it to the Second Respondent that he had given the same explanation to the Tribunal as he had given to the Court and that he must have known the procedures to be followed in these cases. The Second Respondent said that he had explained why he had not visited his GP and consequently how he could not produce a medical certificate.

85. In relation to allegation 2.6 the Respondent Mr Steel referred the Second Respondent to his statement in his detailed admissions and denials. He had said that:

> "The Second respondent didn't give any misleading information to the Legal Ombudsman. It was mentioned that the caseworker who had sent the e-mail was dismissed from the firm's but actually the caseworker left the firm after an argument with his colleague over the e-mail issue before dismissing him."

Mr Steel asked the Second Respondent whether he had meant to say to Mr K "if you don't resign, I'll sack you"; he had said in his e-mail of 9 July 2012 to Mr Am "we have terminated him from the firm due to this issue". The Second Respondent said that Mr K had left the firm because of the issue and he had used the term to mean that he had left. Mr Steel asked the Second Respondent to look at his letter dated 6 August 2012 to the Legal Ombudsman in which it was said that "I decided to dismiss Mr [K] without his running month's pay and cancel his fee earner agreement with us…", Mr Steel asked why there was no mention of Mr K having resigned. The Second Respondent replied that there would have been no resignation as it was not an employer/employee relationship. In this case, Mr K had been a partner, as could be seen from the NM1 form, and resignation would not have been needed.

86. Mr Steel asked the Second Respondent about the NM1 form and his allegation that Mr A had forged his signature without his knowledge. The Second Respondent said that the change of manager had been done with his knowledge but that he had only noticed that it had been done in his name later. He had thought that Mr A was carrying out the change and he had only found out later that his signature had been forged. It had first been brought to his attention when the papers in these proceedings have been served on him.

87. Mr Steel pointed out that in his letter to Rebecca Randy dated 2 September 2013, the Second Respondent had mentioned the NM1 form and attached it to his response; he had therefore seen the document with his forged signature before he had received the

exhibit bundle. The Second Respondent said that he had not looked through the enclosures that he had sent with his letter to Ms Randy. Mr Steel suggested that that assertion stretched credibility.

88. In questioning about the form submitted to the SRA concerning renewal of Practising Certificate/registration, the Second Respondent accepted that the reply "no" about whether the firm had held or receive client money in the 12 months to 31 October 2012 was incorrect. His explanation was that he thought client money only related to large amounts, such as mortgages. When it was put to him by Mr Steel that it was important to get these matters right, he agreed that the SRA would rely upon what he had said.

89. Mr Steel asked the Second Respondent whether he had been happy to be involved with Mr A who he knew to be a struck off barrister. He replied that he was a good caseworker but he had not known that he was forging his signature.

90. In cross-examination by Mr Blatt for the First Respondent, the Second Respondent was asked about his interest in the new firm and he explained the background. Since he had been in India at the time it had been set up most discussions had been done over the telephone with Mr A. He had sent the firm his Practising Certificate and it had been up and running by the time he had arrived.

91. It was put to the Second Respondent that Mr A was the owner of the firm and had a controlling interest, which would be unlawful. The Second Respondent said that it was to an extent true but that he had been the principal solicitor. Mr Blatt went on to ask the Second Respondent about the document entitled "Consultancy Agreement for Partner" and whether he had drawn up the document shown in the exhibit bundle. He agreed that he had but he had not done anything similar for the First Respondent. Mr Blatt pointed out that the agreement stipulated £60,000 as guaranteed income for the consultant and put it to the Second Respondent that it was fanciful, did not make any sense and that his attention to detail was sadly lacking. The Second Respondent said that he did not agree.

92. Mr Blatt asked the Second Respondent when he had first met the First Respondent and he replied that he had first met him in December 2012. Mr Blatt asked why the NM1 form stated that the First Respondent had joined the firm in May 2012. The Second Respondent said that he did not know and had not known the First Respondent before he had joined the firm. He confirmed that the First Respondent had had no involvement with the finances, governance or running of the firm but said that he had taken remuneration. He had not been a signatory to the office or client accounts.

93. The Second Respondent confirmed that he was aware that the First Respondent was a consultant with other practices whilst he was working at the firm.

94. In re-examination by Ms Ahmed, the Second Respondent was asked whether he had conditions on his Practising Certificate and he replied that he did have conditions but was unable to find work as a solicitor due to the disciplinary matter. He had now obtained part-time work in an OISC firm as a caseworker.

95. In relation to his incorrect answer on the renewal of Practising Certificate/registration form sent to the SRA he said that there had been no guidance accompanying the form which he believed he had received by e-mail from the SRA. He had never been a principal before but had been a consultant with three firms.

96. The Second Respondent also said that he had not known there had been an unsuccessful Judicial Review on the immigration matters before he made the application. However he did accept that he should have provided more information.

97. The Second Respondent referred to his passport and the date of entry and exit stamped upon it. The date of entry to the UK was shown as 17 April 2012. The Second Respondent was asked why he had never reported the forgery of his signature and he repeated that he had not seen it until he received the hearing bundle. He had just signed the letter dated 2 September 2013 to the SRA and asked Mr A to attach the enclosures as he was rushing to Court. He had therefore not seen the NM1 form before.

98. Ms Ahmed asked the Second Respondent about how he had obtained the consultancy agreement and he said that it had been drafted by Mr SA. Ms Ahmed asked why he had said in examination in chief that he had drafted the document. The Second Respondent said that the documents had been sent to his e-mail address and he had drafted it by inserting his name and looking at the format. Ms Ahmed said that it had been suggested by Mr Blatt that his attention to detail was lacking; the Second Respondent said he had looked at the terms in the consultancy agreement and the other party had been happy with it, which is why he had signed it.

99. The Second Respondent was asked whether Mr A had been the controlling interest and he replied that he was "behind the curtain", looking after the finances. The SRA officers had gained the impression that Mr A was in control as he had handed the immigration files to them; however the Second Respondent had always been the principal. Mr A had had no direct control of matters and that was what the IO had asked about, which was why he had responded as he had to her. He had confirmed to Mr Blatt that there was indirect control by Mr A and his two statements were therefore not contradictory.

Submissions made on behalf of the Second Respondent

100. Ms Ahmed referred the Tribunal to chapter 28 of Archbold. Paragraph 33 of that chapter dealt with civil and criminal Contempt:

> "The distinction between civil Contempt, i.e. conduct which is not in itself a crime but which is punishable by the Court, and criminal Contempt was described as "long recognised" in Director of the Serious Fraud Office v O'Brien [2014] 2 WLR 902, SC." At paragraph 38 of O'Brien Lord Toulson said that:
>
> "Breach of an order made (or undertaking obtained) in the course of legal proceedings may result in punishment of the person against whom the order was made (or from whom the undertaking was obtained) as a form of Contempt. As Lord Oliver observed in Attorney General v Times Newspapers

> Ltd, although the intention with which the person acted will be relevant to the question of penalty, liability of strict in the sense that it is required to be proved is a service of the order and the subsequent doing by the party bound of that which was prohibited (or failure to do that which was awarded). However, the Contempt of that kind does not constitute a criminal offence. Although the penalty contains a punitive element, its primary purpose is to make the order of the Court effective. A person who commits this type of Contempt does not acquire a criminal record…".

In Ms Ahmed's submission the judgement before the Tribunal was that of a civil Court and non-compliance was with a civil order. Whilst the Second Respondent did not dispute the essential facts, paragraph 15.4 of the SDPR applied, not paragraph 15.2. Thus the findings of fact upon which the judgment was based were admissible as proof but not conclusive proof of those facts. Paragraph 39 of the O'Brien judgement confirmed that this was the correct interpretation:

> "a criminal Contempt is conduct which goes beyond mere non-compliance with the Court order or undertaking and involves a serious interference with the administration of justice examples include physically interfering with the course of the trial, threatening witnesses or publishing material likely to prejudice fair trial".

101. In relation to allegation 2.5.1 the Second Respondent admitted that he could have been more candid. He had explained that he had not been aware of the previous Judicial Review and that Mr A was the caseworker dealing with the matter. The Second Respondent denied misleading the Court in this respect. Similarly, in relation to allegation 2.5.2 the Second Respondent had given the same evidence to the Tribunal. He accepted that there had been an oversight but had had no intention to mislead the Court.

102. Allegation 2.6.1 related to the provision of information to the Legal Ombudsman. The Second Respondent had been cross-examined extensively and it was clear that he had used the term "sacked" interchangeably with the terms "dismissed" and "left". In his letter to the SRA dated 8 October 2013 at paragraph 12 he had said that "Mr [K] left the firm before he was dismissed" yet just two lines further down in that letter he had said that "Mr [K] was dismissed". The Tribunal had heard that he had taken steps to dismiss Mr K but that no resignation had been required and he had relied upon of a conversation with him. In Ms Ahmed's submission, the Second Respondent had merely demonstrated an inconsistency in approach and had had no intention to mislead the Legal Ombudsman. His actions did not amount to a breach of Principles 2, 6 and 7. Moreover, the Legal Ombudsman had had no concerns about the Second Respondent's approach to the matter.

103. In Ms Ahmed's submission, there had been nothing lacking in the Second Respondent's approach with regard to equality and diversity. The Second Respondent had accepted that there were no hard copies of the equality and diversity policy but had produced such copies later. He had given evidence that he accessed the policy online and had given consideration to it when dealing with Mr Am's complaint. He had conducted an investigation and had taken proactive steps. There was therefore no breach of Principle 9 in relation to allegation 2.7.

Findings of Fact and Law

104. The burden was on the Applicant to prove each of the disputed allegations beyond reasonable doubt.

105. 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.

106. The Tribunal considered most carefully all of the documentary evidence before it, including the case law to which it had been referred, the oral evidence that it had heard and the submissions of both the Applicant and the First and Second Respondents.

107. **The allegations against the First Respondent, contained in a Rule 5 Statement dated 18 July 2014, were that:-**

Allegation 1.1 - He failed to maintain properly written up books of account in breach of Rules 1 and 29 of the SAR;

Allegation 1.2 - He failed to ensure regular reconciliations of client account in breach of Rule 29.12 of the SAR; and

Allegation 1.3 - He failed to account to clients for interest earned on client money in breach of Rule 22.1 of the SAR; and

Allegation 1.4 - He breached Principle 8 of the Principles in that he failed to run his business or carry out his role in the business effectively and in accordance with proper governance principles. In particular he:

1.4.1 Permitted non-lawyers to be members of the firm without obtaining SRA approval; and

1.4.2 As set out above, failed to ensure there was a proper system for handling client money.

107.1 The First Respondent admitted each of the allegations against him, on the basis of strict liability and that that he ought to have known his responsibilities as a member of the firm.

107.2 The Tribunal found each of the allegations to have been proved beyond reasonable doubt on the facts and documents before it.

108. **The allegations against the Second Respondent, Benny Thomas, contained in a Rule 5 Statement dated 18 July 2014 were that:**

Allegation 2.1 - He failed to ensure compliance with the SAR in breach of Rule 6 SAR;

Allegation 2.2 - He failed to remedy breaches of the SAR promptly on discovery in breach of Rule 7 SAR;

Allegation 2.3 - He failed to ensure the proper protection of client assets and money in breach of Principle 10 of the Principles in that:

2.3.1 He failed to maintain properly written up books of account in breach of Rules 1 and 29 of the SAR;

2.3.2 He failed to ensure regular reconciliations of client account in breach of Rule 29.12 of the SAR; and

2.3.3 He failed to account to clients for interest earned on client money in breach of Rule 22.1 of the SAR;

108.1 The Second Respondent admitted each of allegations 2.1 - 2.3 and the Tribunal found each of those allegations to have been proved beyond reasonable doubt on the facts and documents before it

109. **Allegation 2.4 - He breached Principle 8 of the Principles in that he failed to run his business or carry out his role in the business effectively and in accordance with proper governance principles. In particular he:**

2.4.1 permitted non-lawyers to be members of the firm without obtaining SRA approval; and

2.4.2 failed to ensure there was a proper system for handling client money.

109.1 The Second Respondent denied allegation 2.4.1.

109.2 The Tribunal noted that the Second Respondent admitted that a non-lawyer had been a member of the firm. His explanation was that he had relied upon the telephone call with the SRA when he had been told that it was permissible to have one third of the members of the LLP as non-legally qualified.

109.3 The Tribunal did not believe the Second Respondent's explanation and in general had not found him to be a credible witness. He had been unable to produce a contemporaneous note of his alleged telephone conversation and in any event, he should not have relied upon a telephone conversation but should have done his own research. It was a matter of fact that he had permitted non-lawyers to be members of the firm without approval.

109.4 The Tribunal found allegation 2.4.1 to have been proved beyond reasonable doubt on the facts and documents before it.

109.5 The Second Respondent admitted allegation 2.4.2 and the Tribunal found that part of the allegation to have been proved beyond reasonable doubt on the facts and documents before it.

110. **Allegation 2.5 - He breached Principles 1, 2 and 6 of the Principles in that:**

2.5.1 he submitted (or allowed to be submitted on his behalf) an out of hours application form to the Court on or about 26 March 2013 in which it was misleadingly asserted that:

"Solicitor instructed yesterday morning";

2.5.2 in a statement containing a Statement of Truth dated 18 April 2013, he stated that, "I do not have conduct of this case" and that Mr "A", a non-lawyer, was " ...the solicitor having conduct of this case";

2.5.3 he was found guilty of Contempt in the face of the Court by Mr Justice Cranston in the High Court on 31 July 2013;

2.5.4 in the course of a hearing on 6 August 2013, he gave evidence on oath which was found by the Court to be untruthful (and it is also alleged that in doing so, the Second Respondent was dishonest);

110.1 The Second Respondent denied allegation 2.5 in its entirety.

Allegation 2.5.1

110.2 The Tribunal determined that the statement to the Court "solicitor instructed yesterday morning" was grossly misleading. The Tribunal had heard the Respondent's explanation that he was unaware of the previous Judicial Review but this in no way relieved him of his obligations to make enquiries and to be frank with the Court. Whilst the statement may have been factually correct, the Second Respondent had been under a positive duty to inform the Court of the further information available to him but had failed to do so, indeed he himself had admitted that he could have been more candid. The Tribunal had heard submissions from Mr Steel that there was the highest obligation of disclosure in these cases (Awuku and Brett). The Tribunal determined that there was a high duty to the Court to be open and candid and any solicitor should have appreciated in all the circumstances that this statement was neither.

110.3 The Tribunal noted the definition of "lack of integrity" put forward by Mr Steel from the case of Batra and was in no doubt that the Second Respondent had displayed a lack of integrity in this regard. He had therefore breached Principle 2. The Tribunal was also satisfied so that it was sure that Principles 1 and 6 had also been breached by the Second Respondent in this matter. The Tribunal found allegation 2.5.1 to have been proved beyond reasonable doubt.

Allegation 2.5.2

110.4 The Tribunal had heard from the Second Respondent that his statements that he did not have conduct of the case and that Mr A, a non-lawyer was "… the solicitor having conduct of this case" was an oversight and a clerical error. However, the Tribunal found that it was completely unacceptable for the Second Respondent to have signed

a Statement of Truth containing these assertions. It was a misrepresentation to the Court and a blatant breach of obligation. A solicitor, as an officer of the Court, had to be scrupulous in ensuring that any statement he made was completely accurate. The Tribunal also noted that the Respondent's own explanation showed a total lack of insight into the serious nature of the allegation against him.

110.5 The Tribunal found allegation 2.5.2 to have been proved beyond reasonable doubt. In the Tribunal's consideration this allegation involved a very serious breach of a solicitor's professional obligations.

Allegations 2.5.3 and 2.5.4

110.6 The Tribunal had considered most carefully Mr Steel's submissions concerning the standard of proof required to prove Contempt of Court and the applicability of Rule 15 of the SDPR. It had given the same careful attention to Ms Ahmed's submissions concerning the nature of the Contempt of Court that the Second Respondent had committed. The Tribunal determined that, whilst the standard of proof applied in the High Court was a criminal one, the Contempt in question did not constitute a criminal offence. It followed that Rule 15(4) would apply in this case and the findings of fact behind the judgment could be used as proof, but not conclusive proof, of those facts.

110.7 However, the Tribunal had itself heard the Second Respondent's explanation for his non-attendance at the High Court during these proceedings. As an expert and impartial tribunal it had not been prejudiced by the prior judgments of the High Court and had examined all of the evidence before it anew.

110.8 The Second Respondent had explained to the Tribunal why he had been unable to attend at the High Court and why he had given the evidence that he had given to the High Court. The Tribunal concluded that it did not believe his evidence and found it to be implausible and untruthful. It noted that the Second Respondent had conducted himself in these proceedings in much the same way as he had before the High Court.

110.9 Whilst the Second Respondent had now produced evidence that he said showed his intention to appeal, the fact remained that the judgments remained undisturbed. It was beyond doubt that the Second Respondent had been found guilty of Contempt of Court and giving untruthful evidence under oath by the High Court and that was not in dispute. The very fact of such a finding against the Second Respondent would mean in itself that he had breached Principles 1, 2 and 6 but the Tribunal had gone further and examined all the evidence surrounding the judgments and had concluded based upon that evidence that the allegations were made out. The Tribunal found allegations 2.5.3 and 2.5.4 to have been proved beyond reasonable doubt on the facts and documents before it.

110.10 The Tribunal then considered whether the Second Respondent had been dishonest in relation to his giving of evidence before the High Court. It had examined that evidence carefully and applied the dual test in Twinsectra Limited v Yardley and Others [2002] UKHL 12. It was satisfied so that it was sure that in acting as he did, the Second Respondent was dishonest by the standards of reasonable and honest people and that he knew his conduct was dishonest by those same standards. The

Tribunal found to the higher standard of proof that in this respect the Second Respondent had been dishonest.

111. **Allegation 2.6 - He breached principles 2, 6 and 7 of the Principles in that he:**

2.6.1 provided misleading information to the Legal Ombudsman in relation to the handling of a complaint by a Mr "Am"; and

2.6.2 provided misleading information to the SRA;

111.1 The Second Respondent denied allegation 2.6 in its entirety.

Allegation 2.6.1

111.2 The Tribunal had heard from the Second Respondent that he had not appreciated the difference between the expressions "resigned" and "left" in this case. He had said in his letter to the Legal Ombudsman "we have terminated him from the firm due to this issue" and yet he now appeared to accept that Mr K had resigned. However, the contents of a letter from a solicitor to the Legal Ombudsman concerning a complaint required scrupulous honesty.

111.3 The Tribunal had found the Second Respondent not to be a reliable witness. In the Tribunal's determination the words used to the Legal Ombudsman had suited the Second Respondent's purpose at the time and were misleading and untrue. The Tribunal found allegation 2.6.1 to have been proved beyond reasonable doubt.

Allegation 2.6.2

111.4 This allegation concerned the provision of misleading information to the SRA in relation to two forms, the NM1 form (in which it was submitted that the First Respondent was a member of the firm as at 4 May 2012), and the application for renewal of Practising Certificate/registration which was submitted to the SRA on 28 November 2012 (which stated that the firm did not hold or receive client money).

111.5 The Tribunal was entirely satisfied on the evidence submitted, that both forms contained misleading information. However, the issue to be determined was whether the Second Respondent had authorised both of those forms and was responsible for their submission to the SRA. The Second Respondent had given evidence that his signature had been forged upon the NM1 form; his evidence was that he had however known about the submission of the form to the SRA.

111.6 The Tribunal found the Second Respondent's evidence that he had thought that client monies only related to large sums such a mortgages incredible and shocking, exacerbated by the fact that he had been the designated COFA at the firm. However, it had also heard evidence that the Second Respondent had not been in the UK at the relevant times and had examined pages from his expired passport.

111.7 Whilst the Tribunal members were not handwriting experts, the Second Respondent's signature on his passport and other documents within the exhibit bundle did not appear to be the same as that on form NM1. However, whilst the Tribunal found it extremely surprising that he had allowed the form to go to the SRA under his name

when he had not checked it himself, it could not find beyond reasonable doubt that he had authorised it or that he had signed it. The Tribunal therefore found allegation 2.6.2 not to have been proved beyond reasonable doubt.

112. **Allegation 2.7 He failed to run his business and/or carry out his role in his business in a way that encouraged equality of opportunity and respect for diversity in breach of Principle 9 of the Principles and Outcome (2.2).**

112.1 The Second Respondent denied allegation 2.7.

112.2 The Tribunal found that the Second Respondent's explanation concerning his firm's equality and diversity policy was not good enough, since even on his explanation, retaining a draft on his computer did not meet the requirements. Such a policy had to be circulated to staff who should receive training upon it to ensure compliance.

112.3 The outcome of the Second Respondent's failure was the offensive e-mail. This was a serious incident for which there was no excuse. The Second Respondent's evidence concerning this allegation was totally unsatisfactory, including, in particular, that the printing of a copy of such a policy from his computer once he was aware of the problem could be regarded as a defence. In the Tribunal's consideration this was a further indication of his blatant disregard for the regulatory structures that should have been in place.

112.4 The Tribunal found this allegation to have been proved beyond reasonable doubt.

Previous Disciplinary Matters

113. None against either of the Respondents.

Mitigation

<u>The First Respondent</u>

114. The First Respondent gave sworn oral evidence in relation to his mitigation. He confirmed the contents of his witness statement. In that statement he gave his personal history and said that from 2009 to date he had only undertaken immigration work and that from March 2010 to December 2013 he had worked for another firm. In the first week of April 2012 he had received a call from Mr SA who had asked him to join the firm as an associate. He had known Mr SA because they both worked as advocates at Immigration Tribunals and so he had assumed that the firm must be good and proper practice. It had obtained professional indemnity insurance from a qualified insurer and authorisation from the SRA. He had agreed by telephone to become an associate at the firm and had decided to do so as he had been offered the position by a friend, the firm was nearer to his home and he could continue with the other firm.

115. The First Respondent's witness statement went on to say that he believed that he was joining the firm in the same capacity as he had worked at the other firm and other practices of the past, namely that he would be self-employed and work as associate. He believed that by joining an LLP his liability would be limited to the conduct of his work only and that in the event of a client complaint he believed that he would not be

responsible or liable for the default of others within the LLP. He had not appreciated in any sense that he would be taking responsibility for the governance and management of the firm.

116. Following his telephone conversation with Mr SA he had fallen ill and between April and September 2012 he had almost no contact with the firm except some calls from Mr SA; he had certainly not had any contact from the Second Respondent. It was during this period that he had been asked to provide his Practising Certificate but he had not felt any part of the firm at this point. In fact he had had no formal involvement with the firm until December or January 2013, almost a year after the firm started trading in March 2012. He had never had any form of partnership agreement and it was never discussed with him. He had been told that the firm was doing well, that there were no regulatory issues and SRA authorisation had been renewed. At that time the other persons at the firm were the Second Respondent, Mr A and his wife and Mr SA. He had been told that most of the clients came via Mr A, who was described as the practice manager, however he had since discovered that Mr A was the real owner of the firm. He had always understood that the formal supervision was being undertaken by the Second Respondent - he had never formally supervised the Second Respondent or Mr A.

117. In his witness statement the First Respondent said that he was not a signatory to either the office or client account and had absolutely no knowledge of the way the firm's accounts were managed or dealt with. He had received assurances from the firm's accountant that the accounts were in order although he had never questioned the accountant in any detail.

118. The Second Respondent had gone on to say that Mr A and Mr SA were cousins and consequently he had had no reason to distrust Mr A. He had met both Mr A and the Second Respondent for the first time in January 2013. From January 2013 to August 2013 he had probably only attended the firm's offices 10 to 12 times as he was also undertaking work for the other firm and at the time of intervention he only had some six to ten matters.

119. Mr Blatt told the Tribunal that the First Respondent's plea was not equivocal; he accepted the consequences of being a member of the LLP. In regard to allegation 1.4.1 he had had no knowledge that Mrs A was a member of the LLP. The First Respondent acknowledged that he should have been more participative and that he had fallen below the standard required by the profession.

120. Mr Blatt asked the Tribunal to note that the First Respondent was paying the costs of the intervention. He had already paid £4,176 and further instalments been fixed for the outstanding amount at £300 per month. He had also not originally sought to renew his Practising Certificate as a form of self-punishment but the SRA had recently offered him a Practising Certificate with conditions, as could be seen from the letter to the First Respondent from the SRA dated to March 2015. It was clear that the SRA had full knowledge of the proceedings and that they believed that it was acceptable for the First Respondent to continue in practice. In short, it was clear that the First Respondent did not have enough experience to manage or run a firm but, with the Tribunal's consent, he was likely to practice in the future and, in Mr Blatt's submission, deserved a second chance.

The Second Respondent

121. Ms Ahmed said that she adopted her earlier submissions and asked for an alternative to the most serious of sanctions. The Second Respondent had had an unblemished career for 10 years and during the forensic investigation had assisted the officers, had not been obstructive and the matters complained of had only continued over a relatively short period of time.

Sanction

122. The Tribunal referred to its Guidance Note on Sanctions when considering the appropriate and proportionate sanction.

The First Respondent

123. The Tribunal had found four allegations against the First Respondent to have been proved beyond reasonable doubt and he had admitted each of these allegations, albeit only in the last week. In each case the offence was one of strict liability and the Tribunal had heard that the First Respondent had not realised the obligations of his position in the firm. However, he was culpable in that he should have realised that he was liable. The Tribunal noted that just before the relevant time the First Respondent had been seriously unwell.

124. The Tribunal went carefully through the aggravating and mitigating factors and the harm caused by the First Respondent's behaviour. There was no evidence of any harm caused to clients by the First Respondent's actions although there was damage to the profession as a result of the intervention. However, the risk of harm had not been negligible.

125. The First Respondent could and should have made more enquiry about his situation. The Tribunal noted the First Respondent's evidence in mitigation and found him to be an honest witness. It was impressed by the fact that the First Respondent had paid and continued to pay the intervention costs and found that the First Respondent had genuine insight into his failings. He had been co-operative and made admissions, albeit very late in the day.

126. The Tribunal therefore determined that the appropriate and proportionate penalty in all the circumstances was that the First Respondent be Reprimanded.

The Second Respondent

127. The Second Respondent's culpability for these events was very high and the Tribunal had found that he had been dishonest. He had lied to the Legal Ombudsman, his regulator and not least the High Court, where his case had occupied a great deal of time. The Tribunal had determined that he had also not been truthful in his evidence before it.

128. The Second Respondent had been found guilty of Contempt in the face of the Court and it was difficult to imagine a more serious offence for a solicitor to have committed. The Tribunal noted the observation in Brett that "misleading the Court is

regarded by the Court and must be regarded by any disciplinary tribunal as one of the most serious offences that an advocate or litigator can commit". The harm done by the Respondent's actions was considerable and there were no significant mitigating factors; the Second Respondent certainly had no insight into his actions and he had paid nothing towards the intervention.

129. For the Second Respondent to have been found guilty by the High Court of Contempt of Court and of giving untruthful evidence on oath was at the very highest level of offending behaviour and reflected extremely badly upon the profession. The Tribunal would have no hesitation in making an order for Strike Off against the Second Respondent. Solely on the basis of a finding of dishonesty such an order would be appropriate. The Tribunal had considered the principle in SRA v Sharma [2010] EWHC 2022 (Admin), that is where a solicitor had been found to have been dishonest, unless exceptional circumstances could be shown, then the normal consequence should be for that solicitor to be struck off. There were no exceptional circumstances here. However, this case had gone beyond dishonesty to include a finding of a Contempt of Court and giving false evidence on oath to a Court. The Second Respondent had strayed very far from the guiding principles in Bolton v The Law Society [1994] 1 WLR 512:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity, and complete trustworthiness…"

The only appropriate penalty, to protect the public and maintain confidence in the profession, was that of Strike Off.

Costs

130. The Tribunal had before it the Applicant's costs schedule in the sum of £24,803.80 and Mr Steel asked the Tribunal to summarily assess costs in that sum. In the alternative, he asked for a payment on account followed by a detailed assessment. Mr Steel said that the Second Respondent was in employment which was not dependent on his possession of a Practising Certificate and therefore in the circumstances he asked for immediate enforcement of any order. The SRA would only seek to enforce the Order where it considered that it was appropriate to do so.

131. Ms Ahmed said that there was a statement of means before the Tribunal which showed that the Second Respondent should be the subject of an order that costs were not to be enforced without leave of the Tribunal.

132. Ms Ahmed said that her client had seen the Schedule and noted that there had been two attendances by the SRA at the firm on 23 July 2013 and 20 August 2013; apart from that there had been no supervision by the SRA and there was no particularisation on the costs schedule of how the SRA's costs were calculated. Mr Steel responded that he had no further information but if there was a serious concern about the time spent then the matter could go for detailed assessment. This was not a case where the SRA had only carried out a minor investigation and detailed interviewing had been required.

133. Mr Blatt observed that the hourly rate charged by the SRA seemed to change from case to case. He was concerned that the SRA was making a profit from costs orders and in his view the SRA should only be entitled to recover its actual expenditure. However he was content for the Tribunal to carry out a summary assessment of costs.

134. Mr Blatt asked that the costs be apportioned between the Respondents and not be made on a joint and several basis. The significant allegations were made against the Second Respondent, whilst the First Respondent had admitted breaches involving strict liability. Mr Blatt suggested that an apportionment of one third to two thirds would be appropriate; in his submission, his client had had no real participation in the matters complained of and had had no more than six clients at the firm.

The Tribunal's Decision in Relation to Costs

135. The Tribunal worked carefully through the Applicant's costs schedule and found the rates applied and the hours spent to be reasonable and proportionate given the complexities of the case. The Tribunal would summarily assess costs in the sum of £24,803.80.

136. The Tribunal noted that the majority of the case had involved serious allegations against the Second Respondent. The Second Respondent had not been co-operative and had only made some admissions on the second day of the hearing which had involved the Applicant in extra work. The Tribunal considered that it would be unjust in all the circumstances to order that costs be shared jointly and severally between the Respondents. In the Tribunal's assessment a fair apportionment would be as to one quarter to the First Respondent and three quarters to the Second Respondent.

137. The Tribunal had considered the statement of means of both of the Respondents. The First Respondent had not been subject to any financial penalty and it appeared to the Tribunal from the information before it that he would be able to pay the costs of £6,201.00. The Tribunal would therefore make an immediate order in that sum. The Second Respondent appeared to be impecunious and his statement of means had not been challenged by the Applicant. He had now been struck off the Roll but should in future still be able to obtain alternative employment. The Tribunal took note of paragraph 66 of the Tribunal's Guidance Note on Sanction (3rd edition):

> "Where the Tribunal decides that the respondent is, notwithstanding his limited means, properly liable for the applicant's costs (either in full or in part) and is satisfied that there is a reasonable prospect that, at some time in the future, his/her ability to pay those costs will improve, it may order the respondent to meet those costs but direct that such order is not to be enforced without leave of the Tribunal." The Tribunal would order that the costs of £18,602.80 were not to be enforced without its leave.

Statement of Full Order

138. The Tribunal Ordered that the First Respondent, solicitor, be Reprimanded and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,201.00.

139. The Tribunal Ordered that the Second Respondent , Benny Thomas, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,602.80, such costs not to be enforced without leave of the Tribunal.

Dated this 6th day of May 2015
On behalf of the Tribunal

D. Green
Chairman